BEFORE THE ARIZONA STATE BOARD
OF TECHNICAL REGISTRATION

In the Matter of:

MICHAEL SANCHEZ
Non-Registrant,

and

SANCHEZ SURVEYING,
Non-Registrant Firm

Respondents,

Case No. P17-018

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND FINAL BOARD ORDER

This matter came before the Arizona Board of Technical Registration ("Board") for a
Formal Administrative Hearing on Tuesday, April 24, 2018. Michael Sanchez, Respondent, was
not present and was not represented by legal counsel. The State was represented by the Office of
the Attorney General, Assistant Attorney General Scott Donald. The Board received independent
legal advice from Assistant Attorney General Seth Hargraves. At the outset, Mr. Donald
informed the Board that the Complaint and Notice of Hearing had been sent to Respondent on
March 8, 2018, and personal service was attempted March 28, 2018; and that Respondent did not
respond to the Complaint. Mr. Donald then moved the Board to Deem the Allegations Admitted
pursuant to A.R.S. § 32-128(F).

Following the presentation of the State's Motion to Deem the Allegations admitted, the
Board voted to grant the State's Motion and adopted the following Findings of Fact, Conclusions
of Law, and Order:

FINDINGS OF FACT

1. Respondent is not registered with the Board for any profession, nor was he registered
   with the Board at any time relevant to the allegations of this Complaint.
2. Respondent Firm is not registered with the Board, nor was it registered with the Board at
   any time relevant to the allegations of this Complaint.
3. Respondent holds California Land Surveyor License No. 5508, and was so licensed at all
times relevant to this Complaint.

4. On or about September 30, 2006, Respondent performed a Land Title Survey for a property located in Bullhead City, Arizona. Respondent signed and sealed the survey with his California seal.

5. On or about September 10, 2015, the Board for Professional Engineers, Land Surveyors, and Geologists of the State of California entered an Order, effective October 16, 2015, for a stayed revocation of Respondent's California License. Terms of the stayed revocation included three years' probation, subject to various terms, during which:

   ... the respondent may practice professional land surveying only under the review of a professional land surveyor licensed in the same branch as the respondent.
   This person or persons shall be approved in advance by the Board or its designee.
   Such reviewing land surveyor shall initial every stamped or sealed document in close proximity to the respondent's stamp or seal.

In determining the level of discipline to impose, the court found that:

   While respondent presented at the hearing as a thoughtful, caring individual who has a high regard for professionalism, who was proud of the work he accomplished and contrite about his errors, his presentation at the hearing stands in stark contrast to the evasive and combative attitude he displayed in his communications with others away from the courtroom. Respondent was often rambling, aggressive, unreasonable and confrontational in letters and e-mails. He rarely exhibited the professionalism he espoused at the hearing. This contrast causes one to question respondent's sincerity at the hearing. Respondent also was often non-responsive and non-cooperative with the board when it requested information from him.

6. On or about June 2, 2016, Respondent and Respondent Firm entered an agreement with the Complainant in this matter for $6,750.00 to re-survey the property in Bullhead City, Arizona Respondent surveyed in 2006.
7. On or about June 4, 2016, Respondent and Respondent Firm received payment of $6,750.00 from Complainant for the revised survey of the Bullhead City property.

8. On or about June 8, 2016, Respondent contacted Terry Yarborough ("Yarborough"), an Arizona Registered Land Surveyor, to offer him $1,000.00 to seal the new survey prepared by Respondent and Respondent Firm.

9. On or about June 23, 2016, Yarborough received an incomplete version of the revised survey from a representative of Respondent Firm, who asked Yarborough to send his electronic signature and seal.

10. On or about June 24, 2016, Respondent Firm emailed the revised survey to a title company. This revised survey was signed and sealed under Yarborough's registration and contained Respondent Firm's name in the title block as well as the statement "Survey Prepared by Sanchez Survey".

11. On or about June 29, 2016, the revised survey was found by the contracting party to be technically deficient and below standard. The attorney for the Complainant noted that the Title Officer noted:

   The survey is so poor that I cannot even tell if there are buildings on the lots or if they are vacant. ... The easements aren't even drawn out on the lot, most of the measurements of the lots are missing. They are not labeled as to the parcels and cannot tell what block they are in. The certification does not set forth any table items and it is not signed.

12. Respondent was promptly notified of this and, on or about June 29, 2016, sent an email confirming the initial contract for the re-survey. Respondent, however, alleged the work necessary to bring the survey up to the standard required by Complainant was not contemplated in the original contract, and would be "in the area of $15,000."

13. Following subsequent communications with Complainant and Complainant's attorney, on or about July 7, 2016, Respondent emailed Complainant's attorney:

   Please take the time to read the certification signed by myself on the original
survey, and please tell me which, if any, of these additional items are certified to. Those we will gladly certify, but absolutely no other items will be certified to that are not certified to on the original survey. If someone is asking us to certify those items, please have them review the certification on the original, as you should have, and realize, if it was not certified then, it will absolutely not be certified now, I don't know how to make myself any clearer .... To certify item 1, would be in the area of $8,000 to $20,000 in additional work, and your insistence that this be done is ludicrous .... Please tell me what is your expertise and your license number, if any, to practice land or contract law, and who, exactly, do you claim to represent with these email (sic.) you are sending to me? In your professional opinion, who, if anyone, do I have a contract with?

14. On or about July 11, 2016, Complainant emailed Respondent:

This letter to follow up on our conversation of Friday 7/8/16 .... As I said to you and your 'office manager' Ron, I DO NOT WANT you, your agent(S) or employees to perform any work of any nature without express written consent from me ...

Complainant subsequently hired a different land survey firm to complete a survey of the Bullhead City property.

15. Regardless, on or about July 20, 2016, Respondent emailed Complainant:

I hope you are happy with the final product, we have done everything per your attorneys (sic.) letter, and included a free upgrade to the new ALTA standards, for which there is no charge at this time, the value of the extra work is $2,350 per published hourly rates.

The email concluded with "[r]espond in 9 days if you disagree."

16. On or about July 28, 2016, the Board received a complaint alleging Yarborough both aided and abetted an unregistered firm in the practice of Land Surveying, and failed to meet Minimum Standard Detail Requirements for an ALT A/NSPS Land Title Survey of the Bullhead
City property.

17. On or about August 16, 2016, Board staff received an email from Yarborough in which he admitted Respondent asked Yarborough to review the survey for $1,000.00, and Yarborough sent his electronic signature and seal despite not receiving a final map to review. Additionally, Yarborough stated:

I did not see the final map until yesterday [August 15, 2016], when it was sent to me by the State of Arizona Board of Technical Registration. My seal and signature had been placed on that version. I received no payment from Mr. Sanchez. I do not think Sanchez Survey followed their agreement to hire me, and therefore I did not participate in this survey... If it is at all possible I want my name, stamp, signature, and license number removed from this project.

18. On or about October 3, 2016, Board staff received an email from Respondent admitting to operating a firm without registration with the Board.

19. On or about October 6, 2016, the Complainant notified Board staff that Respondent told him that Respondent performed the original survey that contained Respondent's California seal and signature.

20. After providing the Respondent information regarding the allegations, on or about October 13, 2016, Board staff received an email from the Respondent stating:

The seal affixed was reviewed and approved by said surveyor [Yarborough], so I deny the allegation, subject to any evidence. Please provide evidence of said allegation for legal review. Pending said evidence, I retain my 5th amendment (sic.) rights, pursuant to receiving said evidence I retain the right to address any damages caused by the actions of others in a civil court. Consider the (sic.) a request under the freedom of information act to government files concerning myself in the possession of the State of Arizona.

21. Finally, on or about November 15, 2016, Board staff received an email from Respondent stating:
As to doing the survey in Arizona, I admit fault ... I contacted Terry Yarborough, AZ LS 49098, with whom I have worked with (sic.) on numerous projects, and we are familiar with each other (sic.) work, and asked him if he would review the work and certify it... I hereby state the (sic.) Mr. Yarborough was kept in the dark on that matter until it came to light when I received the email from your office.

22. On or about November 16, 2016, Board staff received an email from Respondent in which he stated "Please help me clear up Mr. Yarborough LS reputation in this matter, as any wrong doing is on my account."

23. On or about November 18, 2016, while speaking with Board staff, Respondent admitted to both practicing land surveying without a license in Arizona and stamping the original 2006 Land Title Survey for the Bullhead City project in Arizona with his California seal.

24. On or about March 28, 2017, Yarborough entered into a consent agreement with the Board for a stayed revocation of his registration for multiple causes of action including aiding and abetting Sanchez Survey in the unlicensed firm practice of land surveying through providing his electronic seal for the Bullhead City revised survey, and providing his seal and signature for the Bullhead City revised survey where the revised survey was performed neither by him nor under his direct supervision.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent pursuant to A.R.S. § 32-101, et seq.

2. The Board is authorized under A.R.S. § 32-106.02(A) to "initiate a hearing pursuant to title 41, chapter 6, article 10 on receipt of a complaint that a person who is not exempt from this chapter and is not registered or certified under this chapter is practicing, offering to practice or by implication purporting to be qualified to practice any board regulated profession or occupation." Additionally, the statute provides "[i]f after the hearing, the board determines that
based on the evidence the person committed a violation under section 32-145, it, in addition to any other sanction, action or remedy, shall issue an order that imposes a civil penalty of no more than two thousand dollars per violation."

3. The conduct and circumstances in the Factual Allegations above constitute a violation of A.R.S. § 32-121 with regards to Respondent and the 2006 survey, ("[e]xcept as otherwise provided in this section, a person or firm desiring to practice any board regulated profession or occupation shall first secure a certificate or registration and shall comply with all the conditions prescribed in this chapter.")

4. The conduct and circumstances in the Factual Allegations above constitute a violation of A.R.S. § 32-121 with regards to Respondent and the 2016 survey, ("[e]xcept as otherwise provided in this section, a person or firm desiring to practice any board regulated profession or occupation shall first secure a certificate or registration and shall comply with all the conditions prescribed in this chapter.")

5. The conduct and circumstances in the Factual Allegations above constitute a violation of A.R.S. § 32-121 with regards to Respondent Firm and the 2016 survey, ("[e]xcept as otherwise provided in this section, a person or firm desiring to practice any board regulated profession or occupation shall first secure a certificate or registration and shall comply with all the conditions prescribed in this chapter.")

6. The conduct and circumstances in the Factual Allegations above constitute a violation of A.R.S. § 32-141 with regards to Respondent Firm and the 2016 survey, ("[a] firm shall not engage in the practice of any board-regulated profession or occupation unless the firm is registered with the board and the professional services are conducted under the full authority and responsible charge of a principal of the firm, who is also a registrant.")

7. The conduct and circumstances in the Factual Allegations above constitute a violation of A.R.S. § 32-145 with regards to Respondent and the 2006 survey, ("[a]ny person who commits any of the following is guilty of a class two misdemeanor: ... [p]ractices, offers to practice or byany implication holds himself out as qualified to practice ... [a]dvertises or displays ... ")
8. The conduct and circumstances in the Factual Allegations above constitute a violation of A.R.S. § 32-145 with regards to Respondent and the 2016 survey, ("[a]ny person who commits any of the following is guilty of a class two misdemeanor: ... [p ]ractices, offers to practice or by any implication holds himself out as qualified to practice ... [a]dvertises or displays ... ")

9. The conduct and circumstances in the Factual Allegations above constitute a violation of A.R.S. § 32-145 with regards to Respondent Firm and the 2016 survey, ("[a]ny person who commits any of the following is guilty of a class two misdemeanor: ... [p ]ractices, offers to practice or by any implication holds himself out as qualified to practice ... [a]dvertises or displays ... ")

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues the following Order:

1. **CIVIL PENALTY.** Within 30 days of the effective date of this Order, Respondent shall pay a civil penalty of fourteen thousand dollars ($14,000.00), encompassing two thousand dollars for each of the four violations against Respondent and three violations against Respondent Firm, by certified check or money order made payable to the State of Arizona Board of Technical Registration.

2. **COST OF INVESTIGATION.** Within 30 days of the effective date of this Order, Respondent shall pay to the Board the cost of investigation in the amount of three-hundred and eighty-seven dollars ($387.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration.

3. **LEGAL COSTS.** Within 30 days of the effective date of this Order, Respondent shall pay to the Board’s legal costs in the amount of one-thousand one-hundred ninety-six dollars and eighty-eight cents ($1,196.88) by certified check or money order made payable to the State of Arizona Board of Technical Registration.
Right to Petition for Rehearing or Review

Respondent is hereby notified that he has the right to file a motion for rehearing or review. Pursuant to A.R.S. § 41-1092.09(B) and A.A.C. R4-30-126(A) the motion for rehearing or review must be filed with the Board’s Executive Director within 30 days after service of this Order. Service of this Order is defined as five calendar days after mailing.

The motion for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-30-126(C). If a petition for rehearing or review is not filed, the Board’s Order becomes effective 35 days after it is mailed to Respondent. Respondent is further advised that the filing of a motion for rehearing or review is required to preserve any rights of appeal to Superior Court.

DATED this 27th day of April 2018.

Arizona Board of Technical Registration

Alejandro Angel, Chairman

ORIGINAL filed this 30th day of April 2018, to:

Board of Technical Registration
1110 West Washington, Suite 240
Phoenix, Arizona 85007

COPY mailed via Certified Mail
No. 9214 8901 9434 4600 0353 38
First Class mail this 30th day of April 2018, to:

Michael Sanchez
155 N. Cawston Ave
Hemet, CA 92545
COPY of the foregoing mailed
this 30 day of April, 2018, to:

Scott Donald
Assistant Attorney General
1275 W. Washington Street
Phoenix, Arizona 85007

By: Kurt Winter