

MINUTES
ARIZONA STATE BOARD OF TECHNICAL REGISTRATION
1110 West Washington, Conference Room #240
Phoenix, AZ 85007

Tuesday, January 23, 2018
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER – 9:04am**
2. **ROLL CALL - Present**, Stephen Noel, Jason Foose, Neal Jones, Eugene Montgomery, Andrew Everroad, Dr. Alejandro Angel, Jason Madison, Edward Marley, Jack Gilmore
Staff: Melissa Cornelius, Patrice Pritzl, Robert Stam, Douglas Parlin, Kurt Winter
3. **CALL TO THE PUBLIC**

Paul Bakalls, executive director of the School Facility Board, appeared before the Board. Mr. Bakalls asked the Board to clarify whether the School Facility Board’s interpretation of the Board’s statues regarding firm registration and professionals hired for public works was accurate. Dr. Angel asked staff to clarify the rules with the School Facility Board but asked that staff add this matter to the next board meeting’ agenda if staff decided that the Board needed to discuss the matter. 32-141, 32-142

4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

- A. Approve, modify and/or reject December 12, 2017 Board meeting minutes.

Mr. Marley moved and Mr. Foose seconded to approve the minutes; motion carried.

5. **CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING**

Formal Hearings or Related Proceedings will begin at 9:30 a.m.

- A. Formal Administrative Hearing and/or Review, or Discuss and Take Possible Action on:

1. AL14-003, Jason Stoepker, Non-Registrant

Dr. Angel opened the matter. The Board took a roll call and all the board members indicated that they had received and reviewed the materials for this matter.

Scott Donald, A.A.G., appeared before the Board representing the State. Seth Hargraves, A.A.G., appeared before the Board as legal counsel. Respondent did not appear before the Board and was not represented by legal counsel.

Dr. Angel asked Mr. Donald if the matter should proceed as a Motion to Deem. Mr. Donald answered 'no'; Mr. Donald stated that Respondent contacted him telephonically and he considered that communication a response. Therefore he asked that the Board proceed with the formal administrative hearing.

Dr. Angel asked staff how Respondent was served with the complaint. Ms. Pritzl indicated that staff served Respondent through regular and certified mail, as well as email, if Respondent provided an email address. Dr. Angel asked whether Respondent responded to the Complaint and Notice of Hearing. Mr. Donald answered 'yes'; Respondent contacted him telephonically.

In his opening statement, Mr. Donald stated that Respondent practiced a Board regulated occupation without registration, and therefore, violated Arizona statutes.

Dr. Angel asked if the State wished to call any witnesses. Mr. Donald answered 'yes' and asked Adrianna Soto, AZBTR investigator, to testify. Dr. Angel swore in Ms. Soto. Mr. Donald conducted a direct examination of Ms. Soto. Mr. Donald asked that the Board admit exhibits 1-4 into the record. The Board admitted exhibits 1-4 into the record.

In his closing argument, Mr. Donald argued that the evidence and testimony in this matter proved that Respondent practiced a Board regulated occupation without registration and therefore violated Arizona statutes. Mr. Donald asked that the Board impose the maximum fine possible.

Mr. Madison moved and Mr. Gilmore seconded to adopt the Factual Allegations on page three from the Complaint and Notice of Hearing as Findings of Fact; motion carried.

Mr. Madison moved and Mr. Gilmore seconded to adopt the Alleged Violations from the Complaint and Notice of Hearing as Conclusions of Law; motion carried.

Mr. Noel asked staff why this case took so long to come before the Board. Ms. Cornelius answered that the case was backlogged with the AG's office. Mr. Noel opined that this was a matter of fraud. Dr. Angel agreed with Mr. Noel. Mr. Gilmore asked if the alarm business was in violation for knowingly hiring a non-registrant. Dr. Angel stated that Respondent was not an employee of the company, so it would be difficult to prove collusion. Mr. Madison asked staff to look into whether the Board filed a complaint against the alarm business in the past.

Mr. Marley moved and Mr. Foose seconded to issue the following Order: Respondent shall comply with all laws and regulations; pay cost of investigation in the amount of \$940.74; and pay a civil penalty in the amount of \$2000, both to be paid within 60 days; motion carried.

B. Formal Administrative Hearing and/or Review, or Discuss and Take Possible Action on Motion for Rehearing

1. P14-048, Timothy Spangler, Non-registrant, & Arizona Alta Specialists, Firm No. 18700

Scott Donald, A.A.G., appeared before the Board representing the State. Seth Hargraves, A.A.G., appeared before the Board as legal counsel. Respondent did not appear before the Board and was not represented by legal counsel.

Mr. Donald argued that Respondent's written argument in his motion, which stated that Respondent did not have an attorney, failed to meet the criteria for a rehearing and therefore there was no basis for a rehearing. Mr. Jones asked Mr. Donald if Respondent had the right to request a public defender. Mr. Donald answered no; an individual could request a public defender only in a criminal matter.

Mr. Foose moved and Mr. Everroad seconded to deny the request for rehearing or review; motion carried.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

- A. Complaints Proposed for Resolution by Dismissal or Closure:
1. P17-090, Andrew J. Boubel, Architect #35853

Mr. Marley moved and Mr. Foose seconded to dismiss the complaint; motion carried.

- B. Complaints Proposed for Resolution by Letters of Concern:

1. HI18-014, Travis Buddington, C.H.I. #54213 and Budd Home Inspections, LLC, Firm #17867

Mr. Madison expressed concern that Respondent performed 22 home inspections while holding a lapsed certificate and he asked staff for clarification. Mr. Parlin responded that Respondent had a lapsed certificate, as opposed to the more egregious violation of practicing while never being registered. Therefore, staff recommended resolution of the complaint by letter of concern. Mr. Madison asked how long Respondent's certificate was lapsed. Ms. Soto answered 'over a year' and she further explained that Respondent performed home inspections on a part-time basis. Board members expressed concern that Respondent performed 22 home inspections while his certificate was lapsed.

Mr. Madison moved and Mr. Foose seconded to propose offering Respondent a consent agreement to resolve the complaint informally, encompassing a \$250 administrative fee and cost of investigation, both to be paid in 60 days, and if not signed within 30 days, move to hearing; motion carried.

C. Complaints Proposed to Offer Consent Agreement:

Nothing to consider

D. Complaints Proposed for Resolution with Signed Consent Agreements:

1. HI18-006, Craig Garfield, C.H.I. #57513

Respondent appeared before the Board.

Mr. Marley moved and Mr. Gilmore seconded to accept the signed consent agreement; motion carried.

2. P18-021, David Hayes, P.E. (Civil) #22719

Respondent appeared before the Board.

Mr. Marley opined that the consent agreement was lenient considering Respondent's actions. Mr. Foose agreed. Mr. Montgomery stated that the Board should take the entirety of Respondent's career into consideration when making a final decision.

Mr. Madison moved and Mr. Montgomery seconded to accept the signed consent agreement; motion carried.

3. HI17-034, David Vibber, C.H.I. #59464

Mr. Madison opined that the penalties in the consent agreement appeared excessive. Mr. Madison stated that the main issue EAC members had with Respondent's home inspection report was Respondent's failure to properly inform the homeowners of the GFI unit being an immediate safety hazard. Mr. Madison further stated that Respondent did indicate the issues with the GFI unit in his home inspection report numerous times and therefore he did not understand the EAC members reasoning. Mr. Parlin explained that the EAC members argued that a non-functional GFI unit was a safety hazard and Respondent should have made that clear to the homeowners beyond submitting his home inspection report. Dr. Angel expressed his belief that going beyond the home inspection report to inform homeowners of safety hazards was not in the home inspector standards.

Mr. Madison moved and Mr. Marley seconded to issue a Letter of Concern and reject the signed consent agreement; motion carried.

4. P17-102, John Echeverri, Non-Registrant and EJ Engineering Group, Non-Registrant Firm

Mr. Jones recused himself.

Mr. Madison opined that the penalty of \$1000.00 appeared excessive. Ms. Soto explained that the penalty took into account the length of time and the number of projects performed while Respondent Firm was unregistered.

Mr. Everroad moved and Mr. Madison seconded to accept the signed consent agreement; motion carried.

5. P18-024, Timothy Robertson, Non-Registrant and Timothy Robertson Architects, Non-Registrant Firm

Mr. Madison opined that the penalty fee was insufficient since Respondent knowingly stamped a project in violation of Board statutes. Mr. Thacker explained that Respondent cooperated with the investigation, which influenced his recommendation of a \$1500.00 penalty fee.

Mr. Everroad moved and Mr. Marley seconded to accept the signed consent agreement; motion carried. Madison voted Nay.

6. P18-017, Beth Katz, Non-Registrant and Katz Design Group, LLC, Non-Registrant Firm

Respondent appeared before the Board.

Respondent indicated to the Board that she was not an architect, did not intentionally portray herself as an architect, and she had already made the required changes to her website.

Mr. Madison questioned whether the word 'architecture' was a regulated/protected term and he opined that the Board dismiss the case. Mr. Madison expressed his belief that Respondent's actions were not intentional, but the use of the word 'architecture' could be misconstrued. Dr. Angel agreed. Mr. Gilmore stated that the terms 'landscape architect' and 'landscape architecture' were regulated/protected terms. Mr. Everroad stated that in past meetings when a Respondent used the word 'architecture' in a company title, the Board disciplined the party, but he further stated that the Board should look at such matters on a case-by-case basis.

Mr. Madison moved and Mr. Foose seconded to dismiss the case; motion failed. All voted to oppose the motion except Mr. Madison and Mr. Foose.

Mr. Gilmore moved and Mr. Noel seconded to modify the consent agreement to remove the penalty and cost of investigation fees; motion carried.

E. Complaints Requiring Board Guidance:

1. P17-078, James Griffin, P.E. (Civil) #31682

Mr. Everroad and Mr. Gilmore recused themselves.

Respondent appeared before the Board.

Dr. Angel stated that after reviewing Respondent's provided materials, he opined that the Board dismiss the case.

Mr. Madison moved and Mr. Foose seconded to dismiss the case; motion carried.

2. AL18-002, Todd Pederson, Controlling Person #65430 and Vivint, Inc, Alarm Business Registration #18335

Respondent, Todd Pederson, did not appear before the Board. Nathan Wilcox, chief compliance officer of Vivint, Inc, appeared before the Board representing Respondent Firm. Alleger, Dr. Ted Benya, appeared telephonically.

Board members expressed their belief that this matter did not appear to contain any violations and asked the parties if they had attempted to resolve the matter between themselves. Dr. Benya answered 'yes', but he stated there had been no resolution between the parties. Board members asked for clarification. Dr. Benya obliged. Dr. Angel stated that from what he had read and heard, he did not see an issue with the installation and, therefore, did not find issue with the competency of the installer. Dr. Benya disagreed, citing a number of equipment issues. Dr. Angel stated that there was not enough information to prove a lack of competency. Mr. Wilcox stated that Respondent Firm had attempted on numerous occasions to resolve the issue with Dr. Benya and he further stated that Respondent Firm had done all it could, within the means of its technicians, to resolve the issues. Dr. Benya disagreed stating Respondent Firm failed to address his concerns regarding the defective equipment.

Dr. Angel asked staff if they had considered convening an alarm agent EAC. Ms. Cornelius answered that current statues, and the lack of alarm agent rules, did not allow for the convening of an alarm agent EAC. Ms. Pritzl stated that this case was unprecedented, and therefore, there was no defined process for the Board to follow.

Mr. Everroad stated that the issue at hand was whether Dr. Benya had demonstrated that a lack of competency existed and Mr. Everroad opined that Dr. Benya failed to do so. Dr. Benya stated that it was unfair that he, a consumer without the technical knowledge and skill of an alarm agent, had to demonstrate Respondent's competency. Dr. Angel reiterated that the Board did not know what was at issue. Mr. Foose asked if

the Board had ever disciplined the installer, Mr. Madrid. Ms. Cornelius answered not to her knowledge.

Mr. Madison moved and Mr. Everroad seconded to dismiss the case; motion carried. Dr. Angel voted Nay.

3. P18-003, Aaron Holden, Non-Registrant and iEngineer, LLC, Non-Registrant Firm

Greg Cobb, former owner of iEngineer, LLC, appeared before the Board. Respondent did not appear before the Board.

Dr. Angel asked why an EAC did not review this matter. Mr. Parlin answered that staff thought an EAC was unneeded. Dr. Angel asked Mr. Cobb whether Respondent Firm worked on multi-family housing projects. Mr. Cobb answered 'yes', but a professional engineer sealed the plans. Dr. Angel asked Mr. Cobb to elaborate. Mr. Cobb obliged. Dr. Angel asked staff to provide Respondent Firm's multi-family home plans and contracts for review.

Mr. Everroad asked for clarification that Respondent firm was iEngineer, not iEngineering as stated throughout the packet, and that Mr. Cobb was a Respondent in the case. Board members clarified that Respondent Firm was iEngineer and Mr. Cobb was a Respondent.

Mr. Montgomery and Mr. Madison opined that Respondent Firm title was misleading. Mr. Cobb explained that there was no ill intent. Dr. Angel stated he wanted to know more about the contractual relationship between Respondent Firm and the professional engineers that stamped Respondent Firm's multi-family plans. Mr. Montgomery wanted to know what title stamp was used on the plans. Mr. Jones showed concern that Respondent(s) participated as instructors/presenters at, what appeared to be, a mechanical engineering training course. Mr. Cobb explained that SRP invited them to assist in the section of training regarding single-family homes.

Mr. Foose moved and Dr. Angel seconded to send this matter to EAC; motion carried. Mr. Madison voted Nay.

F. Compliance Monitoring Investigations:

1. P17-088, Gordon Grandy, R.L.S. #17238

The Board had no objection to the revised survey being recorded and directed staff to notify both Respondent and Mr. Haase.

G. Review and Approval of Appointment for EAC Membership:

1. Tom Cain, C.H.I. #52579

Mr. Madison moved and Mr. Foose seconded to approve appointment; motion carried.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Registration after Full Board Review

A. Carlson, Edward – Home Inspector Application #171494

Applicant appeared before the Board.

Mr. Madison moved and Mr. Foose seconded to grant certification; motion carried.

B. Johnson, Eric – Professional Engineer Application #173013

Mr. Madison moved and Mr. Marley seconded to grant certification; motion carried.

C. Roche, Ronald- Professional Engineer Application #173010

Mr. Madison moved and Mr. Marley seconded to grant certification; motion carried.

BTR Licensing Update

D. Improvements and Updates for licensing

Licensing Manager Robert Stam reported that both alarm agent and home inspector certifications were taking a shorter time to complete, and a test group of registrants had successfully renewed online.

8. LICENSING CONSENT AGENDA

A. Review, Consideration, and Action on Staff Recommendations for the following:

1. Cancellation of registrations and certifications that have been expired for one full renewal period;

Mr. Madison moved and Mr. Marley seconded to cancel registrations and certifications that had been expired for one full renewal period; motion carried.

2. Review of the List of registrations and certifications granted by the Executive Director pursuant to A.R.S. § 32-122.05, 32-122.06, and A.R.S. § 32-123.

List available for public review upon request.

9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

A. Committee Appointments:

i) Legislation and Rules Committee Members and Chair

The Board directed staff to contact Peter Leeds, CHI, and Douglas Folk, JD, to invite them to participate as members of the L&R Committee. Mr. Marley was appointed Chair of the Committee.

ii) Home Inspector Rules and Standards Committee Members

Mr. Madison moved and Mr. Gilmore seconded to appoint the following individuals to the HIRSC: David Swartz, term to expire January 2019, as the HIRSC committee member representing a county with a population with 400,000 or less; Peter Leeds, term to expire January 2020; and, Paul Styron, term to expire January 2021.

B. Comments on the Pending Rules Package

Mr. Marley moved and Mr. Madison seconded to make corrections proposed by the HIRSC to the proposed rule packet and file the economic impact statement and the final required notices with GRRC; motion carried.

10. DIRECTOR'S REPORT

Ms. Cornelius reported that the joint legislative budget committee approved the Board's submitted budget request; that ADOA would now be billing GL Solutions monthly, not yearly; that Michelle Johnson returned to employment at the Board; that Paul Warner and Travis Holbrook both left state employment; that a bill to move home inspectors away from submitting fingerprints to the Board and applying for a fingerprint clearance card was being heard in the Senate; that Senator Mosely was considering not moving the deregulation bill affecting geologist and landscape architects forward; that Gilbert Davidson would be the acting director of DOA; and, that the compact bill was introduced into the Senate.

11. BOARD CHAIR'S REPORT – Nothing to report

12. STANDING COMMITTEE REPORTS

A. Legislation and Rules Committee – Meeting scheduled for mid-February.

B. Home Inspector Rules and Standards Committee – HIRSC met in mid-January.

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. ASBOG – Next meeting to be held in Atlanta Georgia in April 2018.
- B. CLARB – Nothing to report.
- C. NCARB – Mr. Marley, Mr. Stam and Ms. Pritzl will attend the March 8-10 meeting in Wichita, Kansas.
- D. NCEES – Dr. Angel, Mr. Foose, Mr. Montgomery, Ms. Pritzl and Ms. Cornelius will attend the April 5-7 2018 in Hawaii.

14. FUTURE BOARD MEETINGS – February 27, 2018

15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Alarm agent competency rules

16. MEETING ADJOURNMENT – 12:27pm

Dr. Alejandro Angel, Board Chairman



Melissa Cornelius, Executive Director

