



BEFORE THE ARIZONA STATE BOARD OF TECHNICAL REGISTRATION IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

TIMOTHY SPANGLER Non-Registrant, and

ARIZONA ALTA SPECIALISTS Registration No. 18700

Respondents.

OAH Docket No. 17F-P14-048-BTR Case No.: P14-048

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came before Tammy L. Eigenheer, Administrative Law Judge (ALJ) for the Office of Administrative Hearings on November 13, 2017, for the purpose of determining whether good cause exists for the Arizona Board of Technical Registration ("Board") to impose a civil penalty upon Timothy Spangler, non-registrant, and Arizona Alta Specialists, firm registration No. 18700. The Respondent appeared in person at the hearing on his own behalf and on the behalf of Arizona Alta Specialists. The Board appeared through its representative attorney, Scott Donald, Esq., Assistant Attorney General.

At its regularly scheduled monthly meeting held December 12, 2017, the Board considered whether to adopt, modify or reject the Administrative Law Judge's Decision and Order, dated December 4, 2017. Seth Hargraves, Assistant Attorney General, was present to provide the Board with independent legal advice. Neither Respondent nor his attorney were present at the meeting. Mr. Donald, the Board's attorney, was present and requested that the Board adopt the ALJ's Findings of Fact, Conclusions of Law, and Recommended Order with the addition of administrative fees, costs of investigation, and attorney's fees. Mr. Donald also asked the Board to consider modifying the Recommended Decision to correct the following non-substantive error:

- Conclusions of Law #3, last sentence, strike the word "because".

Mr. Donald also asked the Board to consider modifying the Recommended Decision to remove what did not appear to be a conclusion of law, but an opinion of the Judge:

1 - Conclusions of Law #8, strike the second sentence.

2 After hearing the state's argument and discussing the recommended decision, the Board
3 voted to grant Mr. Donald's requested modifications to the ALJ's Findings of Facts and
4 Conclusions of Law; and to further modify Conclusion of Law #8, by striking the last sentence
5 of the paragraph. Further, the Board voted to modify the ALJ's Recommended Order by
6 including an administrative fee for each of the three violations, costs of investigation and
7 attorney's fees, and adopt the ALJ's Recommended Order as modified.

8 Based on the ALJ's Recommended Decision, the administrative record in this matter and
9 modifications adopted by the Board, the Board issues the following Order:

10 **FINDINGS OF FACT**

11 1. At all times relevant to this matter, Timothy Spangler (Respondent) was the sole
12 Manager, sole Member, Statutory Agent, and CEO of Arizona ALTA Specialists (Respondent
13 Firm) in Phoenix, Arizona. Respondent has never been registered with the Arizona State Board
14 of Technical Registration (Board); Respondent Firm held Registration No. 18700 with the Board
15 during part of the time relevant to the is matter, but the registration is now expired.

16 2. Respondent Firm was organized as a professional limited liability company with
17 Arizona Corporation Commission as Arizona ALTA/ACSM Specialists, PLLC. Respondent
18 Firm was organized specifically for provision of the professional services of land surveying.

19 3. Respondent filed Articles of Organization for Respondent Firm with the Arizona
20 Corporation Commission on or about June 26, 2013.

21 4. On or about February 28, 2014, the Board received a complaint alleging that
22 Respondents practiced, offered to practice or advertised professional land surveying services in
23 Arizona without benefit of an active or valid registration. The complaint alleged that Respondent
24 had been "exerting undue influence" over James Samer, a licensed land surveyor. The complaint
25 went on to detail that Mr. Samer had suffered a stroke in June of 2012 and had to wind down his
26 professional business operations, but that Respondent, a long-time employee, may attempt to
27 involve Mr. Samer in his land surveying business. Exhibit 1 p. 34.

1 5. At the time of the complaint, neither Respondent nor Respondent Firm were
2 licensed by the Board. However, Respondent Firm's website provided that "[f]or more than three
3 decades, [Respondent Firm] has offered professional ACSM and ALTA land survey services"
4 and invited people to contact Respondent Firm for a bid. Exhibit 1 p. 35 and 38.

5 6. On or about March 10, 2014, the investigator initially assigned to the complaint
6 contacted Respondent regarding the complaint. The investigator requested that Respondent
7 provide records, contracts, a list of projects performed in Arizona from June 2013, and a
8 response to the allegations.

9 7. On or about March 13, 2014, Respondent submitted an Annual Firm Registration
10 form to the Board for a new registration identifying Mr. Samer as the Principal Registrant for the
11 Civil Engineering and Land Surveyor. Exhibit 1 p. 63.

12 8. On or about March 14, 2014, Respondent emailed the investigator from Mr.
13 Samer's email address stating that he had reviewed his documentation and discovered that he had
14 not filed with the Board to obtain registration for himself or Respondent Firm. Respondent
15 indicated that he had filed the corporation papers in August, opened bank accounts in September,
16 and "took over" the business in November. Respondent stated that he was the owner and
17 manager of Respondent Firm, which did land surveying, but that he had not advertised or
18 claimed to be a registered surveyor. Exhibit 1 p. 61.

19 9. On or about March 14, 2014, Respondent provided Board Staff with Respondent
20 Firm documents for surveys performed before Respondent Firm was registered with the Board.
21 Respondent provided documents listing Respondent Firm in the title block for surveys stamped
22 by Mr. Samer in December 2013 and February 2014.

23 10. On August 12, 2014, Respondent submitted an Application for Professional
24 Registration in which Respondent answered "no" to the question "Have you ever been the subject
25 of any type of action by a regulatory agency, or do you now have such action pending against
26 you in any state or jurisdiction (including Arizona)?" and answered "yes" to the question "Have
27 you ever been convicted of a misdemeanor other than a minor traffic violation?" Respondent
28 signed the application with the certification "that "I certify the information contained in this

1 application to be accurate, true and completed to the best of my knowledge." Exhibit 1 p. 78.

2 Respondent provided a written explanation stating "I was convicted of disorderly conduct
3 misdemeanor charge in 1981. I do not remember the circumstances " Exhibit 2.

4 11. On November 16, 2015, Respondent submitted an Application for Exam
5 Authorization in which Respondent answered "no" to the question "Have you ever been
6 convicted of a misdemeanor other than a minor traffic violation?" Respondent signed the
7 application with the certification that "I certify the information contained in this application to be
8 accurate, true and compete to the best of my knowledge."

9 12. In June 2016, Mr. Samer's registration with the Board expired.

10 13. After the expiration, Respondent, on behalf of Respondent Firm, entered into
11 contracts with CRESurvey, an Ohio company not registered in Arizona. The Board presented six
12 different surveys that were completed and stamped with Mr. Samer's stamp after Mr. Samer's
13 registration had expired.

14 14. During the investigation, Board staff spoke to Wendell Sommers, the owner of
15 CRESurvey, who stated that the CRESurvey had been contracting with Respondent for three to
16 four years. Mr. Sommers acknowledged that Respondent would go to the site and perform the
17 survey, then Mr. Samer would stamp the work.

18 15. On January 24, 2017, Mr. Samer entered into a Consent Agreement and Order for
19 Voluntary Surrender in which Mr. Samer acknowledged that Respondent Firm had engaged in
20 the practice of land surveying without Board registration, and that Mr. Samer had signed and
21 sealed professional documents prepared by Respondent for Respondent Firm on multiple
22 occasions. Exhibit 4.

23 16. At hearing, Respondent testified that he did not manipulate Mr. Samer at any point.
24 Rather, Respondent asserted that he had worked with Mr. Samer at his firm for a period of time
25 and when Mr. Samer decided to close his firm, Respondent decided to open Respondent Firm.
26 Respondent argued that he entered into the contracts with CRESurvey on behalf of Mr. Samer's
27 firm and that Mr. Samer's firm appeared on the surveys together with Respondent Firm and that
28 Respondent Firm was an "underlying spectator" in the deal. Respondent also indicated that it was

1 his fault Mr. Samer's registration expired because he failed to timely submit the renewal
2 paperwork. Respondent stated that on initial application he answered that he had been convicted
3 of a misdemeanor other than a minor traffic violation because he had a distinct recollection of
4 being arrested for disorderly conduct, appearing before a judge, pleading guilty to the charge,
5 and paying a \$50.00 fine. Respondent indicated that when the Board requested more information,
6 he was unable to provide the information because it happened so long ago and he did not have
7 any documentation. Respondent hired a third party firm to search for court records related to the
8 incident and it was unable to find records; therefore, Respondent answered "no" on the second
9 application. Respondent also testified that he hired a third party to develop and maintain
10 Respondent Firm's website and that he had fired the third party after it failed to correct certain
11 information. Respondent indicated that he had lost all his clients and his \$250,000.00 investment.

12 **CONCLUSIONS OF LAW**

13 1. The Board is the duly constituted authority for the regulation and control of the
14 practice of land surveying, including the unregistered practice. The Board is authorized by A.R.S.
15 § 32-128(C)(4) to take disciplinary action against the holder of a certificate or registration who is
16 charged with a violation of the Board's rules or statutes.

17 2. Respondent has never held a registration with the Board. Respondent Firm held
18 Registration No. 18700 with the Board since March 13, 2013.

19 3. The evidence presented at hearing established by a preponderance of the evidence
20 that Respondent and Respondent Firm practiced or offered to practice the Board-regulated
21 profession of land surveyor without registration with the Board in violation of A.R.S. § 32-145(1).
22 By performing surveying work and using a registrant's stamp without the registrant's supervision,
23 Respondent practiced as a land surveyor without registration on multiple projects. Respondent is
24 not exempt from the Board's registration requirements due to the nature of the projects and he
25 was not a bona fide employee of a registrant working with the registrant's supervision.

26 4. The evidence presented at hearing established by a preponderance of the evidence
27 that Respondent presented false evidence to the Board with the intent to obtain registration in
28 violation of A.R.S. § 32-145(5). Respondent answered "no" to the question regarding a

1 misdemeanor conviction because he was unable to provide the documentation requested on an
2 earlier application while knowing that he had, in fact, been convicted of disorderly conduct and
3 paid a fine related to that conviction.

4 5. The evidence presented at hearing established by a preponderance of the evidence
5 that Respondent and Respondent Firm failed to comply with the Board's rules and statutes in
6 violation of A.R.S. § 32-121.

7 6. The evidence presented at hearing established that Respondent and Respondent
8 Firm engaged in the practice of a Board-regulated profession while not registered with the Board
9 in violation of A. R.S. § 32-141 (A).

10 7. Respondent's actions, as set forth above, constitute grounds for discipline against
11 Respondent pursuant to A.R.S. § 32-106.02, which authorizes the Board to impose discipline
12 against persons who practice or offer to practice a Board regulated profession without first
13 securing proper registration.

14 8. The Board is authorized to impose a civil penalty of no more than \$2,000.00 per
15 violation.

16 **ORDER**

17 Based on the Board's adoption of the Findings of Fact and Conclusions of Law, the
18 Board issues the following Order:

19 1. **ADMINISTRATIVE PENALTY FEE.** Within 30 days of the effective date of
20 this Order, Respondent shall pay an administrative penalty fee of six-thousand dollars
21 (\$6,000.00) by certified check or money order made payable to the State of Arizona Board of
22 Technical Registration for the following three violations:

- 23 A. Practicing without registration per A.R.S § 32-145
- 24 B. Providing false evidence to the Board per R4-30-301(1)
- 25 C. Fraudulent use of a registrant's seal per A.R.S § 32-125(D)

26 2. **COST OF INVESTIGATION** – Within 30 days of the effective date of this Order,
27 Respondent shall pay the costs of investigation in the amount of four hundred and seventy-nine
28

1 ORIGINAL filed this 15 day of December
2 _____, 2017, with:

3 Arizona State Board of Technical Registration
4 1110 W. Washington, Ste. 240
5 Phoenix, AZ 85007

6 COPY mailed via Certified Mail
7 No. 9214 8901 94344600027821 and 9214 8901 94344600027838
8 First Class mail this 15 day of
9 December, 2017, to:

10 Timothy Spangler
11 1726 W. Glenrosa Ave.
12 Phoenix, AZ 85015

13 Arizona ALTA Specialists
14 Arizona ALTA/ACSM Specialists, PLLC
15 Timothy Spangler, Statutory Agent
16 1726 W. Glenrosa Ave.
17 Phoenix, AZ 85015

18 COPY of the foregoing mailed this
19 15 day of December, 2017, to:

20 Scott Donald
21 Assistant Attorney General
22 State Bar No. 022419
23 1275 W. Washington CIV/SGD
24 Phoenix, Arizona 85007-2997

25 COPY of the foregoing mailed this
26 15 day of December, 2017, to:

27 Seth Hargraves
28 Assistant Attorney General
Office of the Attorney General
1275 W. Washington, CIV/LES
Phoenix, AZ 85007

1 **COPY** of the foregoing hand delivered this
2 15 day of December, 2017, to:

3 Tammy L. Eigenheer
4 Office of Administrative Hearing
5 1400 W. Washington St.
6 Phoenix AZ, 85007

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By:  Kurt Winter