

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

**In the matter of Mark A. Deady
PROFESSIONAL ENGINEER
License Number 21375**

STIPULATION AND ORDER

Board File No. 2012-0002

TO: Mark A. Deady
4505 Park Avenue
Minneapolis, Minnesota 55407

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2012) and Minnesota Statutes section 326.111 (2012) to review complaints against architects, professional engineers, land surveyors, landscape architects, geoscientists, and certified interior designers, and to take disciplinary action whenever appropriate.

The Board received information concerning Mark A. Deady ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that the matter may now be resolved by this Stipulation and Order.

STIPULATION

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

1. Jurisdiction. The Board initially issued a Professional Engineering license to Respondent on June 3, 1991. Respondent currently is licensed as a Professional Engineer by the Board. Respondent is subject to the jurisdiction of the Board with

respect to the matters referred to in this Stipulation.

2. Facts. This Stipulation is based upon the following facts:

a. Respondent was first licensed as a Professional Engineer in the State of Minnesota on June 3, 1991.

b. On July 1, 2000, Respondent's Minnesota Professional Engineer license expired.

c. On September 24, 2001, the Board sent a letter to the Respondent notifying him that his Minnesota Professional Engineer license had lapsed effective June 30, 2000 and that his license was not current.

d. Respondent, a principal in an engineering firm located in Minnesota, did not disclose the lapse/expiration of his Minnesota Professional Engineer license to the firm until May, 2011, when he met with two other principals of the firm.

e. Respondent reinstated his Minnesota Professional Engineer license on June 6, 2011. Respondent's Professional Engineer license is current with an expiration date of June 30, 2014.

f. When Respondent reinstated his Minnesota Professional Engineer license, he submitted an Affidavit For Reinstatement, signed on June 1, 2011, stating that during the time his license was lapsed/expired, he did not represent himself as a Professional Engineer and that he did not perform or offer to perform professional engineering services in the State of Minnesota.

g. On August 9, 2011, Respondent, accompanied by his legal counsel, self-disclosed in person to Lynette DuFresne, Board Investigator, that

he may have held himself out as a professional engineer in Minnesota by using the title of 'PE' during the lapse of his license from July 1, 2000 until June 6, 2011. Additionally, Respondent self-disclosed that he may have practiced as a professional engineer in Minnesota during the lapse of his license from July 1, 2000 until June 6, 2011. Respondent spoke of the types of projects he worked on and documents and correspondence he signed as a Minnesota Professional Engineer during the lapse/expiration of his license and placed these projects in various categories such as Administrative; Work Scope, Transmittal Letters, Critique/Review Others Work, Expert Reports, and Engineering Study. Respondent told Investigator DuFresne that he had informed his employer that his Minnesota Professional Engineer license was not current. Respondent's attorney stated that due to confidentiality with the firm where Respondent worked, they could not provide all the documentation the investigator requested. Respondent informed Investigator DuFresne that he was a principal of the firm.

h. In a letter dated October 21, 2011, Respondent stated that he did self-disclose to Ms. DuFresne on August 9, 2011. Respondent provided a list of all the projects on which he worked from July 1, 2000 to June 6, 2011 and the number of hours he spent on each project. Respondent provided copies of his business cards for the period from July 1, 2000 to June 6, 2011. The title "P.E." appeared in conjunction with Respondent's name on all of the business cards.

i. On December 14, 2011, Investigator DuFresne, had a telephone conversation with the legal counsel to the firm where Respondent worked during the lapse/expiration of his Professional Engineer license. The firm's legal

counsel informed Investigator DuFresne that the firm was conducting its own internal investigation and contacting its clients to let them know of the projects on which Respondent worked without a current Minnesota Professional Engineer license.

j. In a letter dated December 15, 2011, the legal counsel to the firm where Respondent worked during the lapse/expiration of his Professional Engineer license, informed the Board that the principals at the firm had met with several clients whose project may have been affected, discussed the client needs and wishes in this situation to determine where corrective action may be needed.

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326.02, Subdivision 1 and 3, Minnesota Statutes section 326.111, subdivision 4 (a) (1-3 and 5) (2012), Minnesota Rules 1805.0200, subparts 1, and 4 (C) and (D) (2011) and are sufficient grounds for the action specified below. Specifically, it is alleged that: (a) Respondent knowingly held himself out and practiced as a Minnesota Professional Engineer when his license was lapsed/expired, from July 1, 2000 until June 6, 2011; (b) that Respondent made materially false statements and submitted materially false information on the Application for License/Certificate Reinstatement, when he signed the Affidavit For Reinstatement stating that he did not represent himself as or practice as a Minnesota Professional Engineer from July 1, 2000 to June 6, 2011; (c) that Respondent engaged in conduct involving dishonesty and deceit and conduct that adversely reflects on Respondent's fitness to practice the profession (1) when, knowing that his Minnesota Professional

Engineer license had lapsed/expired in 2000, Respondent continued to use the title of 'PE' in conjunction with his name and business activities at the firm where he worked and continued to practice as a Professional Engineer in Minnesota; (2) when Respondent signed the Affidavit For Reinstatement in June 2011, knowing that he had held himself out as a Professional Engineer and practiced Professional Engineering in Minnesota during the lapse/expiration of his license; and (3) when Respondent did not inform principals at the firm where he worked about the lapse/expiration of his license until May of 2011.

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

a. Revocation. Respondent's Minnesota Professional Engineer license is revoked for a period of four (4) years from the date the Board Chair signs this Stipulation and Order. During the period of revocation, Respondent shall not hold himself out as a Professional Engineer or P.E., nor shall he practice or offer to practice professional engineering, within the meaning of Minnesota Statutes section 326.02, subdivisions 1 and 3, in the State of Minnesota.

b. Civil Penalty. Respondent shall pay to the Board a civil penalty of Forty Thousand Dollars (\$40,000.00), to be paid according to the following schedule: Respondent shall submit a payment of Ten Thousand Dollars (\$10,000.00) by cashier's check or money order to the Board within sixty (60) days of the Board's approval of this Stipulation and Order; and Respondent shall submit a payment of Ten Thousand Dollars (\$10,000.00) by cashier's check or money order to the Board on or before each of the following dates: January 15, 2014; January 15, 2015; and January 15, 2016.

c. Ethics Course Required. Respondent shall successfully complete sixteen (16) hours of course(s) in professional ethics which are approved in advance by the Complaint Committee. Respondent must complete the course(s) and submit the course completion certification(s) or similar copy to the Board within one (1) year of the Board's approval of this Stipulation and Order. Respondent shall not use these sixteen (16) hours as part of his continuing education hours required for reinstatement or thereafter, should his license eventually be reinstated.

d. Conditions for Reinstatement of License. Respondent agrees that he will not apply to reinstate his Minnesota Professional Engineer license until at least four (4) years after the date the Board Chair signs this Stipulation and Order. After the four (4) year period has been completed, Respondent may apply to reinstate his revoked Minnesota Professional Engineer license. Respondent's reinstatement application will be reviewed and considered by the Board pursuant to Minnesota Statutes section 326.10, subdivision 9 (2012) and other applicable Board statutes and rules in effect at the time the application for reinstatement is submitted. The parties agree that Respondent's Minnesota Professional Engineer license will be reinstated if he meets all of the following terms and conditions: (1) Respondent must be in full compliance with all the terms and conditions of this Stipulation and Order, including having made full payment of the entire \$40,000.00 civil penalty; (2) Respondent must submit documentation satisfactory to the Board of having completed all continuing education (professional development) hours required by Board statutes and rules through the proposed date of reinstatement; and (3) Respondent must pay all fees, including reinstatement fees, required by Board statutes and rules in effect at the time of

his reinstatement application.

e. Respondent shall cease and desist from violating any laws, rules or orders entrusted to enforcement by the Board.

5. Additional Discipline for Violations of Order. If Respondent violates this Stipulation and Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least thirty days prior to the hearing, the Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Within fourteen days after the notice is mailed, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

b. At the hearing before the Board, the Complaint Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The Complaint Committee may submit affidavits responding to any affidavits submitted by Respondent. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice or suspension or revocation of Respondent's license.

6. Waiver of Respondent's Rights. For the purpose of this Stipulation, 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, to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minnesota Statutes Chapter 14 (2012), and to dispute the civil penalty imposed by this Agreement. Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order containing the enforcement action specified in paragraph 4 herein. Respondent waives the right to any judicial review of the Order by appeal, writ of certiorari, or otherwise.

7. Collection. In accordance with Minnesota Statutes section 16D.17 (2012), 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 Stipulation and Order. In the event the Board in its discretion does not approve this Stipulation and Order or a lesser remedy than specified herein, this Stipulation and Order shall be null and void and shall not be used for any purpose by either party hereto. If this Stipulation is not approved and a contested case proceeding is initiated pursuant to Minnesota Statutes Chapter 14 (2012), Respondent agrees not to object to the Board's initiation of the proceedings and hearing the case on the basis that the Board has become disqualified due to its review and consideration of

this Stipulation and the record.

9. 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 Stipulation and Order and which is not directly related to the specific facts and circumstances set forth herein.

10. Record. The Stipulation, 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 Stipulation.

11. Data Classification. Under the Minnesota Government Data Practices Act, this Stipulation and Order is classified as public data upon its issuance by the Board, Minnesota Statutes section 13.41, subdivision 5 (2012). 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 (2012). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this 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.

12. Entire Agreement. Respondent has read, understood, and agreed to this Stipulation and is freely and voluntarily signing it. The Stipulation contains the entire agreement between the parties hereto relating to the allegations referenced herein.

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 is represented by Ryan J. Burt, Esq..

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

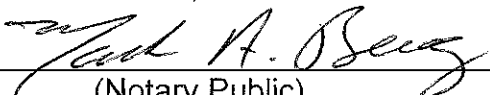
RESPONDENT



Mark A. Deady

Dated: 01-18, 2013

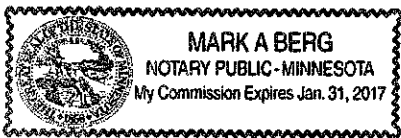
SUBSCRIBED and sworn to before me on
this the 18th day of JANUARY, 2013.



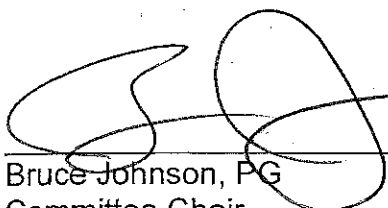
(Notary Public)

Mr Commission Expires:

1/31/17



COMPLAINT COMMITTEE



Bruce Johnson, PG
Committee Chair

2-11-13

ORDER

Upon consideration of the foregoing Stipulation and Order and based upon all the files, records, and proceedings herein, all terms of the Stipulation and Order are approved and adopted and hereby issued as an Order of this Board this the 11 day of February, 20 13.

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

By: 

LISA HANNI, LS
BOARD CHAIR

