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STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
FRED A. DITTLOFF (S-769), RESPONDENT	:	FINAL DECISION AND ORDER

The State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors. Let a copy of this order be served on the respondent by certified mail.

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is Fred A. Dittloff.

A party aggrieved by this decision may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings will be held and serving the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as respondent in the petition is the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

Dated this 7th day of JANUARY, 1983.

Percival Sprague

pc017-552

STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
FRED A. DITTLOFF (S-769), RESPONDENT.	:	

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.16 are:

Fred A. Dittloff
1903 Western Avenue
Eau Claire, Wisconsin 54701

Examining Board of Architects, Professional
Engineers, Designers and Land Surveyors
1400 East Washington Avenue, Room 288
P.O. Box 8936
Madison, Wisconsin 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue, Room 183
P.O. Box 8936
Madison, Wisconsin 53708

A hearing was held in the above-captioned matter. The respondent, Fred A. Dittloff, appeared personally and by his attorney, Russell R. Faulkenberg, P.O. Box 92, Cadott, Wisconsin 54727. The complainant appeared by Attorney Wayne R. Austin, Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8936, Madison, Wisconsin 53708. The record in this matter was held open for the preparation of written closing arguments by counsel. All written closing arguments were received by December 21, 1981.

Based upon the record in this case, the Hearing Examiner recommends that the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors adopt as its final decision the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Fred A. Dittloff (Dittloff) was at all times relevant to this proceeding registered under the provisions of Chapter 443 of the Wisconsin Statutes to practice as a land surveyor in the State of Wisconsin. The certificate of registration of Dittloff bears number S-769 and was issued on March 23, 1972.

2. Dittloff's address is 1903 Western Avenue, Eau Claire, Wisconsin 54701.

3. Dittloff is the president and principal operating officer of Dittloff Engineering Company, Inc. (Dittloff Engineering), 1903 Western Avenue, Eau Claire, Wisconsin 54701.

4. Dittloff Engineering was at all times relevant to this proceeding, duly certified under the provisions of Chapter 443 of the Wisconsin Statutes as a firm through which engineering may be practiced.

5. At all times relevant to this proceeding, Dittloff Engineering performed services from two offices. The main office was located in Eau Claire, Wisconsin (Eau Claire office) and a second office was located in River Falls, Wisconsin (River Falls office). Dittloff was the manager of the Eau Claire office and Arthur L. Wegerer (Wegerer), who was at all times relevant to this proceeding registered to practice as a land surveyor pursuant to certificate of registration numbered S-963 issued on February 21, 1969, was an employee of Dittloff Engineering and the manager of the River Falls office.

6. Dittloff Engineering was retained in August of 1974 by Rex W. Myers (Myers), residing at Route 1, Cohasset, Minnesota, to perform a land survey and to prepare a plat of a subdivision known as the Oak Knoll Subdivision, located in the southwest quarter of the southeast quarter of section 33, the southeast quarter of the southeast quarter of section 33, and the northwest quarter of the southeast quarter of section 33, township 30 north, range 19 west, Town of St. Joseph, St. Croix County, Wisconsin.

7. In his capacity as an employee of Dittloff Engineering, Wegerer performed or supervised the performance of a survey and prepared or supervised the preparation of a plat concerning the property described in paragraph 6 above. This survey and plat was designated as Job #RF 74-83 by Dittloff Engineering; the numbering description referring to the fact that the project was the 83rd undertaken by the River Falls office in 1974. Job #RF 74-83 for Myers was completed in August of 1975.

8. In performing the survey and in preparing the plat described as Job #RF 74-83, the services of Dittloff Engineering were to be calculated and billed to Myers on a time and material basis.

9. Client billings and employee payroll for work performed by Dittloff Engineering were handled by the Eau Claire office.

10. Rita Munzenmaier (Munzenmaier) was employed as a secretary at the Eau Claire office by Dittloff Engineering from August of 1974 to May of 1979. During her employment with Dittloff Engineering, Munzenmaier's responsibilities included preparing the employee payroll records and billings to clients for land surveying services, as well as other routine secretarial duties.

11. In preparing the payroll for Dittloff Engineering, Munzenmaier would review the employee time cards, which indicated the number of employee hours spent upon each separate job project, and then transfer the total hours worked for each individual employee to a payroll sheet from which the bi-weekly payroll was calculated.

12. In preparing client billings for Dittloff Engineering, Munzenmaier would use the employee time cards in order to calculate the hours spent upon each project. Munzenmaier prepared a monthly summary sheet for each project in progress, using the employee time cards to calculate hours expended. The monthly summary sheet would also contain other billable expenses attributable to the project. A final summary sheet would be prepared by Munzenmaier, using the monthly summary sheets. After Munzenmaier's preparation of the final summary sheet on a project, Munzenmaier would submit it to Dittloff for his review prior to the mailing of the invoice to the client involved.

13. It was the practice of Dittloff to include in bills to clients an amount sufficient to pass along his costs for errors and omissions insurance (hereinafter, insurance). It was also the billing practice of Dittloff to give a 2% discount on the client's bill if the client paid the bill within 15 days. In order to pass along the possible cost of this 2% early payment discount, a 2% charge (hereinafter, discount) was calculated into the client's bill.

14. Upon the completion of Job #RF 74-83 by Dittloff Engineering for Myers, Munzenmaier prepared a final summary sheet and invoice for the project.

15. In preparing the final summary sheet for Job #RF 74-83, Munzenmaier calculated the employee hours spent on the project, as well as various expenses incurred. In reviewing the employee time cards she calculated that 655.5 hours were expended on the project. After multiplying the hourly rate charged for each employee by the employee's number of hours worked and calculating job-related expenses, these inputs into the bill amounted to $5,033.71. Prior to preparing the final summary sheet for Job #RF 74-83, Munzenmaier had been informed by Wegerer that a charge should be added to the billing of Myers relating to a different project which had previously been performed but not charged to Myers. Munzenmaier calculated this amount as totalling $232.73 which, when added to the subtotal previously calculated, yielded a subtotal of $5,266.44. To this figure was added the 2% insurance charge of $105.32 ($5,266.44 x 2%) along with an additional $105.32 for the discount charge at 2%. This resulted in a subtotal of $5,477.08. Myers previously had been billed $3,540.61 by Dittloff Engineering for a portion of the project. This bill had not been paid. Accordingly, Munzenmaier added the unpaid balance to the final summary sheet which resulted in a total billing to Myers of $9,017.69.

16. Munzenmaier submitted the final summary sheet for Job #RF 74-83 to Dittloff for his review. Subsequently, Myers was sent a bill on or about September 5, 1975 for $9,017.69.

17. Myers disputed the amount of the billing by Dittloff Engineering. This resulted in Dittloff commencing a lawsuit against Myers in 1976 for collection of the bill.

18. Pursuant to the lawsuit commenced, the attorney for Myers demanded production of the final summary sheet and the employee time cards of Dittloff Engineering.

19. Pursuant to this demand, Dittloff became concerned over the charges reflected upon the final summary sheet in regard to the discount, insurance and $232.73 for another project. Dittloff instructed Munzenmaier to prepare a second final summary sheet which was not to reflect any charge for the insurance and discount or the $232.73 billed Myers for the other project. In order for the second summary sheet to reflect a total billing of $9,017.69 given the deletions ordered, Dittloff instructed Munzenmaier to increase the number of actual employee hours represented as being expended on Job #RF 74-83 on the second summary sheet. Dittloff further instructed Munzenmaier to alter the number of hours represented on employee time cards as expended on the project so that the employee time cards would coincide with the employee hours represented on the second summary sheet.

20. Munzenmaier complied with the instructions given her by Dittloff and altered employee time cards and prepared a second final summary sheet.

21. The employee time cards, as altered, falsely represent the number of hours expended by the employees of Dittloff Engineering on Job #RF 74-83. The second summary sheet prepared for Job #RF 74-83 falsely represents that the employees of Dittloff Engineering spent 699.5 hours upon the project when, in fact, the unaltered employee time cards indicated that 655.5 hours had been expended.

CONCLUSIONS OF LAW

1. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors have jurisdiction to take disciplinary action in this proceeding pursuant to Wis. Stats. sec. 443.02(8) [1975] and Wis. Stats. sec. 443.12 [1979-80].

2. Dittloff's conduct in ordering the alteration of employee time cards to support the fee charged to Myers for Job #RF 74-83, evidences a lack of trustworthiness to transact the business required by the land surveying profession within the meaning of Wis. Adm. Code sec. A-E 4.003(3)(c), and constitutes misconduct within the meaning of Wis. Stats. sec. 443.02(8)(a) [1975], as now renumbered Wis. Stats. sec. 443.12(1).

ORDER

NOW, THEREFORE, IT IS ORDERED that the certificate of registration as a land surveyor (No. S-769) of FRED A. DITTLOFF, shall be and hereby is SUSPENDED for THREE (3) MONTHS, commencing thirty days following the date of the final decision of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

OPINION

Many of the facts in this case are not disputed between the parties. In August of 1974, Dittloff Engineering, Inc. agreed to provide land surveying services for Rex Myers concerning property located in St. Croix County, Wisconsin. The survey and plat of the property was completed in August of

1975. The actual land surveying services were performed out of the River Falls office of Dittloff Engineering, Inc., although the billing was handled by the corporation's main office in Eau Claire, Wisconsin. The final billing of Mr. Myers totaled $9,017.69. Mr. Myers refused to pay the bill, resulting in civil litigation which was ultimately settled prior to actual trial.

The substance of the complaint against Mr. Dittloff alleges that he ordered the alteration of employee time cards as to the number of hours actually spent upon the Myers project so as to justify the total amount billed to Mr. Myers. It is claimed that the time cards were altered to inflate the number of hours expended upon the project so as to cover-up the fact that the original billing to Mr. Myers contained questionable charges which Mr. Dittloff did not desire to disclose. Mr. Dittloff defends this action by claiming that he never ordered the alteration of employee time cards; that his secretary, Rita Munzenmaier, altered the time cards on her own initiative as an act of vengence against her employer, Mr. Dittloff; and that, in fact, there was no overcharge to Mr. Myers on the project.

Complainant's primary witness in this case was Rita Munzenmaier. Ms. Munzenmaier was initially employed in Mr. Dittloff's Eau Claire office in August of 1974. Her duties included the preparation of the employee payroll, billing clients, and other routine secretarial responsibilities. In preparing both the employee payroll and client billings, Ms. Munzenmaier would refer to the employee time cards. These time cards provided spaces in which each employee would indicate the number of hours spent upon each individual project. From these time cards Ms. Munzenmaier would prepare monthly summary sheets on each project in progress, and then use the monthly summary sheets to prepare a final summary sheet on each project when completed. From the final summary sheet she would prepare an invoice to be sent to the client for billing. The monthly and final summary sheet would also contain an itemization of various expenses incurred on each project which were to be passed along to the client. One such expense was a 2% charge to the client by Mr. Dittloff in order to recover the cost of his errors and omissions insurance. Additionally, it was the practice of Mr. Dittloff to grant a 2% discount upon all bills paid within 15 days. However, in order to recover the cost of this possible early payment by the client a 2% "discount" charge was added to the initial billing sent the client.

In this case, the following breakdown represents the itemization of the bill sent to Mr. Myers on or about September 15, 1975, as gathered from the final summary sheet on that project (Complainant's Exhibit #3) and the testimony of Rita Munzenmaier:

Charge	Purpose of Charge
$5,033.71	655.5 employee hours on the project, plus misc. expenses
232.73	Added charge for previous project
5,266.44	(Subtotal)
105.32	2% errors and omissions insurance ($5,266.44 x 2%)
105.32	2% recovery of discount offered ($5,266.55 x 2%)
5,477.08	(Subtotal)
3,540.61	Previous billing on project, unpaid by Mr. Myers
$9,017.69	(TOTAL)

The bill for $9,017.69 was disputed by Mr. Myers. A civil lawsuit ensued and Mr. Myers' legal counsel demanded that Mr. Dittloff produce an itemized breakdown of the billing and the employee time cards. Ms. Munzenmaier claims that Mr. Dittloff instructed her to prepare a second, falsified final summary sheet to be provided to Mr. Myers, this second final summary sheet to contain no reference to the $232.73 charge to Mr. Myers for another project or the 2% charges for insurance and the discount. In order to account for this deletion and still reach the same billing for $9,017.69, Ms. Munzenmaier claims that Mr. Dittloff instructed her to add additional employee hours to the final summary sheet and to alter the employee time cards accordingly. Mr. Dittloff denies giving Ms. Munzenmaier such instructions. Ms. Munzenmaier claims she followed Mr. Dittloff's instructions and prepared the falsified second final summary sheet for the Myers project (Complainant's Exhibit #5) and altered employee time cards (Complainant's Exhibit #4).

The key issue in this case involved the credibility of Rita Munzenmaier. The examiner believes that the testimony of Rita Munzenmaier is credible and sufficient to establish that Mr. Dittloff instructed her to falsify employee time cards as alleged by complainant; an instruction which she carried out.

Respondent contends that during Ms. Munzenmaier's period of employment from August of 1974 to May of 1979, she became a disgruntled employee and could not get along with fellow employees; the situation finally becoming so acute that it was necessary to discharge her. Respondent's theory is that Ms. Munzenmaier's testimony is fabricated in an attempt to gain vengeance upon Mr. Dittloff. In this regard, respondent offered the testimony of several employees, or former employees, of Dittloff Engineering. The testimony of these individuals is provided in addition to that of Mr. Dittloff, in which he states,

> "...conditions became intolerable. She did not cooperate with me. She did not respond to any instruction I gave her. She could not get along with the people around the office. There was constant verbal battles with somebody at all times.... I got in the middle of them because every man in my office at one time has come to me and said, why don't you fire that S.O.B." (Transcript, p. 178.)

The foregoing testimony of Mr. Dittloff, however, was confined to primarily the last year of Ms. Munzenmaier's employment (Trans., pp. 199-200), basically mid-1978 to mid-1979. It does not reflect Mr. Dittloff's opinion prior to mid-1978, or at the time in which Ms. Munzenmaier altered the employee time cards. In fact, as late as December 14, 1977, Mr. Dittloff characterized Rita Munzenmaier as an "excellent employee" upon her employee evaluation form. (Complainant's Exhibit #7). Mr. Dittloff's analysis of Ms. Munzenmaier's performance at the approximate time she was altering employee time cards regarding the project for Mr. Myers, as reflected by Complainant's Exhibit #7, included high marks for attributes such as "Dependability", "Company person", "Courtesy", and "Work Record". She did receive low marks in Mr. Dittloff's December, 1977 evaluation for "Personality" and "Friendliness". However,

the evaluation read in its total context yields little which would indicate that Ms. Munzenmaier took it upon herself to alter employee time cards in the Myers project in order that she might, in the future, gain some measure of vengeance upon Mr. Dittloff by falsely testifying that she had altered the records at Mr. Dittloff's insistence.

Furthermore, the testimony of Mr. Dittloff's employees concerning Ms. Munzenmaier's attitude toward her work, personal relationships with other employees, etc., does not convincingly lead to the conclusion that she was disgruntled to the extent that she would falsify documents with the intent of "framing" Mr. Dittloff later. Complainant's attorney analyzed this employee testimony at length in his written closing argument. A review of that analysis and the testimony leads the examiner to agree that it establishes little more than that Rita Munzenmaier had personality conflicts with some employees and that she tended to be rather "strong-headed" in how she approached her job. The testimony certainly does not support that of Mr. Dittloff quoted above in which he claims "every man in my office at one time has come to me and said, why don't you fire that S.O.B." or establish that she unilaterally took it upon herself to alter employee time cards on the Myers project out of her frustrations and disgruntlement with her job in order to take vengeance upon Mr. Dittloff.

Mr. Dittloff had reason, however, to be concerned about certain items that were charged to Mr. Myers which made up the final bill, and had reason to attempt to conceal those items from Mr. Myers. The practice of including a 2% add-on in a client's bill in order to recover the possible early payment of that bill by the client, for which a 2% discount was allowed, constitutes questionable billing practices. No discount has actually been given a client for early payment if an amount equal to that discount has already been calculated in the bill. Furthermore, in the Myers project, a charge of $232.73 was included for a prior project completed by Dittloff Engineering which had benefitted Mr. Myers, for which he had not been previously charged. Mr. Myers would not be aware of this charge unless he received an itemized statement. The 2% charge for Mr. Dittloff's errors and omissions insurance may be a justifiable expense to allocate among clients. However, the examiner believes that Mr. Dittloff felt the charge sufficiently questionable to order it deleted from any itemization provided Mr. Myers.

In short, it appears to the examiner far more likely that Mr. Dittloff was concerned about various expenses charged Mr. Myers to such an extent that he ordered the falsification of his business records, than that Ms. Munzenmaier falsified the records on her own accord to gain a measure of revenge upon Mr. Dittloff by future false testimony.

The conduct of Mr. Dittloff in ordering his secretary to alter employee time cards so as to conceal the true items charged which made up an original billing to a client, demonstrates untrustworthiness within the meaning of Wis. Adm. Code sec. A-E 4.003(3)(c), and, accordingly, misconduct under the licensing law. The remaining issue in this case is the appropriate discipline, if any, to be imposed by the board in this case. In determining this issue it must be recognized that the interrelated purposes for applying disciplinary

measures are 1) to promote the rehabilitation of the licensee; 2) to protect the public, and 3) to deter other licensees from engaging in similar conduct. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

As pointed out in complainant's written closing argument, this case does not allege that the services performed by Dittloff Engineering were deficient, nor that the fee charged by Mr. Dittloff was itself excessive. This is not a fee complaint. In fact, there was testimony presented by respondent indicating that in fact more than 655.5 employee hours were actually expended upon the Myers project, but not calculated into the initial billing of Mr. Myers as not all employee hours were reflected upon the employee time cards when Ms. Munzenmaier prepared the final summary sheet and invoice.

Mr. Dittloff's chief failing in this case was his willingness to order the alteration of his business records in an attempt to strengthen his position in his litigation against Mr. Myers. It would likely be more difficult for Mr. Myers to challenge the number of hours represented as being expended upon the project than to challenge the 2% discount fee, for example. Furthermore, the $232.73 charge for past surveying work never charged to Mr. Myers in the past could be difficult, and at least embarrassing, to explain.

Under all of the facts and circumstances of this case, the examiner believes that a suspension is necessary and sufficient discipline in order to impress upon other licensees the need for total candor with the public in their billing practices. The board cannot condone the alteration of business records in order to justify billings which may actually be the result of charging questionable expenses to clients.

The examiner has also taken into consideration the evidence in the record which indicates that Mr. Dittloff has been engaged in the practice of land surveying and engineering since 1947. Again, this case does not involve the competency of the work performed under Mr. Dittloff's direction, and it is believed that the period of suspension recommended will serve to deter him from engaging in similar misconduct to that found in this case in the future.

Dated at Madison, Wisconsin this 29th day of September, 1982.

Respectfully submitted,

Donald R. Rittel

Donald R. Rittel
Hearing Examiner

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