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STATE OF WISCONSIN

BEFORE THE PROFESSIONAL ENGINEERS SECTION OF THE EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL GEOLOGISTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

ALBERT P RUGG,

FINAL DECISION AND ORDER

RUGG & KNOPP, INC.,

LS9911122ENG

Also d/b/a RESPONDENTS

96 ENG 007

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The parties to this action for the purposes of Wis. Stats. Sec. 227.53 are:

*Albert P. Rugg &
Rugg & Knopp, Inc
15718 West Ridge Road
New Berlin, WI 53186*

*Bureau of Business & Design Professions
Professional Engineers Section
Examining Board of Architects, Landscape Architects, Professional Engineers,
Designers and Land Surveyors
P.O. Box 8935
Madison, WI 53708-8935*

*Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935*

The Professional Engineers Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, having considered the Stipulation Agreement Annexed – hereto of the parties, in resolution of the captioned-matter, makes the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to jurisdiction and authority granted to the Board's Section, in Ch. 443, Wis. Stats., and Sec. RL 2.12, Wis. Adm. Code, that the Stipulation Agreement annexed-here to, filed by Complainant's Attorney, shall be and hereby is incorporated, made and ordered the Final Decision and Order of the Professional Engineers Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Let a copy of this Order be served on Respondent by certified mail.

6. On September 6, 1995, the Department received a complaint filed by Respondents against Ramesh Kapur (#95 ENG 011), a Professional Engineer, regarding Kapur's work as a consultant for Respondents for doing the civil and structural drawings of a project for an air rescue firefighting training facility, at New York City, JFK International Airport, for the Port Authority of New York and New Jersey.

7. Pursuant to an investigation into the subject complaint filed by Respondents, it was determined that the subject complaint was intentionally frivolous and was without merit; and that Respondents themselves were then and or had been involved in several civil litigations involving incompetence and or unprofessional conduct.

8. Accordingly, complaint # 95 ENG 011 was closed against Mr. Kapur, and this complaint 96 ENG 007 was opened for investigation against Respondents.

9. The investigation determined that on about December 18, 1995, Civil Complaint # 95 CV 5220, Exhibit "A" was filed against Respondent R&K in Federal Court, Eastern District of New York. The nature of the filed action was, in pertinent part:

"This action is brought for breach of a joint venture agreement entered into by GRACE Industries, Inc., (GRACE) with Rugg & Knopp, Inc., for the bidding, design, performance and completion of a port authority of New York contract # JFK 110.115B, the design and construction of an aircraft rescue and fire fighters fuel spill trainer, and contract # JFK 110.115MB, the maintenance of the aircraft rescue and firefighting fuel spill trainer, at the John F. Kennedy International airport."

10. Plaintiff's ten (10) claims for relief, succinctly were – in pertinent part that:

a. Defendant's breach of its obligations and responsibilities ... significantly delayed the performance of the contracts, forced GRACE to absorb materials and labor price escalations: GRACE was forced to incur extended home office overhead costs: caused a disruption in the critical path of GRACE's performance of the contracts and has resulted in substantial field office overhead costs, and this disruption has significantly increased GRACE's labor and performance costs including, but not limited to: (a) Labor and fringe benefits escalation: (b) Workers' compensation escalation; (c) Federal Unemployment tax escalation; (d) escalated and extended compensation for the field office; (e) escalation in field office utility expenses; (f) extended equipment costs; and (g) extended insurance.

11. As a ninth claim for relief, it was alleged: That Defendant fraudulently misrepresented to GRACE that it possessed the ability, experience, expertise and legal authority to provide all engineering design services required under the contracts and to fulfill all New York State licensing obligations for preparation of maps, the satisfaction of code and contracts requirements for the Project, and that:

Defendant made this representation with the knowledge that it is false and/or a reckless disregard for the truth.

That said representation was made in order to induce GRACE to entertain and enter into the said Joint Venture with the Defendant in order for the Defendant to benefit from the Contracts.

GRACE relied upon this representation by entering into the Agreement with the Defendant.

That Defendant did not possess the ability, expertise and experience it represented to GRACE and breached the Agreement to GRACE's detriment.

As a result of Defendant's misrepresentation, GRACE has been damaged.

12. The Plaintiffs demanded 5,000,000.00 punitive damages with interest from August 8, 1994, based upon the fact "that as a result of Respondent's egregious breach of the agreement with full knowledge of its' inability to perform as required by the agreement and the contracts," and also demanded judgment against Respondent, in the amount of \$2,000,000.00 on the "first through ninth claim, with interest from August 8, 1994; and \$5,000,000.00 on the tenth claim for relief, with interest from August 8, 1994."

13. Respondent failed to appear for the scheduled civil trial, and a default judgment was rendered against it, Exhibit "B" in pertinent part, and by order dated June 5, 1996, the parties were directed to submit submissions on the questions of damages and attorney fees owed Plaintiff. See Exhibit "C," Plaintiff's Submission and Affidavit in Support of Plaintiff's Request and Submission for Damages.

14. As of October 5, 1999, Complainant's Attorney, Sanders was informed by Plaintiff's Attorney, Vincent A. DeIorio, that the United States magistrate judge, has not yet issued a written "confirmation of damages sustained" judgment.

15. Also pursuant to the investigation into the matters, it was determined that a Complaint and Jury Demand,

case # 2: 97 CV 0303W, Exhibit "D", was filed on April 18, 1997, in the United States District Court, District of Utah, Central Division, was filed against Respondents, by Salt Lake City (Utah) Corporation, a municipal Corporation and body politic of the State of Utah, alleging the following facts, in pertinent part:

FACTS

- a. In November 1991, the City solicited Statements of Qualifications from independent consultants interested in providing design services for an Airport Rescue and Fire Fighting (ARFF) facility to be constructed at the Salt Lake City International Airport ("the Project").
- b. Rugg-Knopp and Contraves, as a joint venture, submitted a Statement of Qualifications to the City in response to said solicitation.
- c. Included in said Statement of Qualifications was a letter from Contraves to Rugg-Knopp, dated 2 December 1991, wherein the joint venture misrepresents, inter alia, the qualifications of the joint venture to perform the design and construction of the Project, referencing therein among Contraves's and Rugg-Knopp's supposed joint successes on similar facilities the design and/or construction of a similar facility in Duluth, MN.
- d. In fact, Rugg-Knopp, which was a subcontractor to Contraves on the Duluth project, did not perform adequately thereon, and was replaced.
- e. As a continuing and material component of said misrepresentations, the joint venture invited Authority representatives to visit the Duluth facility.
- f. Said visit occurred on or about July 1994, during which representatives of the joint venture presented the Duluth facility to the Airport representatives as a project exemplifying what the joint venture, Rugg-Knopp and Contraves could do on the Project.
- g. Said visit and related misrepresentations were material to the City's consideration of the joint venture's qualifications to do the work, to its decision to award the design contract for the Project to the joint venture, and/or to its decision to allegedly consent to and/or ratify the Assignment hereinafter described.
- h. On or about June 1, 1992, Rugg-Knopp and Contraves, as a joint venture, entered into a contract with the City whereby the joint venture was to provide engineering and related design services for the design and construction of the Project and the City was to compensate Rugg-Knopp and Contraves therefor.
- i. As joint ventures, Rugg-Knopp and Contraves were each agents of the joint venture and, as such, each is jointly and severally charged with the knowledge, representations, words, actions or conduct