

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

Tuesday September 26, 2017
9:00 a.m.
OPEN SESSION

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

3. **CALL TO THE PUBLIC**

No one appeared before the Board.

4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

- A. Approve, modify and/or reject August 29, 2017 Board meeting minutes.

Mr. Noel moved and Mr. Foose seconded to accept the minutes with minor modifications; motion carried. Mr. Marley and Dr. Angel abstained.

5. **CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING**
Formal Hearings or Related Proceedings will begin at 9:30 a.m.

No items for action at this meeting.

6. **ENFORCEMENT MATTERS**

Review, Consideration and Possible Vote on the following:

- A. Complaints Proposed for Resolution by Dismissal or Closure:

1. P18-008, Gerald Clark, R.A. #32055

Dr. Angel expressed concern that there was no compliance date in the consent agreement and that the agreement included referral fees. Mr. Marley opined that if Respondent was ok with paying referral fees there was no issue. Mr. Donald suggested using language such as ‘through accommodation of money and services’ in future consent agreements to make them more encompassing.

Mr. Marley moved and Mr. Montgomery seconded to dismiss the non-compliance complaint; motion carried.

2. P17-083, Richard Waage, R.L.S. #39954

Respondent, Richard Waage, appeared before the Board. Alleger, John Mawarura, appeared before the Board.

Mr. Mawarura explained to the Board the circumstances that gave rise to his complaint and stated he believed Respondent's survey was incorrect. Mr. Foose opined that this was a boundary dispute and the Board should dismiss the complaint, but informed Alleger and the Board that Mr. Mawarura could hire another surveyor for a second opinion. Dr. Angel asked Respondent how he found the property's boundary. Respondent explained the method he used. Mr. Montgomery asked whether there were development plans for the property surveyed. Respondent answered yes. Dr. Angel opined that he believed that Respondent completed the survey following the minimum standards and he agreed with Mr. Foose to dismiss the complaint. Mr. Mawarura showed the Board pictures of the property and asked why the survey did not match the pictures. Board members stated the pictures were not surveys. Mr. Madison explained to Mr. Mawarura that the issue was whether Respondent's survey met the minimum standards and any dispute with the survey beyond that was not under the Board's jurisdiction.

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

After the vote, Mr. Mawarura stated he would seek a second opinion for the survey.

B. Complaints Proposed for Resolution by Letters of Concern:

1. HI17-026, Paul Cummins, C.H.I. #55010

Dr. Angel moved and Mr. Marley seconded to issue the proposed Letter of Concern; motion carried.

2. HI17-032, Kyle Hageman, C.H.I. #42018

Respondent, Kyle Hageman, appeared before the Board.

Respondent stated he wished to know what deficiencies assessors found in his work so he could make corrections in the future and why was there a proposed action in this matter. Mr. Madison explained that a Letter of Concern was non-disciplinary and it would explain the deficiencies the assessors found. Respondent asked if this matter would become public. Mr. Madison answered yes.

Dr. Angel moved and Mr. Marley seconded to issue the proposed Letter of Concern; motion carried.

C. Complaints Proposed to Offer Consent Agreement:

1. P17-026, Christopher Caver, R.A. #50438 and Architectural Solutions, PLC, Non-Registrant Firm

Mr. Marley asked staff if they knew how many projects Respondent worked on while unregistered. Mr. Hunt indicated that Respondent was not cooperative during the investigation and therefore he did not have an answer. Mr. Jones asked if staff invited Respondent to the meeting. Mr. Hunt answered yes. Mr. Marley opined that through the interpretation of Respondent's written responses it was clear Respondent was ignorant, or apathetic, of the Board's rules and statutes. Mr. Marley asked staff if Respondent was current with his registration. Staff answered yes.

Mr. Marley moved and Mr. Gilmore seconded to approve the proposed Consent Agreement encompassing: a Letter of Reprimand; assurance of discontinuance of Registrant's firm; 60 day suspension effective from day of adoption of consent order to be followed immediately by a stayed suspension and probation of 12 months; complete a professional ethics course; pay an administrative penalty in the amount of \$5000 within 12 months; pay the cost of investigation; obey all laws; timely renew; and, if not signed within thirty days move to hearing; motion carried.

2. HI17-028, Vince Sferruzza, C.H.I. #60003 and Property Pro Home Inspection, Firm #20546

Respondent, Vince Sferruzza, appeared before the Board with counsel, Gregg Gibbons. Allegor, Sue Puffer, appeared before the Board.

Mr. Madison opened the discussion and asked Mr. Everroad if he had reviewed Mr. Gibbon's counter-proposed consent agreement. Mr. Everroad answered yes but he still believed the Board should approve the Board proposed consent agreement.

Mr. Gibbon's stated that Respondent was financially responsible during the time in which his firm was unregistered and when Respondent learned that his firm needed to be registered he immediately registered it. Mr. Gibbons argued that these actions proved Respondent had used his upmost diligence to stay within the Board's rules and statues and the violation against him was de-minimis.

Mr. Gibbon's stated that the Board's proposed consent agreement was inconsistent with the EAC's findings and asked the Board to accept his counter-proposed consent agreement.

Dr. Angel asked Board staff if they agreed with Respondent's claim that staff misplaced his renewal fee in December of 2015. Staff answered they have no record corroborating Respondent's claim and added that Respondent had never registered his firm. Dr. Angel stated he believed some aspects of Respondent's home inspection could have misled the homeowner and he asked the Board to consider adding parallel inspections to the Board's proposed consent agreement.

Ms. Puffer stated that nothing has changed in the inspected home since Respondent conducted his home inspection.

Mr. Montgomery asked the Board to clarify what was the Alleger's burden of proof in a matter such as this. Mr. Madison answered it was the Alleger's burden to provide evidence at the EAC meeting.

Mr. Montgomery stated that the renewal process included a re-evaluation of the record and the Board should not consider it simply as an administrative process.

Dr. Angel moved and Mr. Everroad seconded to approve the Board's proposed Consent Agreement with the addition that Respondent perform three parallel inspections and if not signed within 30 days send to hearing; motion carried.

3. P17-097, Rudy Carrillo, Non-Registrant

Mr. Marley was concerned over the severity of the violations in this matter (non-registrant, Respondent, using the seal of a registrant, Mr. Tobin) and wished to see higher penalties. Mr. Madison explained that Respondent was not a registrant and therefore the Board was limited in its ability to penalize Respondent.

The investigator, Mr. Warner, informed the Board that Respondent was a part time employee at the firm and his supervisor gave him access to the firm's server and the victim's seal on said server.

Dr. Angel voiced interest in sending a letter to the City of Chandler informing them that if they use sealed plans of a non-registrant after the Board gave them notice they will become liable if anything were to happen. Dr. Angel speculated that the Alleger, Jay Clary, gave Respondent access to the seal and therefore Mr. Clary may be associated with the violations. Mr. Warner informed the Board that Mr. Tobin was planning to retire or was currently retired. Dr. Angel wished to open a matter against Mr. Clary and his firm, ECD. Dr. Angel asked staff if ECD's firm registration was current. Mr. Warner answered yes. Mr. Parlin asked the Board what violation staff should pursue against Mr. Clary and ECD. Dr. Angel answered aiding and abetting unregistered practice. Mr. Madison opined sending a Letter of Concern to Mr. Tobin instructing him to secure his seal. Dr. Angel asked staff if the Board could bring forth any other allegations against Mr. Clary and ECD. Mr. Warner answered no since there was not enough information. Mr. Madison reminded the Board that if the AG's office prosecuted Respondent, any information connecting the violations to Mr. Clary and EDC would become evident at that time. The Board discussed increasing the civil penalty in the proposed consent agreement. Mr. Donald informed the Board that only two violations were present in this matter and the maximum penalty per violation was \$2000.

Mr. Marley moved and Mr. Jones seconded to offer Respondent a Consent

Agreement encompassing: assurance of discontinuance, pay a civil penalty in the amount of \$4000, pay the costs of investigation in the amount of \$695, and move to hearing if not signed in 30 days; motion carried.

After the vote, the Board asked staff to forward this case to the AG's office for criminal investigation. Mr. Madison asked Mr. Donald if the Board could send a letter to Mr. Tobin as opposed to a Letter of Concern. Mr. Donald answered yes.

The Board took a break at 10:39am and returned at 10:50am.

4. AL17-017, Life Safety Fire and Security Solutions, Non-Registrant Alarm Business

Dr. Angel asked staff if Respondent firm's controlling person and alarm agents were currently registered. Mr. Warner answered no. Dr. Angel was concerned that after six months since staff opened the case, Respondent firm and employees had yet to become registered. Mr. Warner explained that it took time to get a hold of the main principal in Boston. Dr. Angel stated he believed there was ample time to register.

Dr. Angel moved and Mr. Noel seconded to approve the proposed Consent Agreement but revise the civil penalty to \$4000; motion carried.

D. Complaints Proposed for Resolution with Signed Consent Agreements:

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

Mr. Marley moved and Mr. Foose seconded to accepted the signed Consent Agreement; motion carried

2. P17-093 and P7-103, Rene Rivera, Non-Registrant

Mr. Marley moved and Mr. Foose seconded to accepted the signed Consent Agreement; motion carried

E. Complaints Requiring Board Guidance:

1. P17-036, Klaus Ganser, Non-Registrant

Respondent, Klaus Ganser, appeared before the Board.

Investigator Hunt stated that he met with Respondent's supervisor.

Respondent stated he wrote a letter explaining his work on the project (this letter was included in the Board Member's packet) and he believed his actions were not in violation of the Board's rules and statutes.

Mr. Montgomery commented that the language within Respondent's written scope of functions was ambiguous and not the standard scope of functions for a project manager. Respondent stated secretaries and other employees wrote the scope of

functions. Mr. Montgomery asked Respondent if he performed the functions of a Professional Engineer. Respondent answered no.

Mr. Gilmore questioned why this matter was before the Board since there appeared to be changes to the specifications of the project plans and he asked Respondent to clarify. Respondent answered that the contract operator changed a number of times during the project process. Dr. Angel commented that the evidence substantiated that this was not a public project. Dr. Angel asked Respondent who was responsible for the tasks after the designs had been approved. Respondent answered the contract operator was responsible. Mr. Marley and Dr. Angel commented that the scope of Respondent's functions appeared to be typical of a construction administrator.

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

F. Review and Approval of Appointment for EAC Membership:

1. Dan Francetic, R.L.S. #33874

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

G. Compliance Monitoring Investigations:

1. P16-046, John Ware, R.L.S. #37937

Mr. Madison asked staff if Respondent had been compliant. Mr. Hunt answered yes and stated Respondent wished to have his probation terminated.

Mr. Foose moved and Mr. Marley seconded to terminate the probation; motion carried.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Registration after Full Board Review

A. Soto, Orlando – Alarm Agent Application #170771

Mr. Stam informed the Board that he had been unable to contact Applicant. Mr. Foose asked if staff made every effort to contact Applicant. Mr. Stam answered yes. Mr. Foose asked if Applicant could reapply if the Board moved to deny his application. Board Members answered yes.

Mr. Foose moved and Dr. Angel seconded to deny registration based upon Applicant's failure to demonstrate to the Board that he possessed the capability, qualification and good moral character to practice safely in Arizona; motion carried.

B. English, Joel Colin – Alarm Agent Application #170875

Applicant, Joel English, appeared before the Board.

Mr. English explained to the Board that he was unable to provide all documentation of his past arrest, though not because of a lack of due diligence on his part.

Dr. Angel asked Mr. English to explain why his explanation of the arrest did not coordinate with the documentation presented to the Board. Mr. English explained what happened to the best of his recollection. Dr. Angel asked Respondent to explain his conviction regarding the obstruction of an officer. Respondent could not provide clarification, saying he was unaware of being charged with that crime.

Dr. Angel moved and Mr. Marley seconded to grant registration; motion carried.

Whether to Grant or Deny Request for Extension of Licensing Timeframes

C. Hawks, George – Application for Architect Examinations #171435

Mr. Foote moved and Dr. Angel seconded to grant extension to complete the ARE of one year; motion carried.

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;

Dr. Angel moved and Mr. Marley seconded to cancel registrations and certifications that have 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.

Currently, the new computer system cannot create a list. Please contact staff if you wish to verify granted registration and certification in the month of August 2017.

9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

A. Next issue of the Newsletter

Board members discussed the next issue of the Newsletter and they offered staff some recommended changes.

Mr. Noel moved and Mr. Marley seconded to publish the next edition of the Newsletter with minor changes; motion carried.

B. Proposed 2018 Board Meeting Dates

Mr. Marley moved and Mr. Foose seconded to approve the proposed 2018 Board Meeting Dates; motion carried.

C. Election of 2018 Board Officers

Mr. Foose moved and Mr. Marley seconded to elect Dr. Angel as Chairman, Dr. Angel moved and Mr. Jones seconded to elect Mr. Foose as Vice Chairman and Mr. Gilmore as secretary; motion carried.

D. Reappoint HIRSC Members

Mr. Noel moved and Mr. Foose seconded to reappoint the HIRSC Members; motion carried.

After the vote, Dr. Angel asked if anyone else was interested in applying for HIRSC membership. Staff answered that no one had communicated interest.

10. DIRECTOR'S REPORT

- A. Budget Update – Ms. Cornelius reported that staff timely submitted all annual budget reports; staff submitted three budget requests for additional funds; staff members, Ms. Soto and Mr. Puccino, began their first week in their new positions.
- B. Previous Meeting Follow-Up – Ms. Cornelius reported that staff is still working with GL to correct outstanding issues with the new computer system.
- C. Director's Meetings – Ms. Cornelius reported that Mara Mellstrom, from the Governor's Office, requested another electronic copy of the Board's Response to the Executive Order.
- D. Statistics Review – Ms. Cornelius reported that the new computer system could not currently produce statistics.

11. BOARD CHAIR'S REPORT – Board Chair's farewell.

12. STANDING COMMITTEE REPORTS

- A. Legislation and Rules Committee – Nothing to report
- B. Home Inspector Rules and Standards Committee – Last meeting took place September 6 2017.

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. ASBOG – The annual meeting will take place in Portland, Oregon at the end of October.
- B. CLARB – Mr. Gilmore reported he was concerned that CLARB was trying to create a national registration program. Ms. Cornelius reported she resigned from the model board committee.
- C. NCARB – Ms. Cornelius and Ms. Pritzl telephonically participated in the regional meeting. Board members and staff discussed WCARB membership and national registration.
- D. NCEES - NCEES had requested a response as to whether the Board wants them to visit to observe a board meeting. The Board answered no.

14. FUTURE BOARD MEETINGS –October 24, 2017

15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Firm registration.

16. MEETING ADJOURNMENT – 11:48am

Dr. Alejandro Angel, Board Chairman



Melissa Cornelius, Executive Director

