

STATE OF MINNESOTA
BOARD OF ARCHITECTURE, ENGINEERING, LAND SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE AND INTERIOR DESIGN

In the Matter of **STIPULATION AND
CONSENT ORDER**

Andrea Peschel Swan

Architect No. 44486 Board File No. 2023-0003
OAH No. 23-1006-39722

STIPULATION

Andrea Swan ("Respondent") and the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design's Complaint Committee stipulate that, subject to Board's review and discretionary approval, the Board may issue a consent order that imposes the following sanctions:

A. Respondent's Architect license, No. 44486, is CENSURED and REPRIMANDED pursuant to Minn. Stat. § 326.111 (2022).

B. Respondent shall pay to the Board a civil penalty of Thirteen Thousand Dollars (\$13,000). Respondent shall submit the civil penalty by check to the Board within sixty (60) days of the Board's approval of this Stipulation and Consent Order.

C. Respondent shall complete 2 professional development hours related to professional ethics, and provide proof of completion of the hours to the Board, within 60 days of the Board's approval of this stipulation and Consent Order. These professional development hours are not to count toward the continuing education hours required by statute and rule for license renewal.

D. Respondent shall remain law abiding and comply with all statutes and rules within the Board's jurisdiction. *See* Minn. Stat. §§ 326.02-.15 (2022) and Minn. R. chs. 1800 & 1805 (2023).

E. Respondent shall report in writing within ten days any and all violations of this stipulation and consent order to the Board's Executive Director.

Respondent and the Committee enter into this stipulation based on the following findings of fact, conclusions of law, and other stipulated provisions:

Findings of Fact

1. The Board issued Respondent an Architect license in Minnesota on November 28, 2005.

2. Respondent's Minnesota Architect license expired on July 1, 2016.

3. Respondent called the Board office on July 19, 2022, stating that she was unable to login to the Board's website to renew her Architect license.

a. Respondent was informed during the conversation that her license had expired on July 1, 2016.

b. During the phone conversation, Respondent stated she had been practicing

architecture while her license was lapsed “though mostly residential projects”.

4. Respondent’s Minnesota Architect license was renewed on August 8, 2022, six years and one month after the expiration. Respondent with her August 8, 2022 renewal met the minimum requirements of her continuing education requirements.

5. Respondent owns an architectural firm which is based in Minnesota under the name “Swan Architecture” and is registered as a Professional Firm - Architecture under Minnesota Statute 319B with the Secretary of State’s office.

6. During the six-year lapse of licensure, Respondent stated on her firm’s website that she was “Registered Architect in Minnesota and New York since 2003”. The website lists a Minnesota address for the firm and Respondent resides in Minnesota. Respondent stated that she remained licensed in New York.

7. On August 10, 2022, Respondent submitted an emailed response to the initial allegation letter and request for information in which she stated that she took remedial steps and, per her email, completed the following:

- a. ‘Omitted mention of myself as being a licensed Architect in the state of MN on my BIO (on the firm’s website, and on LinkedIn)’
- b. ‘Omitted the use of the word *architecture* in describing what I do, or the role I have, under my BIO on the firm’s website, and LinkedIn’
- c. ‘I have removed the word *architecture* from my contracts in all instances until my license is reinstated’

8. On August 21, 2022, Respondent submitted an additional response regarding the following information requested in the allegation letter.

- a. A list of all Architect projects worked on between July 1, 2016 to present. Including but not limited to residential projects wherein you were identified as the architect. This includes but is not limited to plans signed and or submitted for permitting by you during your lapse of license. Respondent responded: “I was not identified as “the architect” or “architect” for any projects. I am listed as “Principal” and we do have another licensed architect in our firm. Please note that client information is confidential, if additional information is needed, we can provide it, but I will need to follow MN Data Practices Act procedures, so it would take more time.”
- b. A list of invoices for services rendered as an architect between July 1, 2016 to present. Respondent stated in her response: “Attached is the total amount billed for my time on Minnesota projects – all single family residential. To be clear, the company does not send invoices out for just my time and the invoices would not detail out time billed by each employee. We can provide a list of invoices if you would like – but again would have to follow confidentiality procedures.”
- c. Respondent’s position description during the time of the lapse from July 1, 2016 to present. In her response, Respondent stated: “In each engagement I was listed as “Principal” of the firm and that is how I am referenced on our website and on LinkedIn. I would not dispute that confusion could exist considering the firm name, services provided and that other licensed architects working for the firm are licensed.”

9. On October 3, 2022, an additional letter was sent requesting the information that Respondent failed to provide with the initial request. In the letter, it was also explained that the Minnesota Government Data Practices Act that Respondent claimed to need to comply with in her response only applied to government entities and not to the Respondent or her firm. The Board again requested the following items:

- a. A list of all Architect projects worked on between July 1, 2016, to your renewal date of August 10, 2022. Including but not limited to residential projects wherein you were identified as the architect. This includes but is not limited to plans signed and or submitted for permitting by you during your lapse of license.
- b. A list of invoices for services rendered as an architect between July 1, 2016 to her renewal date of August 10, 2022.
- c. Your position description during the time of the lapse from July 1, 2016 to her renewal date of August 10, 2022.

10. On October 18, 2022, Respondent submitted her response.

- a. A list of all Architect projects worked on between July 1, 2016, to your renewal date of August 10, 2022. Respondent stated: "I was not identified as Architect for any projects I worked on between July 1, 2016, and August 10, 2022. I am listed as Principal and/or owner in all contracts and invoices and/or drawings... I have not signed or submitted any plans for permitting during my lapse of license. Please also note that the firm has had another licensed architect working during the entire lapse and that during the entire lapse, and I have maintained licensure in the state of NY during the entire lapse."
- b. A list of invoices for services rendered as an architect between July 1, 2016 to her renewal date of August 10, 2022. Respondent stated in the response: "...I was not rendered as Architect for any projects during my lapse. Regardless, invoices and contracts are being shared per your request."
- c. Your position description during the time of the lapse from July 1, 2016 to her renewal date of August 10, 2022. In her response, Respondent responded: "I am listed as owner, or principal for each project worked on during the time of lapse."
- d. In the response, Respondent also stated: "I was under the assumption that doing all the CEU's annually was keeping my license in-tact. I clearly understand the renewal process at this time and will make every effort to avoid a future lapse." Respondent had successfully completed five separate license renewals prior to her July 1, 2016 expiration.
- e. Respondent provided the statement "Even though I was not identified as Architect for any projects worked on during the time lapse in the state of MN, I would not dispute that confusion could exist considering the firm name, services provided, and that other licensed architects working for the firm are licensed. Therefore, I am in good faith sharing all invoices, and contracts, rendered as owner and/or principal of Swan Architecture, between July 1, 2016, and August 10, 2022, for your use and review."

11. On December 22, 2022, after Respondent's responses was reviewed by the Committee, additional information was requested. The Respondent was requested to provide copies of the following:

- a. Any and all plans or project drawings signed by Respondent during her lapse in license, including but not limited to plans submitted to city code officials for permitting.
- b. All of the following documents completed by Respondent during the lapse in your license from July 1, 2016 to August 10, 2022:
 - i. A list of any and all nonresidential and/or commercial work that Respondent completed.
 - ii. Copies of any and all invoices for work Respondent

completed on nonresidential and/or commercial projects.

iii. Copies of any and all nonresidential and/or commercial building plans signed by Respondent.

iv. Copies of any and all proposals Respondent completed work on for nonresidential and/or commercial projects.

12. In her January 7, 2023 response, the Respondent again stated that she did not sign any plans or project drawings during her lapse in license. She also stated that all but one of the projects completed during time of lapse were residential. The one that was not residential solely conceptual in nature, to improve the curb appeal of an already designed multi-family building for marketing purposes for a past residential client.

13. The contracts and invoices provided by the Respondent showed that five projects had structural engineering services billed in the invoices. Respondent stated that for all structural engineering services billed, a licensed structural engineer was engaged.

14. On April 18, 2023, more information was requested from the Respondent. The information requested included:

- a. Copies of the fully executed plans including but not limited to the architectural and structural engineering details for the five projects.
- b. Respondent was asked to identify any and all projects that were submitted to City Code Officials for permitting, including but not limited, to the five projects.

15. On May 12, 2023, Respondent submitted her response and requested clarification on the second requested item.

- a. Of the five projects requested, Respondent stated that only three were submitted for City Code Officials for permitting. Plans were provided for all five projects.
- b. In this response, Respondent also stated "When preparing the sets for you, and reviewing them again myself after many years, I realized that on the <PROJECT> set we added my license number to the title block. Since then, there have been a few of projects that have had the same title block that have made it to permit, and the hands of city officials."
- c. Respondent indicated that 24 projects were submitted to City Code Officials for permitting by Swan Architecture between July 1, 2016 and August 10, 2022.
- d. Of those 24 projects, five were submitted for permitting with a variation of her architectural certification.

16. On May 23, 2023, after receiving clarification on the second item of requested documentation, Respondent submitted three more plans for projects she certified. These were included in the list of five projects that she previously identified.

17. Respondent certified plans for five projects during the time of expiration. These plans had already been utilized by the time Respondent renewed.

18. Respondent failed to cooperate when the Complaint Committee sought information regarding on three separate occasions and provided conflicting information with her initial responses.

Conclusion of Law

1. The Board has authority to license and regulate Architects and to take disciplinary action as appropriate. Minn. Stat. ch. 326.111 (2022).

2. Respondent violated Minn. Stat. § 326.02, subd. 1 (2022), and Minn. R. 1805.0200, subp. 1(B), 1800.0100-.0110 (2023).

3. This stipulation and consent order is in the public interest.

Other Stipulated Provisions

1. This stipulation and consent order must be approved by the Board to become effective.

2. Respondent agrees that the Committee may move the Board *ex parte*, with or without advance notice to the Respondent, to approve this stipulation and consent order. Respondent understands that the Board may either approve the stipulation and consent order or not approve it. This stipulation and the files, records, and proceedings associated with this matter may be reviewed by the Board in its consideration of the Committee's motion.

3. If approved by the Board, this stipulation and consent order shall be classified as public data. Minn. Stat. § 13.41, subd. 5 (2022). The Board will post a copy of this order on its website. The Board will also send a summary to the national discipline data bank pertaining to the practice of architecture.

4. If the Board does not approve this stipulation and consent order, then the matter remains unresolved and the Committee may either seek to negotiate a revised stipulation and consent order with Respondent to present to the Board or proceed with filing arguments and exceptions regarding the administrative law judge's report and recommendation. *See* Minn. Stat. §§ 14.57-.62, 214.10, subd. 2 (2022) (describing administrative hearing process).

5. Respondent agrees that if this case comes before the Board again after it reviews and discusses this stipulation and consent order, Respondent waives any claim that the Board was prejudiced by its review and discussion of this stipulation and consent order and any records relating to it.

6. Respondent acknowledges that they were advised by the Committee of their right to a contested-case hearing in this matter before an Administrative Law Judge, to file exceptions and make argument to the Board after the hearing, and to seek judicial review from any adverse decision rendered by the Board. Respondent hereby expressly waives those rights. Respondent was further advised by the Committee of their right to be represented by counsel and that they either have been represented or knowingly waive that right.

7. Respondent has read, understands, and agrees to this stipulation and has voluntarily signed it. It is expressly understood that this stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise. If approved by the Board, a copy of the final stipulation and consent order shall be served personally or by first class mail on Respondent. The Board's order shall be effective when it is signed by the Chair of the Board or the Chair's designee.

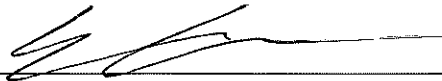
8. Pursuant to Minn. Stat. § 16D.13 (2022), any civil penalty imposed by this stipulation and consent order shall begin to accrue simple interest in accordance with that section thirty days after the civil penalty is due. Pursuant to Minn. Stat. § 16D.17 (2022), thirty days after any civil penalty imposed by this stipulation and consent order is due, the Board may file and enforce any unpaid portion of the civil penalty as a judgment against Respondent in district court without further notice or additional proceedings.

CONSENT TO ENTRY OF ORDER



Andrea Peschel Swan, Architect

Dated: Oct. 03, 2024


ERIC FRISKE, JD
Committee Chair

Dated: October 9, 2024

CONSENT ORDER

Upon consideration of this stipulation and consent order, and based upon all the files, records, and proceedings herein, all terms of the stipulation and consent order are approved. Accordingly, the Board hereby ADOPTS the stipulation and issues the ORDER described above.

MINNESOTA BOARD OF ARCHITECTURE,
ENGINEERING, LAND SURVEYING,
LANDSCAPE ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN

Dated: 10 - 9, 2024
DANIEL KELSEY, PE
Board Vice Chair

