

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

In the Matter of Eirik Magnuson

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER FOR DISCIPLINE**

The above-entitled matter came before the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design on May 6, 2020. Allen Cook Barr, Assistant Attorney General, appeared on behalf of the Board's Complaint Committee. Respondent Eirik Magnuson appeared on his own behalf.

On February 6, 2020, Administrative Law Judge Kimberly Middendorf recommended finding that Magnuson violated Minn. Stat. § 326.02, subd. 1 (2018), and imposing discipline. On February 24, 2020, the Board informed the parties of their right to file exceptions and argument with the Board pursuant to Minn. Stat. § 14.61, subd. 1 (2018). On April 15, the Committee filed arguments and exceptions with the Board. The record closed on April 15.

Based on all the facts, records, and proceedings herein, the Board makes the following:

FINDINGS OF FACT

1. Based on its independent review of the record, the Board adopts as its own the ALJ's findings of fact.
2. Calling oneself a project architect tends to convey the impression that the person is an architect.
3. Any conclusions of law from the ALJ's memorandum that should properly be termed findings of fact are hereby adopted as such.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board makes the following conclusions of law:

1. The Board adopts and incorporates as its own the conclusions of law in the ALJ's memorandum.
2. Any findings of fact from the ALJ's memorandum that should properly be termed conclusions of law are hereby adopted as such.
3. This order is in the public interest.

ORDER

It is ordered that, pursuant to Minn. Stat. § 326.111, subd. 6(a) (2018), Magnuson shall pay a civil penalty of \$250 to the State of Minnesota. Pursuant to Minn. Stat. § 16D.17(1) (2018), Magnuson is notified that this shall become a final civil penalty unless he requests a hearing from the Board on the civil penalty within thirty days. Pursuant to Minn. Stat. § 16D.17(2) (2018), Magnuson is notified that when the civil penalty becomes final, the Board may file and enforce the civil penalty in the same manner as a district court judgment against him without further notice or additional proceedings. Magnuson is notified that simple interest, computed in accordance with Minn. Stat. § 16D.13 (2018), shall begin to accrue on the civil penalty thirty days after the date of this order.

Dated: 5/6/20

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



Margaret S. Parsons, Chair

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

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

In the Matter of Eirik Magnuson

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Kimberly Middendorf for a hearing on January 7, 2020. The record closed that same day.

Anthony de Sam Lazaro, Assistant Attorney General, appeared on behalf of the Complaint Committee (Committee) of the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (Board). Eirik Magnuson (Respondent) appeared on his own behalf without legal counsel.

STATEMENT OF THE ISSUES

Did Respondent violate Minn. Stat. § 326.02 (2018) by holding himself out as a "project architect?"

SUMMARY OF RECOMMENDATION

The Committee established that Respondent held himself out as an architect in violation of Minn. Stat. § 326.02, subds. 1-2, such that the Board has grounds to impose a civil penalty authorized by Minn. Stat. § 326.111, subds. 1, 6 (2018) commensurate with the violation established.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent has a Bachelor of Arts degree in architecture from the University of Minnesota.¹

¹ Testimony (Test.) of Eirik Magnuson; Ex. 5.

2. Respondent does not hold an architecture license issued by the Board.² Respondent has never been a licensed architect.³

3. Respondent is employed by JSSH Architects (JSSH), located in Minnetonka.⁴ JSSH has employed Respondent since September 2003.⁵

4. On or about December 17, 2018, the Board received information from a member of the public regarding the JSSH website.⁶

5. An investigator for the Committee viewed the JSSH website on December 17, 2018.⁷ On that date, the website listed Respondent as an "Associate AIA⁸" and Vice President of JSSH Architects.⁹ In Respondent's profile, he was described as a "project architect" who "sees projects through from design development to completed construction documents." Respondent's profile indicated that his "responsibilities include team management, coordination between engineering consultants, as well as providing our client with the customer service they deserve."¹⁰

6. The Committee's investigator viewed Respondent's LinkedIn profile on December 17, 2018.¹¹ On Respondent's profile, his experience included the position of "project architect" at JSSH from "September 2003 - Present." Respondent described the position as follows:

I design and manage projects from schematic design through construction documents. A typical project is a multi-family senior housing building between 50 and 60 units. Most of my projects are in the Midwest [. . .] The building design is reached through collaboration with the building inside and out.¹²

7. The Committee notified Respondent that use of the term "project architect" by an unlicensed individual was impermissible.¹³ By December 28, 2018, the JSSH website and Respondent's LinkedIn profile were edited from "project architect" to "project manager."¹⁴

8. Respondent was given the job title of "project architect" by his employer.¹⁵

² Test. of Matthew Kaehler; Test. of E. Magnuson.

³ *Id.*

⁴ Ex. 2; Test. of E. Magnuson.

⁵ *Id.*

⁶ Test. of M. Kaehler.

⁷ *Id.*

⁸ "AIA" refers to the American Institute of Architects. Test. of E. Magnuson; *see also* Ex. 5.

⁹ Test. of M. Kaehler; Ex. 5.

¹⁰ Ex. 4.

¹¹ Test. of M. Kaehler; Ex. 2.

¹² Ex. 2.

¹³ Test. of M. Kaehler.

¹⁴ Exs. 3, 5.

¹⁵ Test. of E. Magnuson.

9. While at JSSH, Respondent worked under the supervision of a licensed architect.¹⁶

10. Respondent previously has not been the subject of discipline by the Board.¹⁷

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Board have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 326.111 (2018).

2. The Notice of Hearing is proper in all respects. The Committee has complied with all procedural requirements of law and rule.

3. A person who engages in the practice of architecture is required to be licensed by the Board as an architect.¹⁸

4. It is unlawful for a person to practice architecture; to solicit business as an architect; to use the title of architect; to advertise oneself as an architect; or to use a description that gives the impression that the person is an architect unless that person is duly licensed by the Board.¹⁹

5. The Board is authorized to impose a civil penalty of up to \$10,000 per violation upon a person who commits an act or practice constituting the unauthorized practice of architecture.²⁰

6. The burden of proof is on the Committee to show, by a preponderance of the evidence, that the subject of the order engaged in the unauthorized practice of architecture or violated a statute, rule, or order of the Board.

7. The Committee has met its burden of proving that Respondent's use of the title "project architect" violated Minn. Stat. § 326.02, subd. 1, which is a statute, rule, or order the Board is empowered to enforce.

8. The Board may impose a civil penalty of up to \$10,000, consistent with the factors set forth in Minn. Stat. § 14.045, subd. 3 (2018).

9. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

¹⁶ *Id.*

¹⁷ Test. of E. Magnuson

¹⁸ Minn. Stat. § 326.02, subd. 1.

¹⁹ *Id.*

²⁰ Minn. Stat. § 326.111, subd. 6.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Board find that Respondent violated Minn. Stat. § 326.02, subd. 1 and impose an appropriate fine as authorized by Minn. Stat. § 326.111, subd. 6 and consistent with Minn. Stat. § 14.045, subd. 3).

Dated: February 6, 2020



KIMBERLY MIDDENDORF
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2018), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64254, St. Paul, MN 55164-0254, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2018). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1(2018), the Commissioner is required to serve her final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Committee seeks to impose a civil penalty against Respondent for the unauthorized practice of architecture. Specifically, the Committee contends that use of the term "project architect" constitutes the unauthorized practice of architecture, in violation of Minn. Stat. § 326.02, subd. 1. The Committee maintains that Respondent has held himself out as a project architect, without a license, for fifteen years. Respondent disputes that he intended to hold himself out as a licensed architect. Respondent argues that use of the modifier "project" conveys something less than a fully licensed architect.

Pursuant to Minn. Stat. § 326.02, subd. 1, it is unlawful "to assume, use or advertise any title or description tending to convey the impression that the person is an architect" if the person is not licensed. There is no dispute that Respondent is not licensed yet publicly described himself as a project architect on the JSSH website and his LinkedIn profile.

The Court of Appeals has considered whether the use of the modifier "project" before "architect" removes the term from the strictures of Minn. Stat. § 326.02, subd. 1. In *Matter of Carlson*, the Court rejected Carlson's argument that her use of terms, including "project architect," did not violate Minn. Stat. § 326.02.²¹ Use of terms such as "project architect," "design architect," and "residential architect" are terms that tend to convey the impression that one is an architect, and thus violate the statute unless one is licensed.²²

Calling oneself a project architect tends to convey the impression that the person is an architect. This impression is strengthened where, as here, use of the title occurs on the website of an architectural firm. Respondent's argument, that use of the term "project architect" has an effect similar to that of the term "intern architect," is not persuasive. An intern is commonly understood to be akin to a trainee or student. Its use conveys something less than a licensed architect. A project architect, however, does not convey the same message. Rather, it tends to convey the impression that one is an architect with a particular area of specialization.

While the Committee established that Respondent held himself out as a project architect in violation of Minn. Stat. § 326.02, subd. 1, it failed to establish that Respondent had done so for a period of 15 years. The evidence in the record establishes use of the term only from December 17, 2017, to December 28, 2017, at most. During that short period, Respondent indicated that he held the position of project architect for 15 years. This is not proof that Respondent held himself out as a project architect for 15 years.

²¹ *In the Matter of Carlson*, 2019 WL 4745369, *4, (Minn. Ct. App. Sept. 30, 2019).

²² *Id.*

For the foregoing reasons, the Board may issue a civil penalty to Respondent. However, in arriving at a penalty amount, the Board must consider the factors listed in Minn. Stat. § 14.045, subd. 3. Consistent with those factors, the Board should consider Respondent's cooperation in the investigation, Respondent's lack of disciplinary history, the lack of evidence of harm to the public, and Respondent's prompt correction of the violation.

K. J. M.

STATE OF MINNESOTA
Minnesota Board of Architecture, Engineering, Land Surveying, Landscape
Architecture, Geoscience and Interior Design
85 East 7th Place, Suite 160
St. Paul, MN 55101

CERTIFICATE OF SERVICE BY U.S. MAIL

Case Title: In the Matter of the Eirik Magnuson
OAH 21-100-36206

I, Kay Weiss, verifies by oath or affirmation that on the 6th day of May, 2020, at the City of Saint Paul, in the county of Ramsey, in the state of Minnesota, she served the Findings of Fact, Conclusions of Law, Order for Discipline by depositing a true and correct copy in the United States mail, properly enveloped, with first class postage prepaid and addressed to the following named individual(s) or entities at the address indicated below.

Eirik Magnuson
30 17th Ave N
Hopkins, MN 55343



Kay Weiss
Assistant Executive Director