

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE DESIGNERS 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	:	FINAL DECISION AND ORDER
	:	95 DSN 001
ARNOLD L. BERG,	:	94 DSN 002
RESPONDENT.	:	

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

Arnold L. Berg
317 Olivet Street
La Crosse, WI 54603

533 Upper Road
Kohler, WI 53044

Bureau of Business & Design Professions
Designers Section
Examining Board of Architects, Landscape Architects,
Professional Geologists, 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 Designers Section of the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, having considered the stipulation agreement annexed-hereto of the parties, in resolution of the captioned-matters makes the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to jurisdiction and authority granted to the Board in Chapter 443, Wis. Stats., and sec. RL 2.12, Wis. Adm. Code, that the stipulation agreement annexed-hereto, filed by Complainant's attorney, shall be and hereby is

STATE OF WISCONSIN
BEFORE THE DESIGNERS 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	:	STIPULATION
	:	95 DSN 001
ARNOLD L. BERG,	:	94 DSN 002
RESPONDENT.	:	

Respondent Arnold L. Berg (Berg), and Complainant's attorney, Henry E. Sanders, Division of Enforcement, having reached agreement for disposition of the captioned-matters, stipulate and agree as follows:

1. Respondent Berg's address on file with the Department of Regulation and Licensing is 317 Olivet Street, La Crosse, WI 54603.
2. This stipulation shall be presented to the Designers Section of the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors (Board), for approval and disposition of the matters. If the terms of the stipulation are not acceptable to the Board, then the parties shall not be bound by any of the provisions of the stipulation.
 - a. This stipulation is dispositive of investigative complaints #95 DSN 001 and #94 DSN 002.
3. Respondent has been advised of his right to public hearings on each and every allegation of the complaints, but hereby freely and voluntarily waives his right to hearings in these matters on the condition that all provisions of this stipulation be acceptable to and approved by the Board.
 - a. Respondent further agrees to waive any appeal of the Board's Final Decision and Order adopting the stipulation agreement.
4. Respondent was initially licensed as a Heating, Ventilating and Air Conditioning (HVAC) designer, and plumbing designer on May 9, 1977, but allowed his licenses/permits to lapse/expire from 1984 up to about September 15, 1994, which licenses/permits were only renewed when he was confronted by the Department relating to two complaints filed against him.
5. At various times unknown from 1984-1994, Respondent held himself out as a licensed HVAC designer and performed the HVAC designer's work in an unlicensed capacity. Specifically, and in addition, in August-September, 1994 (while unlicensed), Respondent was

working in a position as professional-supervising designer for the heating, ventilation, and air conditioning component of a building project of J.R. Gibbs in Boscobel, Wisconsin.

6. Wisconsin Department of Industry, Labor and Human Relations (DILHR) Chapter 50, Sec. ILHR 50.01, Wis. Adm. Code, establishes minimum standards for the design, construction, structural strength, quality of materials...heating and ventilation...for all public buildings and places of employment.

7. Sec. ILHR 50.07(2)(b), Wis. Adm. Code, provides: (2) Buildings containing more than 50,000 cubic feet total volume. The plans and specifications for every new building...containing more than 50,000 cubic feet total volume, shall be designed as follows:

- (b) Heating, ventilating and air conditioning design. The plans and specifications for the heating, ventilating and air conditioning systems shall be prepared, signed and sealed by a Wisconsin registered...designer.

8. Succinctly, and generally, all such construction or installation under ILHR 50.07(2)...shall be supervised...a Wisconsin registered designer may supervise the installation of heating, ventilating, and air conditioning systems...the person responsible for supervision shall also be responsible for the construction and installation being in substantial compliance with the approved plans and specifications (ILHR 50.10).

9. All such plans and specifications (HVAC etc.) shall be submitted to ILHR or its authorized representative...for examination and approval before commencing work (ILHR 50.12(2)).

- a. Once building plans are reviewed by ILHR, Safety and Buildings, all components, including HVAC, must be reviewed in the same office that reviewed the building. HVAC plans for a new building will not be reviewed until such time as the building's plan have been approved.

10. By written notice to the owner of the building project dated July 30, 1993, from ILHR, the owner was notified that the submitted building plan was "conditionally approved," by ILHR and that the project construction could proceed, except that the review did not include HVAC, and the owner was reminded that HVAC plans and calculations were required to be submitted for review and approval prior to installation.

11. The building project was inspected by ILHR/Safety and Buildings (SB) on January 18, 1994, and the inspector found building code violations, including sec. ILHR 50.12(2)(c), Wis. Adm. Code, that the "heating and ventilation plans, calculations, fees and plan application form (SB 118) shall be submitted to the Department (ILHR) before

construction begins." An order was issued to come into compliance regarding the HVAC requirements.

- a. The builders had already commenced installation of the HVAC systems in August, 1993.

12. Thereafter, there was much correspondence between ILHR/SB and the project manager regarding compliance, and the project was reinspected on June 28, 1994, with the HVAC component still not in compliance. A second order to correct was issued relating to a continuing violation of:

"ILHR 50.12(2)(c), Wis. Adm. Code. Heating and ventilation plans, calculations, fees and plan approval application form (SB-118) shall be submitted to the Department before construction begins."

13. Ultimately, ILHR/SB, the Complainant, determined that Respondent Berg had knowingly and intentionally "cut a DILHR HVAC approval stamp from a different-previously approved plan, affixed it to the HVAC plan for the (subject) Gibb's project, then copied the plan and passed it off to the project contractor as the HVAC plan approved by DILHR," at which time the HVAC component of the project, unapproved, commenced.

14. Per ILHR's secs. 50.10 and 50.07, Wis. Adm. Code, "The building exceeded 50,000 cubic feet total volume, therefore the plans must bear the original seal, signature and date of the Wisconsin registered....designer."

15. Complainant had contacted the Department of Regulation and Licensing and determined that Respondent's Wisconsin designer's registration/permit had expired from 1984 up until September 1994, and was only renewed when the subject of this complaint(s) became known to Respondent.

16. A letter of notification and a copy of the complaint was submitted to Respondent Berg from the Department of Regulation and Licensing for his response, and his response was as follows:

"During 1993 and the first 7 months of 1994 I tried to do too many things at once in my new job. Doing so some jobs went unfinished in a timely manner. The J.R. Gibbs job was an example of that. To buy time I sent what looked like an approved plan to Fisher Electrical (contractor) so I could get the plan, calculations and application together and submit. I finally did submit the plan which I fully intended to do all along. I realized that this was a stupid thing to do."

"As for my licensing not being in force for all of these years, I was totally unaware of that. I was never notified of my expiration. If I would have been I would have renewed them."

17. Therefore, based upon the above errors and/or omissions, Respondent has, since 1984-September 1994, variously violated secs. 443.02(2)-(3), Wis. Stats., no person may practice...professional engineering...unless the person has been duly registered, is exempt under sec. 443.14 or has in effect a permit under sec. 443.10(1)(d), and no person may offer to practice...professional engineering or use in connection with the person's name or otherwise assume, use or advertise any title or description tending to convey the impression that he or she is a...professional engineer or advertise to furnish professional engineering services unless the person has been duly registered or has in effect a permit under sec. 443.10(1)(d), Wis. Stats., (Note: Sec. 440.08(1), Wis. Stats., Notice of renewal. The Department shall mail a notice of renewal to the last address provided to the Department by each holder of a credential at least 30 days prior to the renewal date of the credential. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against a holder for practicing without a credential...).

18. By violating the above enumerated DILHR's administrative codes relating to HVAC approval and installation, Respondent has violated secs. A-E 8.03(1)-(2)(a), (3)(a), (c), Wis. Adm. Code; (1) Gross negligence in the practice. Performing professional designer services...which does not comply with an acceptable standard of practice that has a significant relationship to the protection of health, safety, or public welfare and is performed in a manner indicating that the professional knew or should have known, but acted with indifference to or disregard of, the acceptable standard of practice; (2)(a) Incompetency in the practice...lacked ability or fitness to discharge the duty owed...to a client or employer or to the public; (3)(a), (c) Misconduct in the practice. (a) Violation of...state laws, local ordinances or administrative rules relating to the practice of...professional designing, and (c), engaging in conduct which evidences a lack of trustworthiness to transact the business required by the profession; violated sec. A-E 8.06, Wis. Adm. Code, Professional Obligation. Evaded professional or contractual responsibilities, which the registrant has to a client or employer; and violated secs. A-E 8.09(1)-(2), Wis. Adm. Code, adherence to statutes or rules. Failed to comply with the requirements in Chapter 443, Stats., rules in Ch. A-E 8, and all other federal, state and local codes which relate to the practice of...professional designing..., (2) engaged in conduct that adversely affected his fitness to practice designing.


19. Based upon the above and in settlement of these matters, Respondent hereby consents and agrees to be suspended for a period of three (3) months, commencing effectively March 1, 1997 through May 31, 1997; and to pay the amount of \$500.00 to the Department as part assessment of costs in resolving these matters, to be paid at the time of execution of this stipulation, or no later than March 1, 1997.

- a. The \$500.00 part assessment of costs shall be payable by cashiers check or money order made payable to the Department of Regulation and Licensing.

20. On or before the effective date of the Board's order, Respondent shall submit all designers permits, certificates, or registrations previously issued to him to the attention of Michelle Neverman, P.O. Box 8935, Madison, WI 53708-8935.

21. Respondent further agrees that this stipulation agreement may be incorporated into the Board's Final Decision and Order adopting the stipulation agreement.

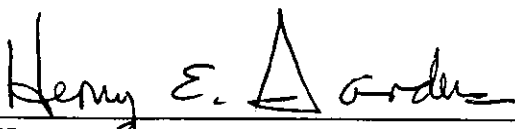
22. Respondent further agrees that Complainant's attorney Sanders may appear at any closed-deliberative meeting of the Board with respect to this stipulation, but that appearance is limited solely to clarification, justification, and to statements in support of the stipulation and for no other purpose.



Arnold L. Berg
Respondent

2-3-97


Date



Henry E. Sanders
Complainant's Attorney

2/5/97

Date



Arnold L. Berg
Respondent

2-3-97

Date

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE DESIGNERS 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

Arnold L. Berg,

AFFIDAVIT OF MAILING

Respondent.

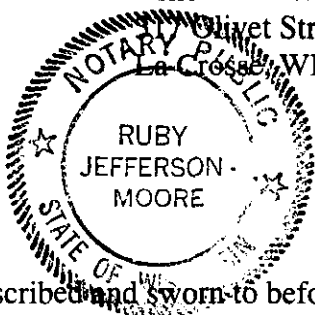
STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On February 19, 1997, I served the Final Decision and Order dated February 18, 1997 upon the Respondent Arnold L. Berg by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt numbers on the envelopes are P 201 377 322 and P 201 377 323.
3. The addresses used for mailing the Decision are the addresses that appear in the records of the Department as the Respondent's last-known addresses and are:

Arnold L. Berg
1011 Olivet Street
La Crosse, WI 54603

533 Upper Road
Kohler, WI 53044



Kate Rotenberg

Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 19th day of February, 1997.

Ruby Jefferson-Moore

Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review. The Times Allowed For Each. And The Identification Of The Party To Be Named As Respondent.

<p>Serve Petition for Rehearing or Judicial Review on: STAFF DESIGNERS SECTION OF THE EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROF. GEOLOGISTS, PROF. ENGINEERS, DESIGNERS AND LAND SURVEYORS 1400 East Washington Avenue P.O. Box 8935 Madison, WI 53708.</p>
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The Date of Mailing this Decision is:

February 19, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)