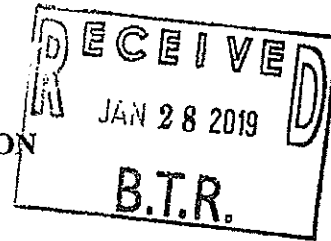


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BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION



<p>In the Matter of:</p> <p>David Schwinghamer Non-Registrant</p> <p>Respondent</p>	<p>Case No. P19-029</p> <p>CONSENT AGREEMENT and ORDER OF DISCIPLINE</p>
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In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration ("Board") and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. § 32-101 *et seq.* and A.A.C. R4-30-120(G), the undersigned party, David Schwinghamer, Non-Registrant, ("Respondent") and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

RECITALS

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.
2. Respondent understands that he has a right to a public administrative hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly, voluntarily, and irrevocably waives his right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action concerning the matters set forth herein.
3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

1 4. Respondent understands that this Consent Agreement or any part of the agreement
2 may be considered in any future disciplinary action by the Board against him.

3 5. The Consent Agreement, any record prepared in this matter, all investigative
4 materials prepared or received by the Board and all related exhibits and materials, are public
5 records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this Consent
6 Agreement and may be retained in the Board's files pertaining to this matter.

7 6. Respondent understands this Consent Agreement deals with Board case number
8 P19-029 involving allegations that Respondent engaged in conduct that would subject him to
9 discipline under the Board's statutes and rules. The investigation into these allegations against
10 Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

11 7. Respondent understands that this Consent Agreement does not constitute a
12 dismissal or resolution of any other matters currently pending before the Board, if any, and does
13 not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction
14 regarding any other pending or future investigation, action or proceeding.

15 8. Respondent also understands that acceptance of this Consent Agreement does not
16 preclude any other agency, subdivision, or officer of this State from instituting any other civil or
17 criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

18 9. Respondent acknowledges and agrees that, upon signing this Consent Agreement
19 and returning this document to the Board's Executive Director, he may not revoke his acceptance
20 of the Consent Agreement or make any modifications to the document regardless of whether the
21 Consent Agreement has been signed on behalf of the Board. Any modification to this original
22 document is ineffective and void unless mutually agreed by the parties in writing.

23 10. This Consent Agreement is subject to the approval of the Board and is effective
24 only when accepted by the Board and signed on behalf of the Board. If the Board does not accept
25 this Consent Agreement, the Board retains its authority to hold a formal administrative hearing
26 pursuant to A.R.S. § 32-128(E). In the event that the Board does not approve this Consent
27 Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor
28 introduced in any action by any party, except that the parties agree that should the Board reject

1 this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that
2 the Board was prejudiced by its review and discussion of this document or any records relating
3 thereto.

4 11. If a court of competent jurisdiction rules that any part of this Consent Agreement is
5 void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full
6 force and effect.

7 12. Respondent understands that any violation of this Consent Agreement may result in
8 disciplinary action, including suspension or revocation of the registration under A.R.S. § 32-150.

9 13. Respondent agrees that the Board will adopt the following Findings of Fact,
10 Conclusions of Law and Order.

11 **FINDINGS OF FACT**

12 1. The Board is the duly constituted authority for the regulation and control of
13 the practice of Architecture in the state of Arizona.

14 2. On November 28, 2018 Respondent presented design plans to the City of
15 Phoenix that displayed the seal and signature of Registered Architect Paul O'Connor
16 #15952, for a residential addition project in Phoenix, Arizona.

17 3. On December 2, 2018 a complaint was filed alleging Respondent
18 fraudulently used the seal and signature of Registered Architect Paul O'Connor #15952.

19 4. On December 29, 2018 Respondent admitted to Board staff in an email that
20 the allegations in the complaint were correct.

21 5. On January 7, 2019 Paul O'Connor told board staff he did not give
22 Respondent authorization to use his seal or apply his signature on the project design plans.
23 O'Connor stated that Respondent has worked for him in the past and did have access to
24 his seal, however, O'Connor was not involved in the project.
25

26 6. Respondent is not registered with the Board as an Architect.
27

28 **CONCLUSIONS OF LAW**

1 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq,
2 including A.R.S. § 32-106.02(A).

3 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline
4 pursuant to A.R.S. § 32-145(4), in that Respondent used the registration of another.

5 ORDER

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

8 1. ASSURANCE OF DISCONTINUANCE. Respondent shall not practice, offer to
9 practice, or by any implication hold itself out as qualified to practice Architecture as defined by
10 A.R.S. § 32-101.B(7) until such time as the Respondent is registered by the Board and is in full
11 compliance with the Board's Statutes and Rules.

12 2. CIVIL PENALTY. Within Sixty (60) days from the effective date of this
13 Consent Agreement, Respondent shall pay a civil penalty of Two Thousand Dollars (\$2,000.00)
14 to be submitted to the Board by cashier's check or money order made payable to the Arizona
15 State Board of Technical Registration, according to the provisions of A.R.S. § 32-106.02(A).


16 3. COST OF INVESTIGATION. Within thirty (30) days from the effective date of
17 this Consent Agreement, Respondent shall pay the cost of investigation of this case to the Board
18 in the amount of One Hundred Twenty-Four Dollars (\$124.00) by certified check or money order
19 made payable to the State of Arizona Board of Technical Registration, according to the provisions
20 of A.R.S. § 32-128(H).

21 4. EFFECTIVE DATE. The effective date of this Consent Agreement is the date the
22 Respondent and Board sign the Consent Agreement. If the dates are different, the effective date is
23 the later of the two dates.

24 5. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with
25 complying with this Consent Agreement.

26 6. NONCOMPLIANCE. If Respondent violates this Order in any way or fails to
27 fulfill the requirements of this Order, the Board may seek a Petition for Injunction in accordance
28 with the provisions set forth in A.R.S. § 32-106.01.

ACCEPTED and ORDERED this 26 day of February, 2019.


Alejandro Angel, P.E., Chairman
Arizona State Board of
Technical Registration

Consent Agreement and Order, No. P19-029 accepted this 15 day of JANUARY, 2019.


David Schwinghamer, Respondent

ORIGINAL filed this 28th day of
FEBRUARY, 2019, with:

Arizona State Board of Technical Registration
1110 W. Washington, Suite 240
Phoenix, AZ 85007

COPY of the foregoing mailed via Certified Mail
No. 9214 8901 9434 4000 0510 17 and
First Class mail this 28th day of FEBRUARY, 2019, to:

David Schwinghamer
6330 E Desert Cove
Phoenix, AZ 85254

By: 