

**BOARD FOR PROFESSIONAL
ENGINEERS**

v.

**RAYMOND T. HILLIS,
RESPONDENT**

* **BEFORE JOHN J. LEIDIG,**
* **AN ADMINISTRATIVE LAW JUDGE**
* **OF THE MARYLAND OFFICE OF**
* **ADMINISTRATIVE HEARINGS**
* **OAH NO.: DLR-ENP-59-17-20663**
* **DLLR CASE NO.: 16-PE-05**

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RECOMMENDED DECISION

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STATEMENT OF THE CASE

On May 1, 2017, the Board for Professional Engineers (Board), Department of Labor Licensing and Regulation (DLLR) issued a Statement of Charges and Order for Hearing (Charges) against Raymond T. Hillis (Respondent), alleging that the Respondent (a) practiced or attempted to practice engineering without a license, (b) misrepresented himself as an engineer, and (c) improperly used the professional engineering seal of a licensed engineer without the licensed engineer's knowledge or consent. On June 29, 2017, the DLLR transmitted the Charges to the Office of Administrative Hearings (OAH) to conduct a contested case hearing.

On November 16, 2017, I held a hearing at the OAH in Hunt Valley, Maryland. Md. Code Ann., Bus. Occ. and Prof. §§ 14-319 and 14-508 (2010).¹ Andrew Brouwer, Assistant

¹ Unless otherwise specified, all references to the Business Occupations and Professions Article are to the 2010 Replacement Volume.

Attorney General, represented the Board. The Respondent represented himself and participated by telephone.²

Procedure in this case is governed by the Administrative Procedure Act, the Department's hearing regulations, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (COMAR) 09.23.02, and COMAR 28.02.01.

ISSUES

1. Did the Respondent practice engineering without a license?³
2. Did the Respondent misrepresent to the public that he is authorized to practice engineering?⁴
3. Did the Respondent use or attempt to use a professional engineering seal without authorization?⁵
4. If the answer to any of the above questions is yes, what civil penalty, if any, is appropriate?⁶

² On the afternoon of November 15, 2017, the day before the hearing, the Respondent submitted a written request for postponement to the OAH. The Respondent did not serve a copy on the Board's counsel. On November 16, 2017, I convened the hearing as scheduled. The Respondent did not appear. However, following several attempts to reach the Respondent by telephone from the hearing room, the Respondent called in to the hearing room. I addressed and then denied the Respondent's postponement request on the record, finding that the Respondent failed to demonstrate that there were unforeseen circumstances giving rise to the Respondent's emergency request for a postponement. *See* COMAR 28.02.01.16A ("Except as provided in §D of this regulation, a request for postponement shall be made in writing and filed not less than 5 days before the scheduled hearing"); *see also* COMAR 28.02.01.16D ("emergency" means a sudden, unforeseen occurrence requiring immediate attention which arises within 5 days of the hearing"). Following my denial of the postponement request, the Respondent requested that he be permitted to participate by telephone; Todd Ehrlich and his wife (Claimants) and the Board did not object, and I granted the Respondent's request to participate by telephone.

³ Md. Code Ann., Bus. Occ. and Prof. § 14-501.

⁴ Md. Code Ann., Bus. Occ. and Prof. § 14-502.

⁵ Md. Code Ann., Bus. Occ. and Prof. § 14-504(a).

⁶ Md. Code Ann., Bus. Occ. and Prof. § 14-508(a).

SUMMARY OF THE EVIDENCE

Exhibits

The Board submitted the following exhibits, which were admitted into evidence:

- Board 1 - Transmittal for DLLR Boards and Commissions (undated), with attached Statement of Charges and Order for Hearing, May 1, 2017; Notice of Hearing, September 27, 2017; Affidavit of Charles Corbin, November 7, 2017; Maryland Motor Vehicle Administration (MVA) Driving Record Information for the Respondent, November 7, 2017
- Board 2 - Two DLLR Certificates with a gold seal, signed by Board Administrator Ruby Courtney, November 13, 2017
- Board 3 - Check #240 for \$250.00 from Todd Ehrlich and his wife (Claimants), to RTH Consultants, May 23, 2014
- Board 4 - MVA printout of the Respondent's MVA licensing information, November 15, 2017
- Board 5 - Business card for the Respondent, undated
- Board 6 - Proposal from RTH Consultants, May 28, 2014
- Board 7 - Email string among Charles Corbin, the Claimants, the Respondent and others, June 2, 2014 to November 20, 2015
- Board 8 - Check #242 for \$1,930.00 from the Claimants to RTH Consultants, June 17, 2014
- Board 9 - Letter from RTH Consultants to the Claimants, November 12, 2014, with attached Geotechnical Study and Report, undated
- Board 10 - Retaining Wall Design, date not legible

The Respondent did not offer any exhibits.

Testimony

The Board presented the testimony of the following witnesses: Todd Ehrlich, one of the Claimants; Bryant Blake, a professional engineer licensed in the State of Maryland and elsewhere, who was accepted as an expert in engineering; and Charles Corbin, DLLR investigator.

The Respondent testified on his own behalf.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Respondent has never been licensed as a Professional Engineer (P.E.) with the State of Maryland.
2. On or about May 23, 2014, the Claimants contacted the Respondent to obtain advice about constructing a retaining wall on a portion of their property in Owings Mills, Maryland.
3. On May 23, 2014, the Claimants paid \$250.00 to the Respondent's sole proprietorship, RTH Consultants, to provide advice about the retaining wall.
4. The Respondent gave the Claimants a business card listing himself as "Ray Hillis, P.E."
5. The "P.E." designation shown on the Respondent's business card is false.
6. The Respondent prepared a proposal dated May 28, 2014 (Proposal), in which he offered to perform engineering services related to the construction of a retaining wall on the Claimants' property. Among other things, the Proposal stated that the "Engineer will prepare Geotechnical Report for Balto. County," and "RTH will prepare a PE sealed certification report to Balto. County government as required." Board 6.
7. On June 17, 2014, the Claimants paid RTH Consultants \$1,930.00 (Deposit) to provide engineering services as set forth in the Proposal.
8. On June 27, 2014, the Respondent sent the Claimants an email acknowledging that he had received the Deposit and agreeing to conduct field testing, perform lab tests, and prepare a geotechnical report.

9. On November 9, 2014, the Respondent delivered a Retaining Wall Design (Design) to the Claimants. The Design bears a signature purporting to be the signature of Bryant E. Blake, as well as Mr. Blake's P.E. seal.

10. Mr. Blake is a professional engineer duly licensed by the State of Maryland.

11. Mr. Blake did not sign the Design. The Respondent forged Mr. Blake's signature on the Design.

12. Mr. Blake did not authorize his P.E. seal to be affixed to the Design. The Respondent affixed Mr. Blake's P.E. seal to the Design without Mr. Blake's knowledge or permission.

13. Mr. Blake did not review or approve the Design.

14. On November 12, 2014, the Respondent, through his company RTH Consultants, delivered a Geotechnical Subsurface Exploration Study & Report (Geotechnical Report) to the Claimants. The cover letter attached to the Geotechnical Report is signed at the bottom as follows:

Sincerely,
RTH Consultants
Ray Hillis, P.E.
Bryant E. Blake, P.E.

15. Mr. Blake has never been an employee or officer of RTH Consultants and he did not authorize his name to be listed as a signatory to the cover letter of the Geotechnical Report.

16. After receiving the Design and the Geotechnical Report, the Claimants decided to discontinue working with the Respondent on the Proposal for the retaining wall.

17. The Claimants asked the Respondent to refund their Deposit. The Respondent has not refunded any money to the Claimants.

18. The Proposal, the Design and the Geotechnical Report were of no value to the Claimants.

DISCUSSION

The Board charged the Respondent with violating sections 14-501, 14-502, and 14-504(a) of the Business Occupations and Professions Article of the Maryland Code, which are discussed separately below. I find that all three charges are valid.

Section 14-501: Practicing Engineering Without a License

Section 14-501 provides as follows:

§ 14-501. Practicing without license.

Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice engineering in the State unless licensed by the Board.

The Board presented un rebutted documentary evidence that the Respondent and his company, RTH Consultants, have never been granted a Professional Engineering license in the State of Maryland. Board 2 (Certified letters from Board Administrator Ruby Courtney). The Respondent admitted this fact when he testified at the hearing.

In addition, the services promised and provided by the Respondent constitute "practice[ing] engineering," which is statutorily defined as follows:

- (2) In regard to a building or other structure, machine, equipment, process, works, system, project, or public or private utility, "practice engineering" includes:
 - (i) consultation;
 - (ii) design;
 - (iii) evaluation;
 - (iv) inspection of construction to ensure compliance with specifications and drawings;
 - (v) investigation;
 - (vi) planning; and

(vii) design coordination.

Md. Ann. Code, Bus. Occ. & Prof. § 14-101(2).

Although the Respondent testified that he did not specifically identify himself as an engineer in his conversations with the Claimants, he admitted that he told the Claimants he could design a retaining wall and tendered to them the Proposal, the Design, and the Geotechnical Report. In addition, I find it appropriate to give considerable weight to the opinion of Mr. Blake, a licensed professional engineer with extensive experience who was accepted as an expert in engineering. Mr. Blake opined that the Respondent's delivery of the Proposal, the Design, and the Geotechnical Report (whether individually or in combination) constitutes the practice of engineering. For these reasons, I conclude that the Respondent engaged in consultation; design; evaluation; investigation; planning; and design coordination with respect to the proposed retaining wall on the Claimants' property. These activities constitute the practice of engineering without a license in violation of section 14-101(2) of the Business Occupations and Professions Article. Even if I believed the Respondent's testimony that he never told the Claimants he was a professional engineer (which I do not because the testimony is directly contradicted by the Respondent's admission that he identified himself as a "P.E." on the business card he gave to the Claimants and the cover letter of the Geotechnical Report),⁷ it would not affect my conclusion that the Respondent unlawfully engaged in the practice of engineering because of the other evidence cited above.

The Respondent contended that he did not engage in the practice of engineering because no permit would be required by Baltimore County for the retaining wall since the wall would be less than three feet high. For several reasons, I do not find this contention meritorious. First, the

⁷ Board 5 and Board 9.

Respondent's assertion contradicts several of his communications to the Claimants in which he specifically mentions the need to obtain a permit for the retaining wall. In an email to the Claimants on June 7, 2014, the Respondent wrote as follows:

You will have one year from date of permit approval to start the work. ... you could hold off on the permit until next year say about 6 months prior to starting construction to apply for permit. Then you have one year from permit release date to complete the work.

Board 7 (emphasis added). Also, in an email dated November 30, 2014 (*i.e.* after he delivered a Design to the Claimants), the Respondent wrote as follows:

And once [the plans] are finalized I can forward the plan to Balto County permits. Once I submit it will take about two weeks to get approval from county.

Board 7 (emphasis added). Moreover, I found the testimony of Mr. Blake to be credible that, based on his review of the Design, the retaining wall would be more than six feet high and therefore the Claimants would be required to obtain a permit from Baltimore County.

Furthermore, even if a permit were not required for the retaining wall, the other evidence cited above is sufficient to show that the Respondent was practicing engineering without a license.

Section 14-502: Respondent's Misrepresentation that he is a Professional Engineer

Section 14-502 provides as follows:

§ 14-502. Misrepresentation.

Unless authorized under this title to practice engineering without the supervision required under § 14-303 of this title, a person may not represent to the public, by use of a title, including "engineer", "professional engineer", "licensed engineer", or "registered engineer", by use of the term "engineering" in the name of the person's business activity, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice engineering in this State.

Mr. Ehrlich testified that he believed the Respondent was a professional engineer based on their conversations and dealings regarding the retaining wall. This was corroborated by the

Respondent, who testified that he knew the Claimants thought he was an engineer. In addition, as noted above, the Respondent admitted that he identified himself as a "P.E." on the business card he gave to the Claimants, as well as on the cover letter that accompanied the Geotechnical Report. Board 5; Board 9.

There is also substantial evidence that the Respondent provided the Claimants with a "description of services, methods, [and] procedures" to indicate that he was a professional engineer. On May 28, 2014, the Respondent gave the Claimants a Proposal in which he promised that "RTH will perform Geotechnical Subsurface Exploration and Limited Hydrological Study," and specifically stated that an "[e]ngineer will prepare Geotechnical Report for Balto. County." Board 6. The Proposal further stated that "RTH will prepare a PE sealed certification report to Balto. County Government as required." *Id.* In addition, the Respondent sent the Claimants an email on June 27, 2014 (Board 7), stating that he had "started [a] Geotechnical study" and would engage in "field testing, ... [and] perform the lab tests on select soil samples." Board 7. Based on these descriptions of the services, methods and procedures to be performed and conducted, it was reasonable for the Claimants to form a belief that they were dealing with a professional engineer.

For all these reasons, I conclude that the Respondent violated section 14-502 by misrepresenting that he was authorized to practice engineering in the State of Maryland.

Section 14-504(a): Using a Professional Engineering Seal Without Authorization

Section 14-504(a) provides as follows:

§ 14-504. Endorsement of documents.

(a) Unauthorized persons. - Other than a professional engineer who obtains a seal as authorized under this title, a person may not use or attempt to use a seal.

The Board proved that the Respondent improperly used the professional engineering seal of Mr. Blake on the Design. First, the Design (Board 10) clearly bears on its face the P.E. seal of Bryant E. Blake. In addition, Mr. Blake testified credibly that he did not authorize the Respondent to use his P.E. seal on the Design.⁸ The Respondent testified that he thought he had erased the P.E. seal from the Design, but when confronted by the documentary evidence (Board 10) he admitted that the Design he gave the Claimants did bear Mr. Blake's P.E. seal. This was further corroborated by Mr. Ehrlich, who testified that the Design given to him did bear the P.E. seal of Mr. Blake and that he never met Mr. Blake prior to the hearing. Based on these facts, I conclude that the Respondent violated section 14-504(a) by using Mr. Blake's P.E. seal without permission on the Design.

Section 14-508: Civil Penalties

In addition to allowing for criminal penalties, the Business Occupation and Professions Article allows the Board to impose a financial penalty not exceeding \$5,000.00 for each statutory violation: Md. Ann. Code, Bus. Occ. & Prof., § 14-508(b)(1). In determining the appropriate penalty, I am directed to consider the following: 1) the seriousness of the violation; 2) the harm caused by the violation; 3) the Respondent's good faith; 4) the history of previous violations by the Respondent; and 4) any other relevant factors. Md. Ann. Code, Bus. Occ. & Prof., § 14-508(b)(2).

I find the violations outlined above to be serious. The Respondent led the Claimants to believe he was a professional engineer when he clearly was not. In addition, the Respondent's actions in using Mr. Blake's P.E. seal without permission could cause serious damage to Mr.

⁸ Mr. Blake explained that the Respondent had worked for the same firm for approximately ten months in 2006 or 2007, and that was most likely the time during which the Respondent improperly obtained Mr. Blake's P.E. seal.

Blake's professional reputation as an engineer. While it is true that the Respondent's Design was not built and therefore the Claimants were saved from potential further damage had the wall been completed using a fraudulently sealed Design, it was the Claimants—not the Respondent—who terminated the retaining wall project.

With respect to the harm caused, the Respondent's conduct resulted in the Claimants spending \$2,180.00 on a retaining wall Design that was of no value to them: the \$250.00 paid on May 23, 2014, plus the \$1,930.00 paid on June 17, 2014.

Although the Respondent expressed some remorse for his actions, he did not present any credible evidence at the hearing to rebut the Board's allegations that he committed serious statutory violations. Moreover, during his dealings with the Claimants, the Respondent did not act in good faith. He knowingly and falsely held himself out as a licensed P.E. and performed work he was not legally authorized to undertake.

There was no evidence presented of any prior violations by the Respondent.

The licensing of engineers is important because of the significant role engineering plays in society, affecting every human being in terms of safe buildings and roads, clean water, functional machinery, communication and medicine. The profession is regulated by licensing boards in order to protect the public safety, health, property and welfare. As a result, engineers must be licensed as a requirement of offering their services to the public. Only a licensed P.E. has the authority to sign and seal engineering documents such as drawings and calculations for a design or analysis, thus taking legal responsibility for the content.

In my view, the seriousness of the violations and the extent of the harm caused by the Respondent's conduct are the most important factors to consider in assessing a proper penalty

under section 14-508(a). Based on the evidence, the Respondent's violations can be reasonably characterized as being serious. It also bears noting that, unlike such agencies as the Real Estate Commission and Home Improvement Commission, there is no fund available to the Board under law that reimburses individuals who sustain losses at the hands of unscrupulous or incompetent P.E., or those who pose as such professionals.⁹ The statute permits a penalty of up to \$5,000.00 for each violation of the prohibitions set forth in the Professional Engineers Title of the Business Occupations and Professions Article. The Commission has suggested that I recommend a total civil penalty of \$15,000.00. I find this to be appropriate in this case. Accordingly, I recommend that the maximum penalty be imposed upon the Respondent for each of his violations, resulting in a \$15,000.00 penalty, calculated as follows:

The maximum penalty for violation of Bus. Occ. and Prof. § 14-501	\$ 5,000.00
The maximum penalty for violation of Bus. Occ. and Prof. § 14-502	5,000.00
The maximum penalty for violation of Bus. Occ. and Prof. § 14-504(a)	+ 5,000.00
	<u>\$15,000.00</u>

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent practiced engineering in the State of Maryland without possessing a professional engineer's license; misrepresented to the public that he is a licensed engineer; and used Mr. Blake's P.E. seal on the retaining wall Design in violation of sections 14-501, 14-502, and 14-504(a) of the Business Occupations and Professions Article.

I further conclude that the Respondent is subject to civil penalties in the amount of \$15,000.00 under section 14-508(a) of the Business Occupations and Professions Article.

⁹ Md. Code Ann., Bus. Occ. & Prof. § 17-402 (statute establishing Real Estate Guaranty Fund); Md. Code Ann., Bus. Reg. § 8-403 (2015) (statute establishing Home Improvement Guaranty Fund).

RECOMMENDED ORDER

I **RECOMMEND** that the Board for Professional Engineers:

ORDER that the Respondent violated sections 14-501, 14-502, and 14-504(a) of the Business Occupations and Professions Article; and that the Board further

ORDER that the Respondent be fined \$5,000.00 for each violation of sections 14-501, 14-502, and 14-504(a), for a total of \$15,000.00, and that the Respondent pay the amount of this fine to the Board within thirty (30) days of the adoption of this Recommended Order by the Commission; and that the Board further

ORDER that the records and publications of the Board reflect this decision.

February 7, 2018
Date Decision Issued

JJL/dlm
#172137

Signature on File

John J. Leidig //'
Administrative Law Judge