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State of Wisconsin \ DEPARTMENT OF REGULATION AND LICENSING

SARAH DEAN
SECRETARY

EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL
ENGINEERS, DESIGNERS AND LAND SURVEYORS
CASS F. HURC, P.E., SECRETARY

1400 EAST WASHINGTON AVENUE
MADISON, WISCONSIN 53702
(608) 266-1397
(ENTER AT 77 NORTH DICKINSON STREET)

July 20, 1977

Mr. Joseph J. Screnock
Attorney at Law
128 Fourth Avenue
Baraboo, Wisconsin 53913

SUBJECT: Findings of Fact, Conclusions of Law and Order
RE: John W. Matzinger, E-011541

Dear Mr. Screnock:

Attached is the subject document containing the Findings, Conclusion and Order of the Engineers' Section of this Board as made at the meeting of July 8, 1977.

Sincerely,

C. F. Hurc, P.E.
Administrator & Secretary of the Board

CFH:jmo

cc: Engineers' Section Members
William L. Dusso, Board Counsel
Assistant Attorney General Lowell Nass
Matthew Pinion
John Langer

Enclosure

STATE OF WISCONSIN

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

IN THE MATTER OF THE PROFESSIONAL ENGINEERS'
LICENSE OF JOHN W. MATZINGER, RESPONDENT (E-011541)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The above entitled proceeding having come on for hearing before the Professional Engineers' Section of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors at 1400 East Washington Ave., Madison, Wisconsin, on April 13, April 27, and May 11, 1977, pursuant to notices of hearing containing the issues involved and charges to be considered, duly served upon the respondent, John W. Matzinger, and respondent having filed answer on April 1, 1977, and having appeared in person, and by the law firm of Joseph J. Screnock & Assoc., by Joseph J. Screnock, and the complainant Mid-State Associates, Inc., by Matthew Pinion, President represented by Attorney John M. Langer, and the Professional Engineers' Section of the Examining Board, represented by Lowell E. Nass, Assistant Attorney General, having heard the evidence presented by William Dusso, Board Counsel, and John M. Langer, counsel for the complainant, in support of said charges, and the evidence presented by respondent, in opposition thereto, and the Board having considered the pleadings, testimony, exhibits, arguments and proceedings herein, hereby makes and files its findings of fact, conclusions of law and order, constituting its decision in this matter.

FINDINGS OF FACT

1. That Matthew L. Pinion is president of Mid-State Associates, Inc., (hereinafter "Mid-State"), a corporation organized under the laws of the State of Wisconsin with its principal place of business located at 1111 8th Street, Baraboo, Wisconsin and that he is authorized by said corporation to make the complaint on its behalf;
2. That John W. Matzinger, (hereinafter "Matzinger") whose address is 221 14th Avenue, Baraboo, Wisconsin 53913, is and was at all times mentioned herein a professional engineer holding certificate of registration #E-11541 issued by the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors;
3. That Matzinger was employed by Mid-State to perform professional engineering services for Mid-State on February 14, 1972 and remained so employed as a full-time employee until August 9, 1976;
4. That included in the responsibilities of Matzinger to Mid-State were the responsibilities to make preliminary contacts and hold initial meetings with clients, prepare proposals for jobs requested by clients, supervise drafting of plans and other documents, draft plans and other documents, perform engineering calculations, research, and studies, submit plans to reviewing agencies, deliver completed plans, reports and other documents to clients, and review and approve statements showing completion of professional services and the amount billed for such services;
5. That while employed by Mid-State Matzinger made demand and received payment for engineering services in addition to those services provided as an employee of Mid-State in the following manner:

- a. On June 1, 1976, W. J. Murphy in his capacity as president of Camp Delton, Inc., a Wisconsin Corporation visited the office of Mid-State for the purpose of obtaining engineering services;
- b. While at the office of Mid-State of June 1, 1976, Murphy met with Mike Horkan and Matzinger, both employees at Mid-State; the three discussed the nature of the work to be done for Camp Delton, Inc.;
- c. On June 2, 1976, Camp Delton, Inc., by W. J. Murphy, entered into an agreement with Mid-State for engineering services, a copy of which is marked Exhibit A and made part of the complaint herein;
- d. Subsequent to June 2, 1976, engineering work was performed by employees of Mid-State including Matzinger for Camp Delton, Inc.;
- e. During the first week of July, 1976, W. J. Murphy visited respondent Matzinger in the office of Mid-State and questioned when plans would be completed for the Camp Delton project. Matzinger responded that it would not be possible to complete the Camp Delton project until the week of July 26 unless W. J. Murphy would pay Matzinger for extra weekend and evening work, in addition to Mid-States bill;
- f. Prior to July 27, 1976, W. J. Murphy received a statement consisting of 3 pages specifying fees to be paid Mid-State for professional services rendered, a copy of which is marked Exhibit B and made part of the complaint herein;
- g. On July 27, 1976, Matzinger met with W. J. Murphy at the office of Camp Delton, Inc. at approximately 5:30 P.M. Matzinger showed W. J. Murphy the completed plans prepared for submission to the State of Wisconsin, Department of Health and Social Services.

Matzinger indicated he had made an appointment for 1:00 P.M. on Wednesday, July 28 with employees of the Department of Health and Social Services to discuss the plans and to obtain State approval of the plans. Matzinger then presented Murphy with a bill stating the amount of fees owed Mid-State, a copy of which had been provided Murphy prior to July 27, 1976, a bill for \$75.00 due the Wisconsin Board of Health, and a bill due the Sauk County Building and Zoning Commission for \$247.00. Matzinger indicated that the amount specified in the bills must be paid in full or the plans would be returned to his desk. Murphy proceeded to write the checks to the County, State, and to Mid-State. After he had written the three checks, Matzinger stated that he had one more bill for extra work and presented Murphy with a bill for \$3,550.00, a copy of which is marked Exhibit C and made part of the complaint herein;

- h. Murphy paid the bill presented by Matzinger, attached to the complaint and marked Exhibit C, with a check, #857 made payable to John W. Matzinger in the amount of \$3,550.00 drawn on account #612-445 at the Bank of Wisconsin Dells. Said check was endorsed and cashed on August 2, 1976 at the Baraboo National Bank.
- 6. That said statement for professional services, a copy of which is attached to the complaint as Exhibit C, describes services which were required by the June 1, 1976 agreement, Exhibit A of the complaint, to be performed by Mid-State;
- 7. That the ~~services~~ described in Exhibit C to the complaint were the type of services routinely performed by employees of Mid-State for clients of Mid-State and were the type of services which Mid-State paid Matzinger to perform;

- That officers and directors of Mid-State did not authorize Matzinger to perform engineering services for Murphy or for Camp Delton, Inc. in addition to or independent of engineering services provided by Mid-State to Murphy or to Camp Delton, Inc.;
9. That prior to August 9, 1976, Matzinger did not inform officers and directors of Mid-State that he (Matzinger) was performing engineering services for Murphy and Camp Delton, Inc., in addition to or independent of engineering services performed for Murphy and Camp Delton, Inc., by Mid-State;
 10. That officers and directors of Mid-State did not authorize Matzinger to prepare or present to Murphy a bill for engineering services or to receive payment for engineering services provided by any person other than Mid-State;
 11. That from time to time between October, 1974 and August, 1976, Matzinger, while an employee of Mid-State, was contacted directly or indirectly by persons identified in paragraph 14 below, who requested engineering services in connection with the preparation and submittal of swimming and wading pool plans to the State of Wisconsin, Department of Health and Social Services (hereinafter "Health");
 12. That plans for swimming and wading pools were prepared in satisfaction of the requests described in paragraph 11 above, by employees of Mid-State, using Mid-State equipment and each plan bore the title block of Mid-State.
 13. That Matzinger submitted said swimming pool plans each bearing the title block of Mid-State, to Health, obtained approval of the plans and transmitted the plans to the person who made the request.

14. That Matzinger made demand for or received payment for engineering services performed in preparing said swimming pool plans in the manner and amount set forth in subparagraphs a through h below:

- a. On Mid-State project #6043, (Oleska) Alex Chicz, doing business as the Monaco Motel, Box 134A, Route 1, Wisconsin Dells, paid Matzinger \$100.00 on October 15, 1974 and Mid-State \$100.00 on December 20, 1974 by checks, copies of which are attached to the complaint as Exhibit D, for plans for a wading pool which were signed and sealed by Matzinger on October 16, 1974 and submitted to Health with a cover letter, a copy of which is attached to the complaint as Exhibit E;
- b. On Mid-State project #6198, Glen and Marilyn Getgen, on behalf of Getgen Development Corporation, Pioneer Park Campground, Box "C", Lake Delton, Wisconsin, paid Matzinger \$200.00 by check a copy of which is attached to the complaint as Exhibit F, for plans for an outdoor wading pool which were signed and sealed by Matzinger on April 30, 1975 and submitted to Health on May 2, 1975 with a cover letter, a copy of which is attached to the complaint as Exhibit G, and that Matzinger paid Mid-State \$72.20 for the account of project #6198.
- c. On Mid-State project #6217, Donald Murray, on behalf of the Twilight Motel, Box 171, Lake Delton, Wisconsin, paid Matzinger \$284.20 for engineering work including as built drawings of a swimming pool which were signed and sealed by Matzinger on May 12, 1975 and submitted to Health on May 13, 1975 with a cover letter, a copy of which is attached to the complaint as Exhibit I and that the payment of \$284.20 was made to satisfy

a statement submitted by Matzinger dated May 23, 1975, a copy of which is attached to the complaint as Exhibit J and that Matzinger paid Mid-State \$66.80 for the account of project #6217.

- d. On Mid-State project #6378, plans were prepared in the office of Mid-State drawn by Robert Wagner, an employee of Mid-State, for a swimming pool to be constructed at the Lake Delton Motel, Lake Delton, Wisconsin. Said plans were signed and sealed by Matzinger on September 5, 1975 and submitted to Health with a cover letter, a copy of which is attached to the complaint as Exhibit K; that time charged to project #6378 by Mid-State employees was in the amount of \$102.30. Matzinger did not submit a bill to the Lake Delton Motel client for the project on behalf of Mid-State. Matzinger received value from the motel owner for the plans.
- e. On Mid-State project #6379, plans were prepared for a swimming pool for Nick Petrasz, doing business as the Weber Motel, Wisconsin Dells, Wisconsin. Said plans were signed and sealed by Matzinger on September 5, 1975 and submitted to Health with a cover letter, a copy of which is attached to the complaint as Exhibit L. Time charged to project #6379 by Mid-State employees was in the amount of \$115.80. Matzinger did not submit a bill to the Weber Motel client for the project on behalf of Mid-State. Matzinger received value from the motel owner for the plans.
- f. On Mid-State project #6384, plans were prepared for a swimming

pool for Michael and Ruth Moore, doing business as the Edge O' The Wood Motel, New Lisbon, Wisconsin. Said plans were drawn in the office of Mid-State by Robert Wagner, an employee of Mid-State who recorded having spent 15 1/2 hours time for Mid-State project #6384. Plans for the Edge O' The Wood Motel pool were signed and sealed by Matzinger on September 16, 1975 and submitted to Health with a cover letter, a copy of which is attached to the complaint as Exhibit M. Michael Moore paid Matzinger in the amount of \$486.60 by a check, a copy of which is attached to the complaint as Exhibit O. Matzinger did not submit a bill for the project to Michael Moore on behalf of Mid-State. Mid-State was paid nothing for work done on project #6384.

- g. On Mid-State project #6227 plans were prepared for a swimming pool for John Zapuchlak doing business as the Mayflower Motel, Wisconsin Dells, Wisconsin. Said plans were signed and sealed by Matzinger on May 15, 1975 and submitted to Health on May 22, 1975 with a cover letter, a copy of which is attached to the complaint as Exhibit P. Time and materials charged to Project #6227 by Mid-State employees were in the amount of \$139.10. Matzinger did not submit a bill to the Mayflower Motel client for the project on behalf of Mid-State. Matzinger submitted his own statement, a copy of which is attached to the complaint as Exhibit Q. He received a check for services rendered in the amount of \$306.00 dated November 8, 1975, a copy of which is attached to the complaint as Exhibit R. Mid-State was paid nothing for work done on project #6227;
- h. On Mid-State project #6155 plans were prepared for a swimming

pool for Michael Papushkewych doing business as the Playday Motel, Lake Delton, Wisconsin. Said plans were requested by an order for professional services, a copy of which is attached to the complaint as Exhibit S. Said plans were signed and sealed by Matzinger on April 9, 1975 and submitted to Health on April 10, 1975 with a cover letter, a copy of which is attached to the complaint as Exhibit T. Time and materials charged to project #6155 by Mid-State employees were in the amount of at least \$437.50. Matzinger did not submit a bill to the Playday Motel client for the project on behalf of Mid-State. Matzinger received a check for services rendered in the amount of \$725.00 dated May 23, 1975, a copy of which is attached to the complaint as Exhibit U. Matzinger paid Mid-State \$437.50 for the account of project #6155;

15. That officers and directors of Mid-State did not authorize Matzinger to provide engineering services to any of the persons described in paragraphs 14 a through h, above, independent of or in addition to engineering services provided by Mid-State;
16. That officers and directors of Mid-State did not authorize Matzinger to prepare or present a bill for engineering services or to receive payment for engineering services provided by any person other than Mid-State to any of the persons described in paragraphs 14 a through h, above; and
17. That prior to August 9, 1975, Matzinger did not inform officers or directors of Mid-State that he (Matzinger) was engaged in performing engineering services independent of those engineering services provided by Mid-State for any other persons described in paragraphs 14 a through

h above:

CONCLUSIONS OF LAW

18. That in presenting a bill for professional services and obtaining payment in the manner described above in paragraphs 5 through 10, respondent Matzinger engaged in conduct which constitutes misconduct in the practice of professional engineering contrary to 443.01, Wis. Stats., and which violates Rules of professional conduct adopted and promulgated by the Examining Board, specifically:
 - a. That such conduct evidences a lack of trustworthiness to transact the business required by the profession, A-E 4.003(3)(c), Wis. Adm. Code;
 - b. That such conduct constitutes an evasion of the respondent's responsibility to his employer contrary to A-E 4.01(3), Wis. Adm. Code;
 - c. That such conduct constitutes a violation of the agent-principal obligation contrary to A-E 4.02, Wis. Adm. Code;
 - d. That such conduct evidences an agreement to perform services for a client or employer while there exists a significant financial interest that may be in conflict with the obligation to render a faithful discharge of such services without obtaining the approval and consent of the client or employer contrary to A-E 4.02, Wis. Adm. Code;
 - e. That such conduct constitutes failure to notify or inform a client or employer of all circumstances involved which may affect the performance of professional engineering services contrary to A-E 4.02(2), Wis. Adm. Code; and
 - f. That such conduct constitutes acceptance of remuneration from a party other than respondent's employer for a particular project

without first obtaining approval of the client or employer, and the performance of services for a client or employer while a full time employe of another employer without notifying all parties concerned contrary to A-E 4.02(7), Wis. Adm. Code.

19. That each instance of presenting a bill for professional services and obtaining payment described above in paragraphs 11 through 17 is conduct which constitutes misconduct in the practice of professional engineering by respondent Matzinger contrary to Sec. 443.01, Wis. Stats., and is conduct which violates rules of professional conduct adopted and promulgated by the Examining Board, specifically;
 - a. That such conduct evidences lack of trustworthiness to transact the business required by the profession contrary to A-E 4.003(3)(c), Wis. Adm. Code;
 - b. That such conduct constitutes and evasion of the respondent's responsibility to his employer contrary to A-E 4.01(3), Wis. Adm. Code;
 - c. That such conduct constitutes a violation of the agent-principal obligation contrary to A-E 4.02, Wis. Adm. Code;
 - d. That such conduct evidences an agreement to perform services for a client or employer while there exists a significant financial interest that may be in conflict with the obligation to render a faithful discharge of such services without obtaining the approval and consent of the client or employer contrary to A-E 4.02, Wis. Adm. Code;
 - e. That such conduct constitutes failure to notify or inform a client or an employer of all circumstances involved which may affect the performance of professional engineering services contrary to A-E

4.02(2), Wis. Adm. Code; and

- f. That such conduct constitutes acceptance of remuneration from a party other than respondent's employer for a particular project without first obtaining approval of the client or employer, and the performance of services for a client or employer while a full time employe of another employer without notifying all parties concerned contrary to A-E 4.02(7), Wis. Adm. Code.

ORDER

IT IS ORDERED, that the certificate of registration, number E-011541, of respondent John W. Matzinger to practice engineering in Wisconsin be and the same hereby is suspended for nine months, said suspension to take effect thirty days from the date of service of this order by certified mail.

Let a copy of these findings of fact, conclusions of law and order be served by certified mail upon John W. Matzinger and upon his attorneys Joseph J. Screnock & Associates.

Dated this 20th day of July, 1977.

EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL
ENGINEERS, DESIGNERS AND LAND SURVEYORS

By


C. F. Hurc, Secretary