

IN THE MATTER OF \* BEFORE THE  
JONATHAN P. SMITH \* STATE BOARD FOR  
\* PROFESSIONAL ENGINEERS  
\* Case No. 18-PE-03  
\* \* \* \* \*

**MEMORANDUM AND ORDER**

On August 10, 2017, the State Board for Professional Engineers (“Board”) issued a Statement of Charges against Jonathan P. Smith (“Respondent”). The Board charged the Respondent with violation of Maryland Annotated Code, Business Occupations and Professions Article (“BOP”), Sections 14-304, 14-305 (d), 14-306 (a) (1), 14-306 (b) (1) (iv), 14-317 (a)(1)(i), 14-317 (a)(1)(ii), 14-317 (a)(1)(vii) and (a)(2).

On September 14, 2017, despite being advised of his right to counsel, Respondent appeared before the Board without counsel, to respond to the charges brought against him. Assistant Attorney General Jessica Kaufman appeared on behalf of the State of Maryland, and Assistant Attorney General Milena Trust served as counsel to the Board. The proceedings were recorded electronically.

The State of Maryland introduced and the Board received into evidence with no objections from the Respondent the following:

1. Exhibit No. 1 – Statement of Charges and Hearing Order dated August 10, 2017.
2. Exhibit No. 2 – Complaint Form filed by the Board dated July 31, 2017.

3. Exhibit No. 3 – A copy of the Board’s Timeline, signed by Steven Long, the Board’s Executive Director, which describes the sequence of events that transpired with regard to this case, together with fifteen Attachments thereto: 1) Application for Professional Engineer Licensure by Reciprocity; 2) through (6) Emails from Ruby Courtney; 7) Email from Linda Washington; 8) Email from Ruby Courtney and Response from Respondent; 9) Letter to Respondent from Ruby Courtney, 10) Letter to Respondent from Steven Long; 11) Refund Notice; 12) Letter to Steven Long from the Respondent; 13) Letter to Ruby Courtney requested a hearing; 14) NCEES record with regard to the Respondent’s examination history; and 15) Deposit record of Joel Smith and Jonathan Smith.

The Respondent did not introduce any documents into evidence.

The State of Maryland presented the testimony of the following individuals:

1. Steven Long, Executive Director for the Board.
2. Ruby Courtney, Administrative Secretary to the Board.

The Respondent testified, but did not present any other witnesses.

### **RESPONDENT’S POSITION**

Respondent contends that he did not receive a license in error because he responded truthfully when he responded “No” to the question on the application as to whether or not he took the licensing examination. Further, he contends that it was his understanding that based on information that he gathered from the National Council of Examiners of Engineering and Surveying’ website, he was

eligible to obtain a license solely on the basis of education and experience. Respondent also contends that other applicants have obtained their professional engineer's license without ever taking a licensing examination.

### **FINDINGS OF FACT**

The Board carefully considered both the documentary and testimonial evidence submitted at the hearing. Based on the evidence presented, the Board makes the following Findings of Fact:

1. On January 27, 2016 the Respondent filed with the Board "An Application for Professional Engineer Licensure by Reciprocity." Exhibit 3, Attachment 1.
2. On the Application, the Respondent provided his educational qualifications and record of professional experience. In response to the question on the Application as to whether he holds "an unexpired license as a professional engineer," the Respondent marked "No." Exhibit 3, Attachment 1.
3. On the following day, January 28, 2016, Ms. Courtney sent an email to the Respondent advising him that his application was incomplete. Exhibit 3, Attachment 2. Additionally, the email stated that "the Board has not received verification of [the Respondent's] license and PE exam." Exhibit 3, Attachment 2. Ms. Courtney sent follow up emails with similar content on March 2, 2016, March 31, 2016, May 3, 2016, and May 24, 2016. Exhibit 3, Attachment 6.
4. On July 8, 2016, another member of the Board's staff, Ms. Linda Washington, sent a follow up email advising the Respondent that the Board still had not received the verification of licensure or verification of the passage of the licensing examination. Exhibit 3, Attachment 7.

5. The Respondent did not respond to any of the above-mentioned emails.
6. Ms. Courtney sent another email to the Respondent in which she advised him that “in order to become a licensed Professional Engineer in the State of Maryland, you are required to have passed the 8-hour NCEES Principles and Practice of Engineering examination.” Exhibit 3, Attachment 8.
7. In September, 2016, the routine inspection of applications revealed that unbeknownst to the Board staff, a former employee of the central licensing unit of the Department of Labor, Licensing and Regulation (“DLLR”) unintentionally processed the Respondent’s check in connection with his application.
8. The licensing unit received two separate checks, both from individuals with the last name “Smith.” One check was from an individual named Joel Smith in connection with a retired professional engineer’s license application. The other check was from Jonathan Smith, the Respondent, in connection with the professional engineer’s license by reciprocity. Exhibit 3, at pp. 1-2.
9. Instead of depositing the check from Mr. Joel Smith, the unit inadvertently deposited the check from Respondent, Exhibit 3, Attachments 2 and 15, thereby automatically generating a license in error.
10. Upon the discovery of unintentional error, the full amount of refund was issued to the Respondent. However, the Respondent did not cash the refund check. Exhibit 3, Attachment 11.
11. On September 12, 2016, Ms. Courtney contacted the Respondent at his home address advising him that “it has come to the attention of the Board that [the Respondent is] not licensed in any state or territory of the US and [has] never

taken the NCEES Principles and Practice of Engineering examination.” Exhibit 3, Attachment 9. She also stated that the license was issued in error and requested that Respondent return the license and the wall certificate. Exhibit 3, Attachment 9.

12. Respondent contacted Ms. Courtney by telephone and was transferred to Mr. James Baseman, Assistant Executive Director to the Board. Mr. Baseman confirmed that the license was issued in error. The Respondent then asked to speak to Mr. Steven Long. Exhibit 3, at p. 2.
13. Steven Long, Executive Director to the Board, made repeated phone calls to the Respondent, but the Respondent never returned his calls. Exhibit 3, at p. 2.
14. Mr. Long contacted the Respondent by letter dated September 19, 2016 and advised Respondent that he had to have passed the NCEES Principles and Practice examination and be licensed in another state or territory of the United States in order to qualify for a license by reciprocity. He also provided in the letter that he “can either suspend the issued license ..., or he can and have voided the issuance of the license, and [the Respondent] can voluntarily return the wall certificate and license.” Exhibit 3, Attachment 10. The Respondent did not respond to Mr. Long’s letter.
15. Mr. Long obtained the Respondent’s record from NCEES which confirmed that the Respondent did not pass, or even take, any of the NCEES’ licensing examinations. Exhibit 3, p. 2.

### **DISCUSSION**

Section 14-317, Subsection (1) provides that “[s]ubject to the hearing provisions of §14-319 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:

- (i) the applicant or licensee fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (ii) the applicant or licensee fraudulently or deceptively uses a license;...or
- (vii) the applicant or licensee violates any provision of this title.

Section 14-305 of the BOP clearly states that in order for a person to become a licensed professional engineer, that person must pass a qualifying licensing examination. While the statute identifies different paths for licensure depending on applicant's experience and education, it nevertheless requires passage of at least one licensing examination in all of them. Moreover, it is clear from the plain reading of subsection (d) that if a person is pursuing what is known as a non-academic path to licensure, which is what Respondent pursued, that person must take and pass the Principles and Practice of Engineering examination. It is beyond any doubt from both documentary and testimonial stances that Respondent did not pass the NCEES licensing examination. Exhibit 3, at p. 2.

Additionally, while the unintentional mistake was made by a staff person, not only was a full refund issued to Respondent, but more importantly, he was advised on numerous occasions that his application was incomplete, and that he needed to submit evidence of passage of licensing examination. Respondent acknowledged that he read and understood the licensing requirements set forth in Section 14-305, and yet, he chose to simply ignore them.

Under Section 14-306 (c) of BOP, the Board has the authority to require an applicant to submit additional information or documentation if the Board finds that an application form and the accompanying documentation do not demonstrate that the applicant meets the requirements set forth in the statute. The record clearly indicates that the Respondent was contacted on numerous occasions by different members of the Board's staff requesting his verification of licensure in other states or at least the verification of passage of the licensing examination. The Respondent claimed the he never received those communications even though he clearly responded to one of them by asking all his correspondence to be directed to his home address in Harvest, Alabama Exh. 3, Attachment 8. He simply could not provide the requested information.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, the Board concludes that the Respondent is guilty of violating the following provisions of Title 14, Business Occupations and Professions Article, Annotated Code of Maryland:

§14-304.

(a) To qualify for a license, an applicant shall be an individual who meets the requirements of this section.

(b) The applicant shall be of good character and reputation.

(c) The applicant shall meet the educational and experience requirements under and, except as otherwise provided in this subtitle, shall pass each examination required under § 14-305 of this subtitle.

§14-305.

(a) In addition to the other qualifications for a license set forth in this subtitle, an applicant shall qualify under this section by meeting the educational and experience requirements set forth in subsection (b), (c), or (d) of this section.

(d) (1) An applicant qualifies under this section if the applicant:

(i) subject to paragraph (2) of this subsection, has at least 12 years of work experience in engineering that is satisfactory to the Board, in at least 5 years of which the applicant has been in responsible charge, if the collective experience indicates to the Board that the applicant may be competent to practice engineering; and

(ii) has passed the examination in the principles and practice of engineering given by the Board under this subtitle.

§14-306.

(a) An applicant for a license shall:

(1) submit to the Board:

(i) an application on the form that the Board provides; and

(ii) any relevant document that the Board requires; and

(2) pay to the Board or the Board's designee:

(i) a nonrefundable application fee set by the Board; and

(ii) an examination fee set by the Board in an amount not to exceed the cost of the required examinations.

(b) (1) The application form shall require:

(i) a statement about the education of the applicant;

(ii) a statement about the engineering experience of the applicant;

(iii) a list of at least 5 references, which, unless excused by the Board, shall include at least 3 professional engineers who have personal knowledge of the applicant's engineering experience; and

(iv) any other relevant information that the Board requires.

(2) An application shall be made under oath.

(c) If the Board finds that an application form and the accompanying documentation do not demonstrate that the applicant meets the requirements for a license under this subtitle, the Board may require the applicant to submit additional information or documentation.



§14-317.

(a) (1) Subject to the hearing provisions of § 14-319 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:

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

**ORDER**

Accordingly, it is hereby ORDERED that:

1. The Respondent, Jonathan Smith, is guilty of violating Business Occupations and Professions Article, Annotated Code of Maryland, Sections 14-304, 14-305, 14-306 and 14-317 (a)(1)(vii).
2. The Board does not find the Respondent guilty of violating Section 14-317 (a)(i) and (a)(ii), Business Occupations and Professions Article, Annotated Code of Maryland.
3. The Respondent's application for a license as a Maryland professional engineer is hereby DENIED.
4. The erroneously issued License No. 48532 is hereby REVOKED.
5. The records of the Board shall reflect this Memorandum and Order.

SO ORDERED this 9th day of November, 2017 by the State Board for Professional Engineers.

Signature on file

— Dr. Steven Arndt, P.E., Chair —  
State Board for Professional Engineers