Sept. 1979

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

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	FINDINGS OF FACT
	:	CONCLUSIONS OF LAW
ROBERT P. SMITH, RESPONDENT	:	AND ORDER

The above-captioned matter was commenced by Complaint filed April 12, 1979 by Lucian Schlimgen, Jr., Executive Secretary of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors. The Board, having reviewed the matter, including the Stipulation filed May 14, 1979 by the parties hereto, makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. That Robert P. Smith, hereinafter referred to as Respondent, was at all times relevant to this complaint duly licensed under the provisions of ch. 443, Wis. Stats. to practice as a land surveyor in the State of Wisconsin (Lic. No. S-886, issued May 18, 1966).

2. That Respondent's address is 5751 North Lake Drive, Oconomowoc, Wisconsin 53066.

3. That as a part of his land surveying practice, Respondent was retained by Mr. Roger J. Curtis, hereinafter referred to as Curtis, to perform a land survey and to prepare a land survey map of land which is known as Lot 1, Block 2, Robinhood Forest, being a subdivision of a part of the Northeast quarter of Section 23 and the Northwest quarter of Section 24, Town 6 North, Range 17 East, in the town of Ottawa, Waukesha County, Wisconsin, said survey and map being required as a condition for disbursement of funds from Curtis' construction escrow account.

4. That Respondent did in fact perform or supervise the performance of a survey and did in fact prepare or supervise the preparation of a map of said survey as described in paragraph no. 3, above, and that Respondent was paid a professional fee for said survey.

5. That the closed traverse depicted on Respondent's survey map had a latitude and departure closure ratio exceeding 1 in 3000.

6. That Respondent's survey map failed to show the exact length and bearing of all boundaries of the parcel surveyed.

7. That Respondent's survey map failed to show and describe all monuments necessary for the location of the parcel and failed to indicate whether such monuments were found or placed.

8. That because of the aforementioned errors, Respondent's survey map was rejected by Curtis' escrow company, and that such rejection was manifested by refusal of the escrow company to disburse further construction funds.

9. That Respondent was made aware of the aforementioned errors in the survey map, and was made aware of the importance of supplying Curtis with a corrected map, but failed to take adequate steps to ensure that Curtis received a corrected survey map.

10. That Respondent's failure to take adequate steps to ensure that Curtis received a corrected survey map resulted in the necessity to retain a different surveyor for the purpose of resurveying the parcel described in paragraph 3.

CONCLUSIONS OF LAW

1. That in performing the aforementioned survey and in preparing the aforementioned survey map, Respondent was required to meet the standards set forth in the Minimum Standards for Property Surveys, Ch. A-E 5, Wis. Adm. Code.

2. That Respondent's survey map, in depicting a closed traverse having a latitude and departure closure ratio exceeding 1 in 3000, violated s. A-E 5.01(6)(d), Wis. Adm. Code.

3. That Respondent's survey map, in failing to show the exact length and bearing of all boundaries of the parcel surveyed, violated s. A-E 5.01(5)(c), Wis. Adm. Code.

4. That Respondent's survey map, in failing to show and describe all monuments necessary for the location of the parcel, and in failing to indicate whether such monuments were found or placed, violated s. A-E 5.01(5)(d), Wis. Adm. Code.

5. That Respondent's failure to meet the Minimum Standards for Property Surveys, and Respondent's failure to take adequate steps to ensure that Curtis received a corrected survey map, constitutes misconduct in the practice of land surveying within the meaning of s. 443.02(8)(a), Wis. Stats.

ORDER

NOW THEREFORE, IT IS ORDERED that the Respondent, Robert P. Smith, shall be and hereby is officially REPRIMANDED.

Dated this _____ day of _____, 1979.

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EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS (LAND SURVEYORS SECTION)

_____

Percival T. Sprague, Chairman
Land Surveyors Section

536-019

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

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
ROBERT P. SMITH (S-886) RESPONDENT	:	

On April 12, 1979, a Complaint was filed in the above-entitled matter, the graveman of which was that Respondent Robert P. Smith, in performing a property survey and in preparing a map of survey for Mr. Roger J. Curtis, Town of Ottowa, Waukesha County, Wisconsin, had failed in a number of respects to meet A-E 5 of the Wisconsin Administrative Code, and had failed to provide Curtis with a corrected survey, thus necessitating a resurvey of the parcel. The Complaint also alleged that these failures constitute imcompetency, gross negligence and misconduct in the practice of land surveying. Also on that date, a hearing was ordered pursuant to Chapter 443, Wis. Stats., and Ch. RL 2, Wis. Adm. Code, for the purpose of considering the allegations of the Complaints.

Subsequently, on May 1, 1979, William Dusso, designated Hearing Examiner in the matter, requested the parties to appear at a prehearing conference to be held on May 10, 1979. On that date, Complainant Lucian Schlimgen, Jr. appeared by his attorney, Wayne R. Austin and Respondent Robert P. Smith appeared representing himself. After discussion, the parties reached agreement on disposition of the matter, which agreement is intended as a recommended basis for the final decision of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

Accordingly, Lucian Schlimgen, Jr., by his attorney, and Robert P. Smith, in consideration of the terms and conditions of this Stipulation, and in consideration of and upon condition of acceptance of the terms and conditions of this Stipulation by the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, do hereby stipulate:

1. That Respondent freely and voluntarily waives his right to a public hearing and to be represented by an attorney in this cause.

2. That Respondent admits all of the facts and conclusions of law alleged in paragraph nos. 1 through 6 of the referenced Complaint.

3. That Respondent was made aware of the errors in the survey map as detailed in paragraph No. 5 of the Complaint, and was made aware of the importance of supplying Curtis with a corrected survey map but failed to take adequate steps to ensure that Curtis received a corrected survey map.

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4. That Respondent's failure to take adequate steps to ensure that Curtis received a corrected survey map resulted in the necessity to retain a different surveyor for the purpose of resurveying the parcel described in paragraph No. 3 of the Complaint.

5. That Respondent's failure to meet the Minimum Standards for Property Surveys, as detailed in paragraph No. 5 of the Complaint, and Respondent's failure to take adequate steps to ensure that Curtis received a corrected survey map, constitutes misconduct in the practice of land surveying within the meaning of s. 443.02(8)(a), Wis. Stats.

6. That based upon the foregoing stipulated facts and conclusions of law, the Board order that Respondent be publically reprimanded.

Dated this 14th day of May, 1979.

Lucian Schimgen, Jr., Complainant

Wayne R. Austin, Attorney for Complainant

Robert P. Smith, Respondent

MAY 23 1979

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

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	NOTICE OF HEARING
ROBERT P. SMITH (S-886) RESPONDENT	:	

TO: Robert P. Smith
5751 North Lake Drive
Oconomowoc, Wisconsin 53066

Please take notice that a hearing constituting a class 2 proceeding as defined in Sec. 227.01(2)(b), Wis. Stats., will be held on the 17th day of May, 1979, at 9:00 o'clock a.m., or as soon thereafter as the matter may be reached, in Room 150, at 1400 E. Washington Avenue, Madison, Wisconsin, on the question of whether the license heretofore issued to the above-named respondent pursuant to Section 443.02, Wis. Stats., should be suspended or revoked, the above-named respondent should be reprimanded or whether such license should be limited.

The legal authority and jurisdiction under which the hearing is to be held is set forth in Chapter 443, Wis. Stats., and Chapter RL 2 Wis. Adm. Code.

The matters asserted and the charges then and there to be considered are as set forth in the attached complaint to which you are required to make answer in writing within twenty (20) days from the date of service of the complaint. The hearing examiner designated to preside over the matter pursuant to Sec. 227.09(2), Wis. Stats. and Sec. RL 2.10, Wis. Adm. Code, is William Dusso, Department of Regulation and Licensing, 1400 East Washington Avenue, Madison, Wisconsin 53702. You shall file your answer with the examiner at the address indicated, a copy of said answer with the Board and a copy with complainant's attorney, Wayne R. Austin, Division of Consumer Complaints, 1400 E. Washington Avenue, Madison, Wisconsin 53702, (telephone 608-266-1815). If you fail to file an answer within such time, or if you fail to appear at the time set for hearing, a default judgment may be entered, and your license revoked, suspended, or other disciplinary action taken upon proof of such default.

If you are represented by counsel, the counsel is requested to file a notice of appearance with the Board forthwith.

Dated at Madison, Wisconsin this 10th day of April, 1979.

Wayne R. Austin, Attorney
Division of Consumer Complaints

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

IN THE MATTER OF THE DISCIPLINARY PROCEEDING AGAINST	:	
	:	COMPLAINT
ROBERT P. SMITH (S-886) RESPONDENT	:	

Lucian Schlimgen, Jr., Executive Secretary for the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, 1400 E. Washington Avenue, Madison, Wisconsin 53702, upon information and belief, complains and alleges as follows:

1. That Robert P. Smith, hereinafter referred to as Respondent, was at all times relevant to this complaint duly licensed under the provisions of ch. 443, Wis. Stats. to practice as a land surveyor in the State of Wisconsin (Lic. No. S-886, issued May 18, 1966).

2. That Respondent's address is 5751 North Lake Drive, Oconomowoc, Wisconsin 53066.

3. That as a part of his land surveying practice, Respondent was retained by Mr. Roger J. Curtis, hereinafter referred to as Curtis, to perform a land survey and to prepare a land survey map of land which is known as Lot 1, Block 2, Robinhood Forest, being a subdivision of a part of the Northeast quarter of Section 23 and the Northwest quarter of Section 24, Town 6 North, Range 17 East, in the Town of Ottowa, Waukesha County, Wisconsin, said survey and map being required as a condition for disbursement of funds from Curtis' construction escrow account.

4. That Respondent did in fact perform or supervise the performance of a survey and did in fact prepare or supervise the preparation of a map of said survey as described in paragraph no. 3, above, and that Respondent was paid a professional fee for said survey.

5. That in performing the land survey and in preparing the survey map described in paragraph 3, above, Respondent was required to meet the standards set forth in the Minimum Standards for Property Surveys, Chapter A-E 5, Wis. Adm. Code, and that said survey and said map did not meet the required standards in the following respects.

(a) The closed traverse depicted on Respondent's survey map had a latitude and departure closure ratio exceeding 1 in 3,000, in violation of s. A-E 5.01(6)(d), Wis. Adm. Code.

(b) Respondent's survey map failed to show the exact length and bearing of all boundaries of the parcel surveyed, in violation of s. A-E 5.01(5)(c), Wis. Adm. Code.

(c) Respondent's survey map failed to show and describe all monuments necessary for the location of the parcel and failed to indicate whether such monuments were found or placed, in violation of s. A-E 5.01(5)(d), Wis. Adm. Code.

6. That Respondent's failure to adhere to the Minimum Standards for Property Surveys, as detailed in paragraph no. 5, above, resulted in a survey so deficient as to be rejected by Curtis' escrow company, and that such rejection was manifested by refusal of the escrow company to disburse further construction funds.

7. That Respondent's failure to supply Curtis with a corrected survey map despite repeated attempts to induce Respondent to do so made by Curtis, by Curtis' construction contractor, and by Curtis' escrow company, resulted in the necessity to retain a different surveyor for the purpose of resurveying the parcel described in paragraph no. 3, above.

8. That Respondent's failure to meet the Minimum Standards for Property Surveys, as detailed in paragraph no. 5, above, and Respondent's failure to ~~supply Curtis~~ take admin steps to supply Curtis with a corrected survey map, constitutes ~~incompetency, gross negligence and~~ misconduct in the practice of land surveying within the meaning of s. 443.02(8)(a), Wis. Stats.

WHEREFORE, the Complainant demands that the Board hear evidence relevant to the matters recited herein, determine and impose the discipline warranted.

Dated this 12th day of April, 1979.

Lucian Schlimgen, Jr.

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

Lucian Schlimgen, Jr., being first duly sworn on oath deposes and says that he is Executive Secretary, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, State of Wisconsin, and that he has read the foregoing Complaint and knows the contents thereof and that the same is true to his own knowledge, except as to those matters therein stated on information and belief and as to such matters, he believes them to be true.

Lucian Schlimgen, Jr.
State of Wisconsin
Examining Board of Architects, Professional Engineers, Designers and Land Surveyors
Department of Regulation and Licensing
1400 East Washington Avenue
Madison, Wisconsin 53702

Subscribed and sworn to before me this 10th day of April, 1979.

Shirley White
Notary Public
My Commission expires
3-6-83

SHIRLEY WHITE
NOTARY PUBLIC
STATE OF WISCONSIN

Wayne R. Austin
Attorney for Complainant
1400 East Washington Avenue, Room 166
Madison, Wisconsin 53702