

**MARYLAND STATE BOARD
OF ARCHITECTS**

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**BEFORE THE MARYLAND
STATE BOARD OF ARCHITECTS**

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v.

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LESLIE L. SHEPHERD

CASE NO. 07-AR-22

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MEMORANDUM AND FINAL ORDER

The Maryland State Board of Architects (“Board”) heard this case on November 16, 2022, via videoconference. Leslie L. Shepherd (“Respondent”) appeared without counsel. Assistant Attorney General Andrew Brouwer appeared as presenter of evidence for the Board.

The Board charged the Respondent with violations of the following sections of the Business Occupations and Professions Article (“BOP”) of the Annotated Code of Maryland and the Code of Maryland Regulations (“COMAR”):

BOP § 3-311(a)

(a)(1) Subject to the hearing provisions of § 3-313 of this subtitle, the Board, on the affirmative vote of a majority of its authorized membership, may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if:

(i) the applicant or licensee fraudulently or deceptively obtains or renews or attempts to obtain or renew a license or permit for the applicant or licensee or for another;

* * *

(iv) the applicant or licensee violates any regulation adopted by the Board;

COMAR 09.21.05.03¹

A. Except as set forth in §B of this regulation, a licensee shall complete at least 12 LUs during each of the 2 preceding calendar years that occur prior to the calendar year in which an applicable license term is set to expire.

COMAR 09.21.05.07(C)²

C. Licensees who are audited shall provide within 30 days of receipt of electronic notice of audit from the Board any additional documentation required by the Board to complete the audit.

COMAR 09.21.02.01(F)(1)

F. Failure to Respond.

(1) If an applicant or licensee receives from the Board a written communication requesting a response, the applicant or licensee shall respond within 30 days of the date of mailing.

The following documents were introduced by the State of Maryland and admitted into evidence:

1. Exhibit No. 1 - Email dated October 17, 2022, from Raquel Meyers, Assistant Executive Director, to Respondent transmitting Notice of Charges and Order and Complaint, and advising Respondent of the hearing date and login information, Notice of Charges dated October 17, 2022, letter dated May 19, 2022, from Raquel Meyers to Respondent transmitting Complaint to Respondent, Complaint dated May 19, 2022, and Certified Mail Receipt dated October 17, 2022.
2. Exhibit No. 2 - Board licensing records for Respondent dated October 24, 2022.
3. Exhibit No. 3 - Sample Maryland Architect Individual License Renewal form.
4. Exhibit No. 4 - Email dated September 14, 2021, from Board to Respondent advising him that he was being audited and his obligation to respond.

¹ This was the applicable COMAR language and provision at the time the Respondent filed for renewal. At that time, §B of the regulation provided, “In the event a licensee is unable to fulfill the continuing competency requirements in accordance with the criteria described in §A of this regulation, but still completes 24 LUs during the relevant term of the license, the Board may accept such completion as the acceptable fulfillment of the license renewal requirements for a particular licensing term.”

² This was the applicable COMAR provision at the time the Respondent filed for renewal. Effective March 7, 2022, COMAR 09.21.05.07 was transferred and amended to COMAR 09.21.05.08. However, the language in subpart C in each remained the same.

5. Exhibit No. 5 - Letter dated March 2, 2022, from Zevi Thomas, Executive Director, to Respondent advising him that he must respond to the audit, and Certified Mail records.

The State of Maryland presented the testimony of Zevi Thomas, Executive Director, Professional Design Boards and Board of Pilots.

The following document was introduced by the Respondent and admitted into evidence:

1. Respondent's Exhibit No. 1 – AIA Transcript of Respondent accessed November 16, 2022.

The Respondent testified on his own behalf and did not present any other witnesses.

All witnesses were placed under oath.

FINDINGS OF FACT

The Board has carefully considered all of the evidence presented, including both testimony and the documentary evidence submitted at the hearing. Based on the evidence presented, and considering the demeanor and credibility of the witnesses, the Board makes the following findings of fact by a preponderance of the evidence:

1. At all times relevant to the Complaint, the Board has jurisdiction over the Respondent because the Respondent holds a license issued by the Board to practice architecture (“license”) under number 04-19159 and has jurisdiction over the subject matter of this Complaint.
2. The Respondent’s license was scheduled to expire on September 13, 2021.
3. On September 14, 2021, the Respondent submitted a license renewal application to the Board in which he certified under the penalty of perjury that he had satisfied the continuing professional competency (“CPC”) requirements that are a

condition of license renewal, and, in reliance upon the Respondent's certification, the Board approved his license renewal application.

4. Immediately following the Respondent's renewal application, on September 14, 2021, the Board selected the Respondent for a random audit to confirm his compliance with the license renewal CPC requirements and emailed the Respondent a written notice of the audit that required him to provide documentation demonstrating his compliance with the CPC requirements within 30 days. The Respondent did not respond to the Board.
5. On March 2, 2022, the Board sent a letter to Respondent by Certified and First-Class Mail reminding the Respondent of his obligation to respond to the audit and granting him an additional 30 days to provide the Board with documentation of his satisfaction of the CPC requirements. The Respondent did not respond to the Board.
6. On May 19, 2022, the Board sent a letter to the Respondent transmitting its complaint and requiring the Respondent to respond. The Respondent did not respond to the Board.
7. The Board properly served the Respondent with the correspondence regarding the audit and complaint.
8. The Respondent received the Board's correspondence regarding the audit and was aware of his obligation to respond.
9. The Respondent did not respond to the audit or complaint or provide the Board with documentation confirming that he had completed any of the CPC hours necessary for the renewal of his license.

10. The Respondent did not complete the 24 hours of continuing education necessary to satisfy his CPC obligation and renew his license.

DISCUSSION

Section 3-311(a) of the Business Occupations and Professions Article of the Annotated Code of Maryland authorizes the Board to revoke a license if the licensee fraudulently renews their license or violates a regulation adopted by the Board. At all times relevant to this proceeding, COMAR 09.21.05.03 required that licensees complete 24 Learning Units (“LUs”) of CPC either by completing 12 LUs during each of the two calendar years prior to the calendar year in which their license expires or by completing 24 LUs during the two-year term of their license since their last renewal. At all times relevant to this proceeding, COMAR 09.21.05.07(C) required licensees who were audited to provide the documentation required by the Board within 30 days of receipt of the electronic audit notice from the Board. COMAR 09.21.02.01(F)(1) requires that licensees respond to correspondence from the Board requesting a response within thirty days.

The facts are undisputed that the Respondent received the Board’s correspondence notifying him that he was subject to audit and requiring a response, that the Respondent failed to respond to the Board, that the Respondent failed to complete 24 CPC LUs during calendar years 2019 and 2020 or since he last renewed his license, and that the Respondent certified to the Board under the penalty of perjury that he had satisfied the CPC requirements for the renewal of his license.

The Respondent testified that he received the Board’s audit correspondence and accepts responsibility for failing to respond. He testified that he is a fellow of the American Institute of

Architects (“AIA”) and that he usually completes his CPC requirements by attending the AIA annual convention and lunch and learn programs at his office, so he assumed that he had completed the CPC necessary to renew his Maryland license on September 14, 2021. He testified that he did not actually complete the required CPC to renew his Maryland license because of the Covid-19 pandemic.

He testified that he does not need his Maryland license because he holds a Texas architects license and because he does not stamp documents in his practice. He testified that he is close to retirement and, if he realized that he had not completed the CPC requirements for Maryland, he would not have submitted his renewal application. He testified that he did not respond to the Board’s letters regarding the audit because he thought his Maryland license had lapsed. The AIA transcript the Respondent presented as evidence revealed that he completed CPC LUs during calendar year 2022. He testified that the September 14, 2021, email notifying him that he was being audited caused him to experience an “oh crap moment,” and that he should have contacted the Board and asked that it allow his license to lapse.

The Board finds that the Respondent fraudulently and deceptively renewed his Maryland license in violation of BOP § 3-311(a)(1)(i) by falsely stating under penalty of perjury that he had satisfied the CPC requirements necessary for the renewal of his Maryland license on September 14, 2021. The Board does not find the Respondent’s testimony that he was unaware that he had not satisfied the CPC requirements to be credible. His own testimony about his reaction to the audit notice upon the submission of his renewal application demonstrates that he knew at that time that his certification was false. He is an experienced professional in a highly regulated industry, licensed in multiple states, and a fellow in the AIA, and he submitted his renewal application under penalty of perjury. The Board does not believe that the Respondent

forgot that he had not been attending the AIA convention or in-office lunch and learn programs during the pandemic. The Board also does not believe that the Respondent would have certified that he had satisfied the CPC requirements in his renewal application under penalty of perjury without first having confirmed through the review of his own records that he had done so. Therefore, the Board finds that the Respondent knowingly falsely certified to the Board that he had satisfied the CPC requirements with the intent of causing the Board to renew his license when he was ineligible for a renewal.

The Board finds that the Respondent violated COMAR 09.21.05.03 by failing to complete the 24 CPC LUs necessary for the renewal of his license on September 14, 2021.

The Board finds that the Respondent violated COMAR 09.21.05.07(C) by failing to respond to the Board's September 14, 2021, electronic audit notice.

The Board finds that the Respondent violated COMAR 09.21.02.01(F)(1) by failing to respond to the Board's March 2, 2022, letter requiring him to submit his audit documents within thirty days.

The Board finds that the Respondent violated COMAR 09.21.02.01(F)(1) by failing to respond to the Board's May 19, 2022, letter requiring him to submit his audit documents within thirty days.

The Board does not find credible the Respondent's testimony that he believed his Maryland license had lapsed and did not understand that he was required to respond to the Board's three written demands for his response. The Respondent personally renewed his license on September 14, 2021, all of the Board's correspondence clearly advised him that he was required to respond and that failure to do so could result in disciplinary action against him, and the Respondent admitted that he read the Board's correspondence.

Because the Respondent fraudulently and deceptively renewed his license, failed to complete the CPC required for the renewal of his license, and repeatedly failed to respond to correspondence from the Board requiring his response in violation of Board regulations, the Board concludes that the revocation of the Respondent's license is warranted. The purpose of the CPC requirement is to promote the public health, safety, and welfare, as, at all times relevant to this proceeding, the required LUs had to be in health, safety and welfare subjects to ensure that licensed architects maintain professional competency in subject matters necessary to protect the public. *See* COMAR 09.21.05.02(B)(4) and COMAR 09.21.05.04(A). The Respondent's renewal of his license without completing the required CPC LUs posed a risk to the public health, safety and welfare because he retained the right to practice architecture without the education necessary to ensure his continued competency. The Respondent's fraudulent and deceptive renewal of his license demonstrates that the Respondent lacks the integrity necessary for the practice of architecture. The Respondent's failure to respond to the Board's correspondence undermined the Board's ability to regulate the Respondent's conduct and demonstrates a lack of concern for the Board's mission and authority. This conduct by the Respondent further demonstrates that his continued licensure as an architect is contrary to the public interest.

Pursuant to BOP § 3-311(a)(2), in addition to revoking the Respondent's license, the Board may impose a penalty of up to \$5,000.00 for each of the Respondent's violations after considering the following factors:

1. the seriousness of the violation;
2. the harm caused by the violation;
3. the good faith of the licensee; and
4. any history of previous violations by the licensee.

The Board finds that the Respondent's failure to complete the CPC required for license renewal is a serious violation because a licensee's failure to maintain competency in health, safety, and welfare matters creates a risk of harm to the public. There is no evidence in the record that the Respondent's failure to complete the required CPC actually caused any harm. The Board finds that the Respondent did not act in good faith because he knowingly falsely certified to the Board that he had satisfied his CPC requirement. There is no evidence of previous violations by the Respondent. Having considered the foregoing factors, the Board concludes that a total penalty of \$2,400.00 should be assessed against the Respondent, which is \$100.00 per CPC LU that the Respondent was required to complete for the renewal of his license but failed to document in response to the Board's audit.

CONCLUSIONS OF LAW

The Board concludes that the Respondent violated the following provisions of Maryland law:

BOP § 3-311(a)

COMAR 09.21.05.03

COMAR 09.21.05.07(C)

COMAR 09.21.02.01(F)(1)

The Respondent's violations of these provisions subject him to the revocation of his license and a financial penalty under BOP § 3-311.

FINAL ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is this 30 day of December 2022, hereby **ORDERED** that:

A. The Respondent, Leslie L. Shepherd, is guilty of violating Business Occupations and Professions Article, Annotated Code of Maryland, § 3-311(a), and COMAR 09.21.05.03, 09.21.05.07(C), and 09.21.02.01(F)(1).

B. The Respondent's license to practice architecture in Maryland is **REVOKED**;

C. The Respondent is **ASSESSED** a civil statutory penalty in the amount of \$2,400.00;

D. The Respondent shall pay the penalty assessed by this Order to the Board within 60 days of the date of this Order;

E. The records of the Board shall reflect this Memorandum and Final Order; and

F. The Respondent has 30 days from the date of this Memorandum and Final Order to appeal this decision to Circuit Court.

Signature on File