

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

In the matter of David Herscher
PROFESSIONAL ENGINEER
License Number 48091

STIPULATION AND ORDER

Board File No. 2019-0010

TO: David Herscher, PE
1811 Four Mile Road NE
Grand Rapids, MI 49525

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2018) and Minnesota Statutes section 326.111 (2018) 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 David Herscher ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that these matters may now be resolved by this Stipulation and Order.

STIPULATION

It is hereby stipulated and agreed by Respondent and the Committee that without trial or adjudication of any issue of fact or law and without any evidence or admission by any party with respect to any such issue:

1. Jurisdiction. Respondent was first issued a Minnesota Professional Engineer license by the Board on March 22, 2010. 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 March 22, 2010.

b. At the time of this Stipulation and Order, Respondent's Minnesota Professional Engineer license is valid.

c. Respondent renewed his Minnesota Professional Engineer license online on June 11, 2018. At that time, Respondent affirmed that he earned 43 Professional Development Hours (PDH), including nine carryover hours, and affirmed that he earned two hours dedicated to professional ethics as required by Minnesota Statutes section 326.107, subdivision 1(b) (2018).

d. In a letter dated June 12, 2018, the Board notified Respondent that his license number was randomly selected for review as part of the Board's continuing education audit.

e. In the same letter, the Board notified Respondent that as part of the audit, he must submit supporting documentation for a minimum of 24 PDH, of which two hours must be dedicated to professional ethics earned between July 1, 2016 and his renewal date of June 11, 2018.

f. Respondent submitted, and the Board received, supporting documentation for the continuing education audit on July 30, 2018. In the documents that were received, Respondent did not indicate that he earned the statutorily-required two professional ethics hours.

g. An allegation letter was sent to Respondent on August 21, 2018

requesting a response to the allegations of failing to meet the continuing education requirements prior to renewal and engaging in conduct involving dishonesty, deceit, or misrepresentation. A response to this letter was requested by September 13, 2018.

h. A response was received at the Board office on September 4, 2018.

i. In his response, Respondent stated that he thought his CDT training, which discussed ethics in the design and documentation related to writing, interpreting, and managing construction documents, would fulfill the continuing education requirements dedicated to professional ethics. He also noted that at the time he submitted his documentation he was unable to find his certificate of course completion.

j. Respondent also attached a Certificate of Completion for *Ethical Decision Making for Engineers #1*, a 2 PDH course. This course was completed by Respondent on August 28, 2018.

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326.111, subdivisions 4(a)(1), and 4 (a)(8) (2018) and Minnesota Statutes section 326.107, subdivisions 1(a) and 1(b) (2018) and are sufficient grounds for the action specified below. Specifically, it is alleged that Respondent failed to provide supporting documentation to substantiate two hours dedicated to professional ethics during the reporting period relevant to his license renewal and, therefore, failed to meet the continuing education requirements for renewal of his license on June 11, 2018.

4. Enforcement Action. Respondent and the Committee agree that the Board

should issue an Order in accordance with the following terms:

a. Reprimand. Respondent's license is censured and reprimanded for the foregoing conduct.

b. Civil Penalty. Respondent shall pay to the Board a civil penalty of \$500.00 payable by check to the Board within 60 days of the Board's approval of this Stipulation and Order.

5. 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 (2018), 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.

6. Collection. Pursuant to Minnesota Statutes section 16D.17 (2018), after 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 the Respondent in district court without further notice or additional proceedings.

7. 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 (2018), 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.

8. 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.

9. 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.

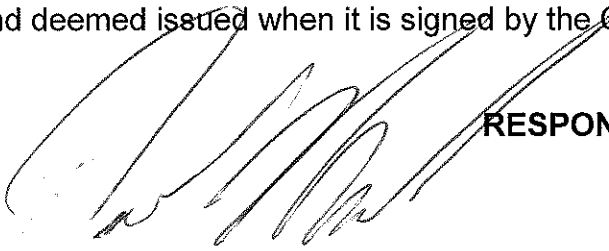
10. Data Classification. Under the Minnesota Government Data Practices Act, this Stipulation and Order is classified as public data upon its issuance by the Board, Minnesota Statutes section 13.41, subdivision 5 (2018). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (2018). 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 engineering.

11. 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.

12. Counsel. Respondent is aware that he may choose to be represented by legal counsel in this matter. Respondent knowingly waives legal representation.

13. 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

David Herscher, PE

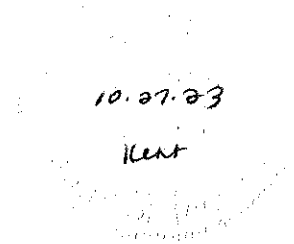
Dated: 4/17, 20 19

SUBSCRIBED and sworn to before me on this the 17th day of April, 20 19.



(Notary Public)

My Commission Expires:

October 27, 2023



COMPLAINT COMMITTEE



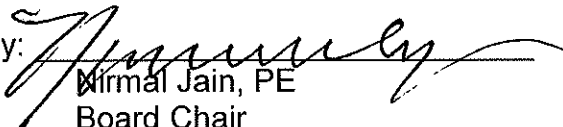
Keith Rapp, PG
Committee Chair

Dated: 16-MAY, 2019

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 16 day of May, 2019.

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

By: 
Nirmal Jain, PE
Board Chair

AFFIDAVIT OF SERVICE BY MAIL

**RE: In the matter of David Herscher
PROFESSIONAL ENGINEER
License Number 48091**

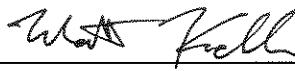
STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Matt Kaehler, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on this the 17th day of May, 2019, he served the attached **stipulation and order**, by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class and certified postage prepaid, and addressed to:


David Herscher, PE
1811 Four Mile Road Northeast
Grand Rapids, Michigan 49525

**CERTIFIED MAIL
Return Receipt Requested
7017 3040 0000 1241 1397**



Matt Kaehler

Subscribed and sworn to before me on
this the 17th day of May, 2019.



(Notary Public)

