

SEP 15, 2020

**BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS**

WV PE BOARD

**IN RE: ARETE STRUCTURES, LLC, and
TERRY S. AUSEL****C2020-15****CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers by Bhajan S. Saluja, P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve Board-initiated Complaint C2020-15. The Complaint, as filed, was against Arete Engineers, PLLC and Terry S. Ausel, ("Respondent Ausel"). The Board recognized that the corporate acts alleged to have been performed by Arete Engineers, PLLC, appear to have been performed by and through its sister entity, Arete Structures, LLC. As part of a negotiated resolution of this matter, the Board together with the undersigned parties agree to amend the Complaint by naming Arete Structures, LLC, now known as and designated as "Respondent Firm" as to matters regarding this Complaint, and now substituted for the aforesaid named Arete Engineering, PLLC in this proceeding. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia. Hereafter, Respondent Ausel and Respondent Firm are collectively known as "Respondents," and they consent to the jurisdiction of this Board. As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of this agreement, does hereby **FIND** the following:

1. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. A license is required by a person to practice or to offer to practice engineering in West Virginia.
3. Respondent Ausel is a licensed professional engineer in North Carolina, and other states.

4. In July 2019, Respondent Ausel applied for comity to obtain a West Virginia Certificate of Registration. His W.V. P.E. License No. 23760 was activated on August 26, 2019. In his comity application, Respondent Ausel answered “No” to the disclosure question, “Are you currently practicing or even offering to provide engineering services for projects in WV?”
5. State law requires a provider of engineering services to possess an active Certificate of Authorization (hereinafter “COA”) in order to practice engineering or to offer to practice engineering in West Virginia.
6. Respondent Firm is a corporation organized under the laws of the State of North Carolina with its principal place of business in Boone, North Carolina.
7. As of the date of the entry of this Consent Order, Respondent Firm has not applied for a COA, nor ever held a COA.
8. The Board received information that an agent, servant and/or employee of Respondent Firm had, prior to August 26, 2019, submitted an offer to provide engineering services for a project located in Tucker County, West Virginia by letter dated June 26, 2019, and did provide engineered design drawings, dated August 22, 2019. These acts of offering engineering services and the practice of engineering services are the basis of the allegations that Respondent Firm aided or assisted the offer and the practice of engineering for a West Virginia project by a person without a license. Moreover, the documents constituting the offer and the practice of engineering were submitted under the name of Respondent Firm. These aforesaid acts are also the basis of the allegations that Respondent Firm offered and provided engineering services for a West Virginia project without a COA.
9. This resulted in a Board-initiated investigation, which was the basis of the Board agreeing to the amended Complaint which set forth the following allegations: that Respondent Ausel provided misinformation to the Board in his comity application; that Respondent Firm aided or assisted another person, who was not duly registered, in offering to provide engineering services; that it aided or assisted another person, who was not duly registered, in providing engineering services for a West Virginia engineering project; that Respondent

Firm offered to practice engineering and did practice engineering in the State of West Virginia without a COA.

10. The Board initiated Complaint Number C2020-15 at its regular meeting on November 13, 2019, which was filed and served on or about November 20, 2019.
11. Respondents filed a timely Response on December 18, 2019.
12. By agreement of the parties, the allegation against Respondent Ausel regarding his alleged act of fraud and/or deceit, contained in the original complaint, is herein reduced to the charge of providing misinformation to the Board, and the other two alleged violations against Respondent Ausel are **Dismissed**.
13. The Board and Respondents agreed to settle this matter. Respondents would forego their right to an administrative hearing, and their right to appeal, and they consent to the Board proceeding against them on the following charges: Respondent Ausel - the single offense that he provided misinformation to the Board in his comity application; and Respondent Firm - the four separate offenses of 1) aided or assisted the unlicensed offer of engineering services, 2) aided or assisted the unlicensed practice of engineering; 3) offered engineering services without the required COA; 4) practiced engineering without the required COA.
14. The Board has considered the following factors in reaching this settlement: there was no risk of harm to the public; the violations did not pose harm to the public; and Respondents cooperated in the resolution of this Complaint.
15. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs and administrative costs were incurred in the investigation, initiation and resolution of this complaint.

CONCLUSIONS OF LAW

16. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code §30-13-1 *et seq.*

17. Terry S. Ausel, as Member of Respondent Firm, has the power and authority to make admissions, and otherwise act on its behalf, and he makes such admissions knowingly, freely, voluntarily, and without any threat of harm or act of coercion.
18. Respondent Ausel has the power and authority to make admissions and otherwise act on his own behalf, and he makes such admissions knowingly, freely, voluntarily, and without any threat of harm or act of coercion.
19. Failure to comply with any of the provisions of W. Va. Code §30-13-1 *et seq.*, or any of the rules promulgated under West Virginia Code Chapter 30, Article 13, is a basis for disciplinary action by the Board. W. Va. Code §30-13-21(a)(4).
20. The Board is authorized to “assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board.” W. Va. Code §30-13-21(b); see also W. Va. Code §30-13-21(d)(4), and W.Va. Code R. §7-1-15.
21. The Board may reprimand, suspend or revoke or refuse to issue, restore or renew a certificate of registration or authorization, or place on probation, impose a civil penalty or reprimand any professional engineer or firm, who has failed to comply with any of the provisions of this article or any of the rules promulgated under it. W. Va. Code §30-13-21(a)(4), (b) and (d), and §30-13-22(d).
22. Providing false information (or misinformation) to the Board is a basis for disciplinary action by the Board. W. Va. Code §30-13-21(a)(12).
23. Providing misinformation to the Board may subject any person or firm to discipline by the Board, including a civil penalty up to Fifteen Thousand dollars (\$15,000.00) for each offense. W. Va. Code R. §7-1-15.1
24. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a COA by the Board. W. Va. Code §30-13-17.
25. It is unlawful for any firm to practice or offer to practice engineering, as defined by West Virginia Code §30-13-3(e), in the State of West Virginia unless that firm has obtained a COA under the provisions of West Virginia engineering law. W. Va. Code §30-13-17.

26. Practicing engineering, or offering to practice engineering as defined by W. Va. Code §30-13-3(e), without a valid COA is an action that may subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00) for each offense. W.Va. Code R. §7-1-15.1.
27. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code §30-13-3(e), in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. W.V. Code §30-13-2.
28. Practicing engineering, or offering to practice engineering, as defined by W. Va. Code §30-13-3(e), without a license is an action that may subject a person to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W. Va. Code R. §7-1-15.1.
29. It is unlawful for any person to aid or assist the unlicensed offer of engineering services, and/or the unlicensed practice of engineering. W. Va. Code §30-13-21(a)(8) and W. Va. Code §30-13-2.
30. The penalty for aiding and assisting a violation of engineering law and its rules shall be no more than the maximum penalty set forth in the Board rule, W.Va. Code R. §7-1-15.1. W.Va. Code R. §7-1-15.2. A person, so aiding and abetting, shall be disciplined in the same manner and extent as the actor committing the offense. In this case, the underlying violations are offering to practice engineering and practicing engineering, as defined by W. Va. Code §30-13-3(e), without a license. Each action subjects a person to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W. Va. Code R. §7-1-15.1.
31. The provisions of W. Va. Code §30-13-21(a) are applicable as appropriate to unlicensed persons and firms. W. Va. Code §30-13-21(b) and (d).
32. Respondent Ausel provided misinformation to the Board in his comity application in violation of W. Va. Code §30-13-21(a)(12).

33. Respondent Firm offered engineering services and practiced engineering without the required COA, in violation of W. Va. Code §30-13-21(a)(4). Respondent Firm also aided or assisted another person, who was not duly registered, to offer and/or practice engineering in the State of West Virginia, in violation of W. Va. Code §30-13-21(a)(8).
34. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the following: whether the amount imposed will be a substantial economic deterrent to the violation; the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the history of previous violations; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; the economic benefits gained by the violator as a result of the non-compliance; the interest of the public; and other matters as may be appropriate. W. Va. Code R. §7-1-15.4.
35. The assessment of administrative costs is within the Board's sole discretion. W. Va. Code §30-13-21(d)(4) and W. Va. Code R. §7-1-14.4.

CONSENT OF RESPONDENTS

Terry S. Ausel, individually, and as Member of Respondent Firm, by affixing his signature hereon, agrees to the following on behalf of himself, and Respondent Firm, Arete Structures, LLC:

36. Respondents acknowledge their right to consult an attorney of their choosing, at their sole expense, and they knowingly, freely, voluntarily, and without any threat of harm or act of coercion waive their right to proceed with counsel, and will proceed pro se. Further, Respondents are aware of their rights to pursue this matter through appropriate administrative and/or court procedures, including their right to a formal hearing before the Board, and Respondents knowingly, freely and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
37. Respondent Firm admits it did not have a Certificate of Authorization to practice engineering or offer engineering services in the State of West Virginia at the time it offered

engineering services and practiced engineering in West Virginia, in violation of West Virginia engineering law.

38. Respondent Firm further admits it aided or assisted another person, who was not duly registered, to offer to provide engineering services, and that it aided or assisted said person to practice engineering in violating West Virginia engineering law, W. Va. Code §30-13-1 *et seq.* and/or the rules promulgated under it.
39. Respondent Ausel admits that he submitted a comity application which contained misinformation regarding his offering and/or practice of engineering in West Virginia.
40. Respondents accept the findings set forth above and consent to the entry of this Consent Order knowingly, freely and voluntarily, and not under duress, restraint or compulsion.
41. Respondents acknowledge that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondents authorize the Board to review and examine all investigative file materials concerning Respondents' activities in West Virginia in consideration of this Consent Order.
42. Should the Board not approve this Consent Order, Respondents waive any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on Respondents even if the Board does not approve this Consent Order.
43. Respondents acknowledge that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
44. If the Board does reject this proposal, any admissions made herein by Respondents are deemed null and void.
45. Respondents understand that this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action

by the Board to enforce the terms of this Consent Order, but that nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondents, or either of them, which may be before this Board.

46. Respondents understand that the Complaint and this Consent Order are public records which, together with other public documents in the file, must be made available upon legal request in accordance with the State's Freedom of Information Act.
47. Respondents agree that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board's website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
48. Respondents acknowledge that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the original Complaint, the summary revocation, non-renewal or non-reinstatement of any Certificate of Registration issued to Respondent Ausel and/or Certificate of Authorization issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.
49. Respondents acknowledge that proof of any material misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the original Complaint, the summary revocation, non-renewal or non-reinstatement of any Certificate of Registration issued to Respondent Ausel and/or Certificate of Authorization issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint Number C2020-15 pursuant to West Virginia Code §30-13-22(b).
2. The Board **ORDERS** that Complaint C2020-15 be amended to name Arete Structures, LLC as Respondent Firm, to reflect the violations on which the agreed-to discipline is based and upon the allegations in support of said discipline. The Board also **ORDERS** that the Complaint C2020-15 be amended to reflect that Respondent Ausel provided misinformation to the Board in his comity application.
3. The Board **ORDERS** Respondent Ausel to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for providing misinformation to the Board in his comity application for a Certificate of Registration.
4. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for aiding or assisting the offer of engineering services in West Virginia without a license.
5. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for aiding or assisting the practice of engineering services in West Virginia without a license.
6. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for offering to practice engineering without a Certificate of Authorization.
7. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for the practice engineering without a Certificate of Authorization.
8. The civil penalty imposed herein totaling One Thousand, Five Hundred Dollars (\$1,500.00) must be paid within thirty (30) days of the date of entry set forth below, such

amount to be made payable to the “**W. Va. P.E. Board**” for transfer to the general fund of the State of West Virginia upon receipt.

9. The sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board’s website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
10. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
11. The Board **ORDERS** Respondent Firm to refrain from offering engineering services and/or practicing engineering in the State of West Virginia unless it possesses an active West Virginia COA.
12. If the civil penalty imposed against Respondent Firm is not paid within thirty (30) days of the date of entry set forth below, then Respondent Firm’s COA, if any, is hereby **ORDERED REVOKED**. Said revoked COA may be restored once the civil penalty is paid, and Respondent Firm pays the appropriate fees, and is otherwise in good standing with the Board. W. Va. Code §30-13-21(d)(1).
13. If the civil penalty imposed against Respondent Ausel is not paid within thirty (30) days of the date of entry set forth below, then Respondent Ausel’s registration, is hereby **ORDERED REVOKED**. Said revoked registration may be restored once the civil penalty is paid, and Respondent Ausel pays the appropriate fees, and is otherwise in good standing with the Board. W. Va. Code §30-13-21(d), and W.Va. Code R. §7-1 et al.
14. This Consent Order may be summarily enforced in the Circuit Court of Kanawha County, West Virginia, without further notice to Respondents upon application by the Board for the entry of a Judgment Order for the amount of payments agreed to herein of One Thousand (\$1,000.000) from Respondent Firm, and Five Hundred Dollars (\$500.00) from Respondent Ausel, together with pre-judgment interest from the date of the Board President’s signature hereon, post-judgment interest from the date of entry of the Judgment

Order, and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.

15. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty agreed to herein, except as to the provisions set forth in paragraphs 12 and 13 , above, regarding revocation of Respondent Firm's COA, if any, and Respondent Ausel's registration, and its effects shall survive the closure of this Consent Order.
16. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to the same with regard to any future disciplinary matter involving Respondent Ausel and Respondent Firm which may come before this Board.
17. This Consent Order relates solely to matters set forth in West Virginia engineering law and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

(Signature line appears on next page.)

AGREED TO BY:



ARETE STRUCTURES, LLC
By: TERRY S. AUSEL, MEMBER

9/14/20

DATE

And



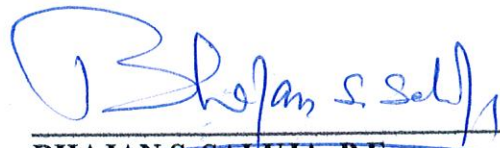
TERRY S. AUSEL
Individually.

9/14/20

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 22 day of September, 2020.

**WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS**

By: 

BHAJAN S. SALUJA, P.E.
BOARD PRESIDENT