

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
TRUE NORTH ENGINEERING, INC.,	:	LS0506141ENG
RESPONDENT.	:	

Division of Enforcement Case No. 04ENG005

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

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 16th day of November, 2005.

Lynda Farrar
Member, Professional Engineer Section
Examining Board of Architects, Landscape
Architects, Professional Engineers, Designers
and Land Surveyors

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

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

TRUE NORTH ENGINEERING, INC., :
RESPONDENT :

Case No. LS0506141ENG

PROPOSED DECISION AND ORDER

The parties to this action for purposes of §227.53, Wis. Stats., are:

True North Engineering, Inc.
9923 E. Scenic Drive
Solon Springs, WI 54873

Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on July 28, 2005, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney John N. Schweitzer. No one appeared on behalf of True North Engineering.

Based on the entire record in this case, the undersigned administrative law judge recommends that the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. True North Engineering, Inc., holds a Certificate of Authorization as an architectural or engineering corporation (No. 011-0001854), which was initially granted on August 31, 1990. The license is due to expire on February 1, 2006.
2. True North Engineering's most recent address on file with the Wisconsin Department of Regulation and Licensing is 9923 E. Scenic Drive, Solon Springs, Wisconsin.
3. True North Engineering performed work under a contract with the Wisconsin Department of Transportation.
4. Until his resignation in March of 2004, the president of True North Engineering was Dale Darwin. Mr. Darwin holds a Wisconsin professional engineer license (License No. 006-0014965).

5. Dale Darwin was suspended from participating in new contracts by the Wisconsin Department of Transportation because of falsifying expense reports.

CONCLUSIONS OF LAW

1. The Examining Board of the of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors has jurisdiction in this matter pursuant to §443.11, Wis. Stats.
2. By having engaged in conduct set forth in Finding of Fact 5, True North Engineering has demonstrated a lack of trustworthiness to transact the business required by the profession contrary to secs. A-E 8.03 (3) (a), Wis. Admin. Code.
3. By having engaged in conduct set forth in Finding of Fact 5, True North Engineering violated administrative rules relating to the profession of engineering contrary to secs. A-E 8.03 (3) (c), Wis. Admin. Code.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Certificate of Authorization of Truth North Engineering, Inc., to practice in the State of Wisconsin shall be **REVOKED**, beginning the date on which this Order is signed.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon True North Engineering, pursuant to sec. 440.22, Wis. Stats.

OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that if a respondent fails to answer a complaint or fails to appear at a hearing, he or she is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent.

A Notice of Hearing and Complaint were sent to True North Engineering, Inc., both by certified mail and by regular U.S. mail at its last known address on file with the Wisconsin Department of Regulation and Licensing. However, no one filed an answer to the above-captioned complaint, nor did anyone on behalf of True North Engineering appear at the scheduled hearing. As a result, True North Engineering, Inc., is in default and has effectively admitted all of the allegations contained in the complaint. A summary of those allegations follows below.

Between January 1, 2001, and December 31, 2003, True North Engineering, Inc. and the Wisconsin Department of Transportation (DOT) executed professional contracts and work orders totaling more than \$5,000,000.00. During at least two separate audits of various costs proposed by True North Engineering, Inc., the DOT found that the firm had made significant compensation payments to owners that were over and above wages which corresponded to hours and rates which were the basis of compensation distributed in the firm's job cost system. Audits conducted through the DOT also revealed lodging reimbursements that were not supported by receipts from bona fide lodging establishments. In short, True North Engineering, Inc., engaged in a series of billings that were fraudulent and contrary to both state and federal laws.

Because True North Engineering has effectively admitted all of the allegations contained in the complaint, the question remains as to what the appropriate form of discipline is with respect to the corporation. Revocation of the Certificate of Authorization has been recommended. It is well established that the objectives of professional discipline include the following: (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, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969).

There is nothing in the record to suggest that imposing any discipline short of revocation would have an effect, rehabilitative or otherwise on True North Engineering or that the corporation has an interest in being rehabilitated. As to the deterrence of others, absent some mitigating evidence, imposing anything less than revocation would not aid in deterrence, but

may instead wrongly encourage others to engage in similar conduct. Accordingly, revocation remains the only appropriate way in which to safeguard the public.

In addition, the imposition of costs against True North Engineering is recommended. Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against a respondent is a discretionary decision on the part of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

Dated at Madison, Wisconsin, this 8th day of August, 2005.

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DEPARTMENT OF REGULATION & LICENSING
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Jacquelynn B. Rothstein
Administrative Law Judge