

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST:

WILLIAM A. SHEARMAN,
RESPONDENT

FINAL DECISION AND ORDER
LS0103271LSR

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

William A. Shearman
6957 South County Road P
Lake Nebagamon, WI 54849

Division of Business Licensure and Regulation
Land Surveyors Section of the 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 State of Wisconsin Land Surveyors 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 matters, makes the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to jurisdiction and authority granted to the Land Surveyors Section, that the stipulation agreement annexed-hereto, filed by Complainant's attorney, shall be and hereby is incorporated, made and ordered the Final Decision and Order of the State of Wisconsin Land Surveyors Section.

Let a copy of this Order be served on Respondent by Certified Mail.

Dated this 26th day of April, 2001.

via certified mail which was received by Respondent, but Respondent never communicated back to Complainant.

7. Pursuant to the Department's investigation into the matter, Respondent was not responsive or timely in his responses to the complaint and gave misleading information to the Department.

99 LSR 012

8. This complaint was filed by a retired consumer who had entered into a contract with Respondent dated August 20, 1999, for Respondent to survey boundaries for two (2) lots, set property corners, locate house, and provide drawing of survey. The contract price was \$200.00, payment upon completion of staking.

9. Respondent's employees surveyed the subject properties on August 19, 1999, and as of the date of his filing this complaint with the Department, December 19, 1999, up to the present, Respondent had never provided a survey drawing.

10. Respondent failed to respond to numerous calls and messages left on his answering machine from the consumer, and the consumer was forced to hire a different land surveyor to redo the job to get the survey drawing. This failure by Respondent affected the consumer real estate transaction, for which the survey drawing was required.

a. Respondent never responded to the Department's correspondence to him relative to investigating the matter.

00 LSR 001

11. This complaint was filed by the Assistant Corporation Counsel, Douglas County, Wisconsin, alleging that on or about September 28, 1998, the Land Records Department of Douglas County contracted with Respondent to establish section, quarter section and meander points, and establish GPS coordinates on all sections and quarter section locations in the Village of Lake Nebagamon.

a. The contracted for information was necessary to receive certain grant monies, and Douglas County specifically contracted with Respondent that, with one small exception, the bulk of the work must be completed on or before December 1, 1998.

12. That from September-December 1998, Douglas County, upon receipt of billings from Respondent Shearman, did advance him toe amount of \$9,720.00 towards his surveying fees and expenses.

13. As of the date of the subject complaint (12/29/99) being filed with the Department-up to the present-despite numerous requests and inquiries by Douglas County, Respondent failed to complete the contracted for work; and the only partial information Respondent had submitted was found to be largely inaccurate, and is so minimal that, even if accurate, would not complete the project.

14. On November 12, 1999, Douglas County terminated Respondent Shearman's contract due to his failure to complete the project, and had to hire another surveyor to perform the subject work-which, because of Shearman's failure to perform-might not have enough time to complete the work in order for Douglas County to qualify for the grant monies.

15. In addition, the above project was to be performed in conjunction with a similar project to take place at Lake Minnesuing. Respondent's services was contracted for on about January 7, 1999, and with one small exception, was to be completed by April 1, 1999. As of the date of Douglas County complaint to the Department-December 29, 1999-up to the present, Respondent has submitted no information or product regarding the project.

a. Respondent's contract on this project as well, was also terminated on November 12, 1999.

16. Although no monies was forwarded to Respondent on the Lake Minnesuing project, Respondent's failure to complete the project, which was necessary to obtain grant monies, adversely affected Douglas County because Respondent's failure made it more difficult for another surveyor to perform the subject work by the deadlines for the grant monies.

17. On November 17, 1999, Douglas County demanded return of the \$9,720.00 advanced to Respondent, and as of December 29, 1999, Respondent had failed to respond to the request and failed to return any of the payments advanced.

18. Complainant also complained that on May 12, 1999, Respondent Shearman was hired by Douglas County to perform a boundary and topographical survey of property behind the Douglas County Courthouse along Belknap Street. Respondent submitted the results of his work along with a bill, but it was found that his information was so grossly inaccurate that the information could not be used. Douglas County did not pay Respondent and hired another surveyor to perform the work.

19. Ultimately, by summons and complaint dated January 14, 2000, case #00 CV 17, unclassified civil 30703, filed in Douglas County Circuit Court, by Douglas County Assistant Corporation Counsel against Respondent, Respondent was sued for breach of contract re the above enumerated acts and for return of the \$9,720.00, plus interest and attorney fees.

20. By Findings of Facts, Conclusions of Law and judgment dated May 25, 2000, case #00 CV 17, Douglas County Circuit Court, the Honorable Judge Joseph A. McDonald presiding, judgment was rendered for Douglas County, and against Respondent, to wit:

"That there is due to the Plaintiff for principal, interest, property taxes and costs of this action, as of May 8, 2000, the sum of \$9,720.00, plus interest dating from November 11, 1998, along with all reasonable incurred costs."

21. Respondent allowed his land surveyor's Certificate of Registration to expire on about February 8, 2000, without renewal, while the Department was investigating the subject complaints. The Department notified Respondent of its findings and conclusions of many violations via a letter to him dated July 31, 2000. Respondent agreed upon a specific disciplinary resolution.

22. However and thereafter, before the agreement could be reduced to writing, the Department received the following complaint, 00 LSR 012, received in the Department on October 2, 2000.

00 LSR 012

23. The complaint was filed by consumers against Respondent who complained that Respondent was paid by them in the amount of \$750.00 on March 31, 2000, for surveying their property, that Respondent cashed the subject check on April 4, 2000, but had failed to provide them with any paperwork or record any documents regarding the subject property lines.

24. Complainants, via small claims court action, case #00 SC 782, Douglas County Circuit Court, received a judgment and costs against Respondent in the amount of \$820.50, dated October 24, 2000.

25. Pursuant to investigating this complaint, it was determined that although Respondent's land surveyor's registrations status is expired, he has been holding himself out as a Registered Land Surveyor, apparently performing land surveying, and recording certified survey maps signed by him on April 5, 2000, April 26, 2000, July 1, 2000, July 3, 2000, and October 10, 2000.

26. Accordingly, based upon the above actions, errors and/or omissions, Respondent Shearman has variously violated sec. 443.02(4), Wis. Stats., no person may practice land surveying in this state or use or advertise any title or description tending to convey the impression that the person is a land surveyor unless the person has been issued a certificate of registration or granted a permit to practice under this chapter; and has further variously violated secs. A-E 8.03(1)-(2)(a), (3)(a)-(c), Wis. Adm. Code: (1) Gross negligence . . . , (2) Incompetency. (a) Lack of ability or fitness to discharge the duty owed by a land surveyor to a client or employer or to the public; (3) Misconduct in the practice. (a) Violation of state laws, local ordinances or administrative rules relating to the practice of land surveying; (b) Preparation of deficient plans, drawings, maps, specifications or reports; (c) Engaging in conduct which evidence a lack of trustworthiness to transact the business required by the profession: variously violated sec. A-E 8.04(2), Wis. Adm. Code, Offers to Perform Services Shall Be Truthful. (2) Shall represent the costs and completion times of a proposed project to a client or prospective client as accurately and truthfully as is reasonably possible; variously violated sec. A-E 8.06(2), Wis. Adm. Code. Professional Obligations. (2) May not evade the professional or contractual responsibility which the registrant has to a client or employer, and violated secs. A-E 8.09(1)-(2), Wis. Adm. Code. Adherence to statutes and rules. (2) May not engage in conduct that may adversely affect his or her fitness to practice land surveying, all not inclusive.

27. Based upon the above and in settlement of these matters, Respondent Shearman hereby consents and agrees to be revoked of his land surveyor's certificate of registration, and or his right of renewal of same, and pay the amount of \$500.00 as part assessment of costs in resolving these matters.

28. The \$500.00 part assessment of costs shall be paid within on (1) year from the effective date of the Section's Final Decision and Order adopting the Stipulation agreement, and shall be payable by cashier's check or money order and made payable to the Department of Regulation and Licensing, and submitted to the attention of the Department's monitor:

Monitor

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

29. Ten days following the effective date of the Section's Final Decision and Order Adopting the Stipulation Agreement, Respondent shall submit all land surveyor's certificates of registrations, and/or permits previously issued to him to the attention of the Department monitor, supra.

30. Respondent agrees that this stipulation agreement may be incorporated into the Section's Final Decision and Order adopting the stipulation agreement.

31. Respondent further agrees that Complainant's Attorney Sanders, and the Section's advisor(s) assigned to the complaints, may appear at any closed deliberative meeting of the Section with respect to this stipulation, but those appearances would be limited solely to clarification, justification, and to statements in support of the stipulation and for no other purpose.

William A. Shearman 4-11-01

Henry E. Sanders 4-11-01

Complainant's Attorney