

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

**In the Matter of
Merlyn Jenkins, Unlicensed**

**SETTLEMENT AGREEMENT
AND
CEASE AND DESIST ORDER**

Board File No. 2015-0046

TO: Merlyn Jenkins
412 West Market Street
Pottsville, Pennsylvania 17901

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2014) and Minnesota Statutes section 326.111 (2014) 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 Merlyn Jenkins ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that these matters 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 (2014), the Board is authorized to issue an order requiring an unlicensed person to cease and desist from holding out as a land surveyor and practicing as a land surveyor 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 is not currently and never has been licensed by the Board as a Land Surveyor in the State of Minnesota.
 - b. Respondent signed an ALTA/ACSM Land Title Survey for a community living facility project located in Lake Crystal, Minnesota with his Pennsylvania Land Surveyor stamp on April 23, 2015.
 - c. Respondent signed an ALTA/ACSM Land Title Survey for a health care center facility located in Mankato, Minnesota with his Pennsylvania Land Surveyor stamp on April 23, 2015.
 - d. Respondent signed an ALTA/ACSM Land Title Survey for a corporate office project located in Mankato, Minnesota with his Pennsylvania Land Surveyor stamp on April 24, 2015.
 - e. Respondent signed an ALTA/ACSM Land Title Survey for an Assisted Living Facility located in Mankato, Minnesota with his Pennsylvania Land Surveyor stamp on April 27, 2015.
 - f. Respondent signed an ALTA/ACSM Land Title Survey for an Assisted Living Facility located in New Prague, Minnesota with his Pennsylvania Land Surveyor stamp on April 28, 2015.

- g. In a letter dated June 5, 2015, Respondent was asked to provide a list of all the Minnesota projects that he worked on. Respondent stated: "Response: None, except those five sites that were the subject of this inquiry; which, as explained herein, were withdrawn prior to completion."
- h. In this same letter dated June 5, 2015, Respondent was asked to provide copies of all drawings, plans, reports, etc. for any Minnesota projects that he signed and or certified as a land surveyor. Respondent stated: "Response: None; at Mr. Vincent Macaуда's insistence, as he was attempting to complete a Planning & Zoning Report, to accommodate his demand I signed a certification as the President of the firm and the individual being responsible for checking all of the work which any surveying technician and/or professional had produced in order to insure the highest attainable degree of accuracy for our clientele."
- i. Respondent has been the subject of disciplinary orders for similar types of violations of state laws in the following other jurisdictions:

 - i.1 West Virginia, Cease and Desist Order, Complaint C07-14, issued by State of West Virginia Board of Professional Surveyors on January 17, 2008.
 - i.2 Illinois, Order to Cease and Desist, No. 200500053, issued by State of Illinois, Department of Financial and Professional Regulation, on December 12, 2008.

i.3 Ohio, Case No. 08-056, Settlement Agreement, issued by Ohio State Board of Registration for Professional Engineers and Surveyors on May 20, 2009.

i.4 Rhode Island, Consent Order, DBR No. 12DP029, issued by State of Rhode Island Department of Business Regulations on November 28, 2012.

i.5 Tennessee, Case numbers L15-SUR-RBS-2015011831 & L15-SUR-RBS-2015011841, issued by State of Tennessee Board of Examiners for Land Surveyors on September 3, 2015.

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326.02, subdivision 1 (2014), Minnesota Statutes section 326.02, subdivision 4 (2014) and Minnesota Statutes 326.03, subdivision 1 (2014) and are sufficient grounds for the action specified below. Specifically, it is alleged that the Respondent held himself out as a Land Surveyor in Minnesota and practiced as a land surveying within the meaning of Minnesota Statutes section 326.02, subdivision 4 (2014) in Minnesota by signing and certifying five (5) ALTA/ACSM Land Title Surveys for projects located in Minnesota with his Pennsylvania Land Surveyor seal in April 2015.

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 holding out as a land surveyor in Minnesota and practicing as a land surveyor in Minnesota until such time as he becomes licensed as a land surveyor in the State of

Minnesota.

b. Civil Penalty. Respondent shall pay a civil penalty of Ten Thousand Dollars (\$10,000.00) to the Board. Respondent shall submit a check or money order for Ten Thousand Dollars (\$10,000.00) 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 (2014). 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. Pursuant to Minnesota Statutes section 16D.17 (2014), after ninety (90) days of the Board's approval of this Stipulation and Order, the Board may file

and enforce any unpaid portion of the civil penalty imposed by this Order as a judgment against Respondent in district court 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 (2014), 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 (2014). 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 (2014). 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 land surveying.

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

Merlyn Jenkins
Merlyn Jenkins

Dated: 11/16, 20 15

SUBSCRIBED and sworn to before me on this the 16 day of November, 20 15.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Debra A. Jenkins, Notary Public
City of Pottsville, Schuylkill County
My Commission Expires Dec. 11, 2017
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Debra A. Jenkins
(Notary Public)

My Commission Expires:
12/11/17

COMPLAINT COMMITTEE

Terry Groshong
TERRY GROSHONG, AR
Committee Chair

DATED: 11.19., 20 15

ORDER

Upon consideration of the foregoing Settlement Agreement and Cease and Desist Order and based upon all the files, records, and proceedings herein, all terms of the Settlement Agreement and Cease and Desist Order are approved and adopted and hereby issued as an Order of this Board this the 4 day of DECEMBER, 20 16.

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

By: Mary Deeg
Mary Deeg, CID
Board Chair

