

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

~~In the Matter of~~
~~Nestor Popowych, Unlicensed~~

SETTLEMENT AGREEMENT
AND
CEASE AND DESIST ORDER

**In the Matter of the Engineering
Activities of Nestor Popowych**

Board File No. 2010-0061

TO: Mr. Nestor Popowych
2720 South River Road Suite 256
Des Plaines, Illinois 60018

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2010) and Minnesota Statutes section 326.111 (2010) to review complaints concerning the unauthorized practice of architecture, professional engineering, land surveying, landscape architecture, geoscience and interior design, and to take action pursuant to those statutes whenever appropriate.

The Board received a complaint concerning Nestor Popowych ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that the matter may now be resolved by this Settlement Agreement and Cease and Desist Order.

SETTLEMENT AGREEMENT

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

1. Jurisdiction. Pursuant to Minnesota Statutes section 326.111, subdivision 3 (2010), the Board is authorized to issue an order requiring an unlicensed person to cease and desist from practicing professional engineering in the State of Minnesota. Respondent is subject to the jurisdiction of the Board with respect to the matters referred to in this Settlement Agreement and Cease and Desist Order.

2. Facts. This Settlement Agreement is based upon the following facts:

a. Respondent was first licensed as an Architect in the State of Minnesota on September 8, 2009, license number 47725. As of the date of this Settlement Agreement and Cease and Desist Order, Respondent's Architect license in Minnesota is current with an expiration date of June 30, 2014.

b. Respondent is not currently and never has been licensed by the Board as a Professional Engineer in the State of Minnesota.

c. Respondent practiced professional engineering, as defined in Minnesota Statutes section 326.02, subdivisions 1 and 3, without a Minnesota Professional Engineer license, by signing the Structural Analysis Of Antennas Tripod on Roof of 92' Tall Water Tower for Clear Wire engineering report, for a project located in Maplewood, Minnesota, and by the following actions.

c.1 Respondent, using his Architect license #47725, signed and certified the Structural Analysis Of Antennas Tripod on Roof of 92' Tall Water Tower for Clear Wire report, dated January 16, 2010,

located in Maplewood, Minnesota.

c.2 Additionally, attached to the Structural Analysis Of Antennas Tripod on Roof of 92' Tall Water Tower for Clear Wire report, dated January 16, 2010, were construction drawings (T-1), general requirements plans (T-2), watertower specification plans (T-3), site plans (C-1, C-2, C-3, C-4, C-5), tripod water tank mounting plans (C-6), and grounding plans (G-1 and G-2).

d. In a letter dated August 11, 2010, in response to a written question from the Board's investigator, "Did you prepare the drawings identified as T-1, T-2, T-3, C-1, C-2, C-3, C-4, C-5, C-6, C-7, G-1 and G-2? If not, who did prepare these drawings?," Respondent replied: "As Architect-of-Record for this project, it is my responsibility by the State of Minnesota Board of AELSLAGID to certify that the plans and specifications were prepared by me or under my direct supervision under the Laws of the State of Minnesota. Accordingly, I will attest that I personally designed the major aspects of this project and had direct supervision over the execution of the plans, specifications, and documents pertaining to it."

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326.02, subdivisions 1 and 3 and section 326.03, subdivision 1 (2010) and are sufficient grounds for the action specified below. Specifically, Respondent practiced as a professional engineer, when he signed and certified the Structural Analysis Of Antennas Tripod on Roof of 92' Tall Water Tower

for Clear Wire report, dated January 16, 2010, located in Maplewood, Minnesota.

4. Enforcement Action. Respondent and the Committee agree that the Board may issue an Order in accordance with the following terms:

a. Cease and Desist Order. Respondent shall cease and desist from practicing professional engineering in Minnesota until such time as he becomes licensed as a Professional Engineer in the State of Minnesota.

b. Civil Penalty. Respondent shall pay a civil penalty of Five Thousand Dollars (\$5,000.00) to the Board. Respondent shall submit a cashier's check or money order for Five Thousand Dollars (\$5,000.00) to the Board within sixty (60) days of the date of the Board Order approving this Settlement Agreement and Cease and Desist Order.

5. Judicial Relief. If the Respondent violates paragraph 4 above, a district court of this state may, upon application of the Committee, enter an Order enjoining Respondent from such unauthorized practices, ordering Respondent to show cause why the required civil penalty has not been paid, and granting the Board its costs, reasonable attorney fees, and other appropriate relief.

6. Waiver of Respondent's Rights. For the purpose of this Settlement Agreement, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent and to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minnesota Statutes Chapter 14 (2010).

Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order requiring the action specified in paragraph 4 herein. Respondent waives the right to any judicial review of this Settlement Agreement and Cease and Desist Order or the attached Board Order by appeal, writ or certiorari, or otherwise.

7. Collection. In accordance with Minnesota Statutes section 16D.17 (2010), in the event this order becomes final and Respondent does not comply with the condition in paragraph 4(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment without further notice or additional proceedings.

8. Board Rejection of Settlement Agreement and Cease and Desist Order. In the event the Board in its discretion does not approve this Settlement Agreement and Cease and Desist Order, this Settlement Agreement shall be null and void and shall not be used for any purpose by either party hereto. If this Settlement Agreement is not approved and a contested case proceeding is initiated pursuant to Minnesota Statutes Chapter 14 (2010), Respondent agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Settlement Agreement and the record.

9. Record. The Settlement Agreement, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Settlement Agreement.

10. Data Classification. Under the Minnesota Government Data Practices Act, this Settlement Agreement and Cease and Desist Order is classified as public data upon its issuance by the Board, Minnesota Statutes section 13.41, subdivision 5 (2010). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (2010). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this Settlement Agreement and Cease and Desist Order will appear in the Board's newsletter. A summary will also be sent to the national discipline data bank pertaining to the practice of professional engineering.

11. Unrelated Violations. This settlement shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying disciplinary action which occurred before or after the date of this Settlement Agreement and which is not directly related to the specific facts and circumstances set forth herein.

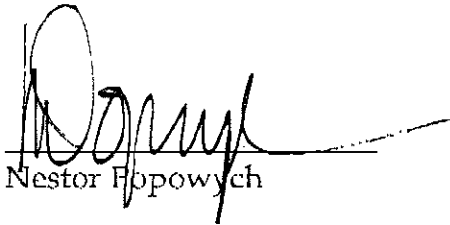
12. Entire Agreement. Respondent has read, understood, and agrees to this Settlement Agreement and Cease and Desist Order and is freely and voluntarily signing it. The Settlement Agreement and Cease and Desist Order contains the entire agreement between the parties. Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

13. Counsel. Respondent is aware that he may choose to be represented by

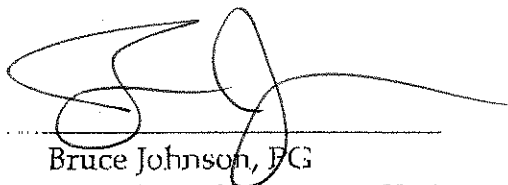
legal counsel in this matter. Respondent knowingly waived legal representation.

14. Service. If approved by the Board, a copy of this Settlement Agreement and Cease and Desist Order shall be served personally or by first class mail on Respondent. The Settlement Agreement shall be effective and deemed issued when it is signed by the Chair of the Board.

RESPONDENT


Nestor Popowych

COMPLAINT COMMITTEE

BY: 
Bruce Johnson, FG
Complaint Committee Chair

Dated: Oct 9, 2012 2012

Dated: 10/17, 2012

ORDER

Upon consideration of the foregoing Settlement Agreement and based upon all the files, records and proceedings herein, all terms of the Settlement Agreement are approved and hereby issued as an Order of this Board on this the 26 day of October 2012.

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

By: 

Lisa Hanni, LS
Board Chair

