



BEFORE THE MARYLAND STATE BOARD OF LAND SURVEYORS

**MARYLAND STATE BOARD
OF LAND SURVEYORS**

V.

COMPLAINT NO. 15-LS-04

**DAVID L. HALLER
Lic. Reg. #09-240**

Respondent

* * * * *

CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the State Board for Professional Land Surveyors ("Board") based on a complaint filed by James and Gerald Hurt ("Complainants") against David L. Haller ("Respondent"). Based on the investigation of the complaint, the Board determined that administrative charges against the Respondent were appropriate and that a hearing on those charges should be held. A Statement of Charges and Order for Hearing was issued on June 25, 2015. A hearing was scheduled at the Office of Administrative Hearings in Hunt Valley, Maryland on September 28 and 29, 2015. To resolve this matter without a formal hearing, the Board and the Respondent have agreed to enter into this Consent Order to provide for the imposition of disciplinary measures which are fair and equitable in these circumstances and which are consistent with the best interests of the people of the State of Maryland.

THE PARTIES AGREE AND STIPULATE TO THE FOLLOWING:

1. At all times relevant to the matters set forth in this Consent Order and Settlement Agreement, the Board has had jurisdiction over the Respondent and the subject matter.
2. The Respondent is licensed by the Board as a property line surveyor, license number 09-240, and was licensed at the time of the events at issue. The Respondent's current license expires July 7, 2016.
3. On or about on or about September 8, 2009, Kenneth Caulder, a neighbor of the Complainants, contracted with Zenith Surveys, Inc. for a boundary survey to settle a boundary dispute with the Complainants. The Respondent performed a boundary survey and signed and sealed a "Plat of Survey" of the land conveyed to the Caulders, Liber 1282, Folio 224, 3rd Election District, Howard County, Maryland, on October, 2009.
4. The Plat of Survey represented the Respondent's findings of a field-performed survey of the land and adjoining property, including the lands of the Complainants. The plat represented the establishment and/or reestablishment of the physical position of the Caulder property.

5. The Plat of Survey depicted the Caulder lot, including the property lines between the Caulder property and that of the neighbors, including the Complainants' lands. The Respondent did not refer to or provide evidence that he used any deed information for the adjoining properties to the east of the Caulder property in the preparation of the survey. The Plat of Survey that the Respondent signed and sealed indicated the deed references to those properties and that he should have reviewed those deeds. If the Respondent did review those deeds, he did not do so in a competent manner consistent with standards of the profession.

6. Descriptions of the Complainants' lands were available from three parcels that originated from the 1883 Estate of Joseph Barlow. There were two properties to the east of the Caulder property, i.e., the Renehan Property (Liber 595, Folio 409) and the Archdiocese of Baltimore property (Liber 4044, Folio 623). The Renehan property had a deed dated 1972 that called for an iron pipe to be 300 feet north of the road along the Caulder property line. The Respondent did not search for and/or find this common corner. The Archdiocese of Baltimore deed dated 1997 included a metes and bounds description indicating the recovery of prior monumentation (pipes) at the common corner of the Caulder/Renehan properties and at the common corner of the Caulder/Hurt properties. The Respondent did not find and/or recover those corners and/or reference them in the Plat of Survey.

7. There was a plat of the 37.239 acre Elizabeth B. Renehan property adjoining the Complainants' property to the east, tax map #9, Parcel 21, prepared by Fisher Collins & Carter in 1992. There was also a plat of the 87.98 acre property to the north of the Complainants' property, tax map #9, Parcel 18, prepared by Vanmar Associates in 2007. There was also a plat of survey in a deed of a 5 acre lot conveyed to James Hurt by his parents prepared by Boender Associates in 1975 in Liber 1153, Folio 149. The Respondent did not review those plats. If the Respondent did review those plats, he did not do so in a competent manner consistent with standards of the profession.

8. In approximately 2011, the Complainants hired NTT Associates, Inc. to conduct and prepare a boundary survey for their lands ("NTT Survey") and J. Carl Hudgins, President of NTT Associates, Inc., performed that survey. The NTT boundary survey did not agree with the Respondent's survey. The NTT Survey did agree with the surveys or plats for the 6 adjoining properties, except the Caulder property's Zenith pins and caps. The monumented corners found during the NTT Survey did not match the corners established by the Respondent's survey. The Respondent acknowledges that the errors were with the Plat of Survey that he signed and sealed.

9. The NTT Survey showed the Zenith pins were 1.41' +/- west of the pipe on the north end of the Caulder property. The NTT Survey showed the Zenith pins were 7' +/- west of the corner also on the south end of the Caulder property.

10. The Respondent acknowledges that he did not exercise due diligence in the performance and preparation of the boundary survey. The property corners found by

NTT Associates, Inc. were found through the use of a metal detector with property search ties. One of those corners was only 1.4 feet (17 inches) from a corner the Respondent allegedly established. The Respondent acknowledges that he did not discover the correct corners.

11. The Respondent admits that he did not use the normal care of a prudent surveyor. He did not meet the standards of care accepted and used within the industry. The Respondent based his survey on the finding of two (2) corners without searching for others to justify the two (2) points that he found and used for the establishment and/or reestablishment of the property. With the use of reasonable effort, all of the corners could have been found and established and/or reestablished correctly, as done by the NTT Associates, Inc. survey.

12. The Caulders, by letter dated September 21, 2012 from their attorney, E. Alexander Adams, barred the Complainants from entering onto the disputed land. The letter threatened criminal prosecution if the Complainants entered upon the land. This letter attempted to deny the Complainants the right to use their land. This letter was based upon the Zenith Survey that the Respondent signed and sealed.

13. On or about October 31, 2012, James P. Hurt sued the Respondent and Zenith Surveys in the District Court for Howard County (Case No. 100100053062012). On or about February 6, 2013, the District Court entered a judgment in favor of Mr. Hurt and against Zenith Surveys, Inc. The court found that the Zenith Survey performed by the Respondent was wrong.

14. Based on the Respondent's erroneous survey, the Caulder property encroached on the Complainants' lands.

15. In an effort to resolve this matter without a hearing and in a manner that best serves the public's interest, the Board and the Respondent have agreed to enter into this Consent Order and Settlement Agreement. The Respondent recognizes that the Board has the authority under Title 15, Business Occupations and Professions Article, Maryland Annotated Code, §15-317(a)(1)(iv), (v), (vi) and (2)(i), to sanction a licensee for violation of the Minimum Standards of Practice.

16. The Respondent admits that by performing a survey in violation of the Minimum Standards of Practice, as described above, he has violated Md. Code Ann., Bus. Occ. & Prof. Art. ("BOP"), §15-317(a)(1)(iv), (v), (vi) and (2)(i) that provide in pertinent part:

**§15-317. Denials, reprimands, suspensions, and revocations
– Grounds; alternative penalties.**

(a) *Grounds.* – (1) Subject to the hearing provisions of §15-319 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if:

* * *

(iv) the applicant or licensee is guilty of gross negligence, incompetence, or misconduct while practicing land surveying or property line surveying;

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

(vi) the applicant or licensee violates any provision of this title; ...

* * *

(2) (i) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this subsection, the Board may impose a penalty not exceeding \$5,000 for each violation.

17. The Respondent agrees to accept a finding of a violation of the Minimum Standards of Practice, Code of Maryland Regulations ("COMAR") 09.13.01.02, 09.13.06.03B and C(2), and 09.13.06.13 which provide as follows:

COMAR 09.13.01.02 Responsibility to the Public

In the performance of his professional duties, a registrant shall make every reasonable effort to protect the safety, health, property, and welfare of the public. If the registrant's professional judgment is overruled under circumstances in which the safety, health, property, or welfare of the public is endangered, the registrant shall inform his employer or client of the possible consequences.

COMAR 09.13.06.03

**Chapter 06 Minimum Standards of Practice.
.03 Boundary Surveys.**

* * *

B. Result. Unless otherwise directed by the party requesting the survey, sufficient monuments or reference control points which were used to determine the property lines shall be:

- (1) Set or recovered on the ground, to the extent feasible; and

(2) Shown on a plat upon completion of the boundary survey so that the property lines can be determined or readily reestablished.

C. Research and Investigation.

* * *

(2) The surveyor shall make a reasonable effort to identify, locate, and review private survey records which are cited in the provided public records and which may:

- (a) Be material in locating the property's boundaries,
- (b) Have the potential for disclosing conflicting descriptions of the property's boundaries, or
- (c) Affect the location of the property's boundaries.

.13 Violation of Minimum Standards

Violation of the minimum standards of practice by a professional land surveyor or a property line surveyor shall constitute grounds for disciplinary actions under Business Occupations and Professions Article, Title 15, Annotated Code of Maryland.

18. As a sanction for these violations, the Respondent agrees to a thirty (30) day suspension, from and including October 1, 2015 through and including October 30, 2015.

19. As a sanction for these violations, the Respondent agrees to pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for these violations, which amount is payable to the Board within sixty (60) days of the date of this Order is executed by the Board.

20. The Respondent agrees to apply for a firm permit from the Board for his current business by October 1, 2015. The Respondent agrees that he will provide any and all necessary documentation with this application by October 1, 2015 or he will not be in compliance with this provision of the Consent Order and Settlement Agreement.

21. The Respondent agrees to provide to the Board two boundary surveys prepared by him between 2012 and 2015 within fifteen (15) days of the date of this Order, for the purpose of constructive review and suggestions.

22. The Respondent, by entering into the Consent Order, expressly waives the right to an administrative hearing on the charges, the making of Findings of Fact and Conclusions of Law, any and all further proceedings before the Board to which the Respondent may be entitled in this matter, and any rights to appeal from this Order.

23. The Respondent agrees that if the Respondent fails to pay the civil penalty as provided for in this Consent Order, or fails to apply for the firm permit with all required documentation, or fails to provide the Board with the two boundary surveys he has completed, the Respondent's license will be suspended automatically and immediately by the Board, without a hearing on the suspension, and that the Respondent will be ineligible for the renewal or reinstatement of the license until such time as:

- (a) the Respondent submits an application for firm permit with all required documentation, as required in paragraph 20 of this Consent Order; and
- (b) the civil penalty set forth in paragraph 19 of this Consent Order is paid in full to the Board; and
- (c) the Respondent submits the boundary surveys, as required in paragraph 21 of this Consent Order; and
- (d) The Respondent has completed the suspension as required in paragraph 18 of this Consent Order.

24. The Respondent and the Board understand that this Consent Order will serve as the Final Order in matter 15-LS-04 and be a part of the Respondent's licensing record maintained by the Board. The Board's records and publications will reflect the terms of the Consent Order.

25. The Respondent enters this Consent Order and Settlement Agreement freely, knowingly, voluntarily, willingly, and with the advice of counsel.

26. The Respondent agrees to abide by the Maryland Professional Land Surveyors Act, Maryland Annotated Code, Business Occupations and Professions Article, Sections 15-101 *et seq.*, and the regulations of the Board.

**BASED ON THE AGREEMENTS AND STIPULATIONS SET FORTH
HEREIN, IT IS, THIS 9th DAY OF September, 2015, BY THE
STATE BOARD FOR PROFESSIONAL LAND SURVEYORS,**

ORDERED that the Respondent David L. Haller, license registration 09-240, has violated BOP §§15-317(a)(1)(iv), (v), (vi), and (2)(i), as well as Code of Maryland Regulations ("COMAR") 09.13.01.02, 09.13.06.03B and C(2), and 09.13.06.13; and it is further

ORDERED that based on the Respondent's violations, the Respondent's license registration 09-240 be and hereby is **SUSPENDED FOR 30 days**, from and including October 1, 2015 to and including October 30, 2015; and it is further

ORDERED that based on the Respondent's violations, pursuant to BOP §15-317(2)(i) and (ii), having considered the seriousness of the Respondent's violations, the harm caused by the Respondent's violations, the good faith of the Respondent, and any history of previous violations by the Respondent, the Board hereby imposes on the Respondent a CIVIL PENALTY in the amount of \$2,500 for these violations to be paid within 60 days of the execution of this Consent Order; and it is further

ORDERED that, if payment of the civil penalty is not made within that 60-day period, the Respondent's license (License No. 09-240) shall be automatically suspended until that payment is made; and it is further

ORDERED that the Respondent shall apply for a firm permit from the Board for his current business by October 1, 2015. The Respondent agrees that he will provide any and all necessary documentation with this application by October 1, 2015; and it is further

ORDERED that, if the Respondent does not apply for a firm permit with all necessary documentation, by October 1, 2015, the Respondent's license (License No. 09-240) shall be automatically suspended until that documentation is provided; and it is further

ORDERED that the Respondent will provide two boundary surveys prepared by him between 2012 and 2015 to the Board within fifteen (15) days of the date of this Order; and it is further

ORDERED that, if the Respondent does not provide the two boundary surveys to the Board within that 15-day period, the Respondent's license (License No. 09-240) shall be automatically suspended until that documentation is provided; and it is further

ORDERED that the Board's records and publications shall reflect the terms of this Consent Order and Settlement Agreement and the discipline against the Respondent **David L. Haller** in this case.

STATE BOARD FOR PROFESSIONAL LAND SURVEYORS

Chairman

David L. Haller, Respondent

AGREED:

Date

Sept. 9, 2015