

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
ALVAH P. BREITWEISER,	:	LS0505041ARC
RESPONDENT.	:	

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Division of Enforcement Case Nos. 04ARC002

The State of Wisconsin, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, Architect Section, 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, Architect Section.

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 12th day of April, 2006.

Gary Gust  
Member, Architect 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,  
ARCHITECT SECTION**

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**IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST PROPOSED DECISION  
Case No. LS0505041-ARC**

**ALVAH P. BREITWEISER,  
RESPONDENT.**

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**PARTIES**

The parties in this matter under Wis. Stats. § 227.44 and for purposes of review under Wis. Stats. § 227.53, are:

Alvah P. Breitweiser  
892 Dean Way  
Fort Myers, Florida 33919

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

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

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 4, 2005. A default hearing was held in the above-captioned matter on June 21, 2005. Atty. Mark A. Herman appeared on behalf of the Division of Enforcement. The respondent, Alvah P. Breitweiser, did not file an Answer to the Complaint and did not appear at the default hearing.

Based upon the record herein, the Administrative Law Judge recommends that the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, Architect Section adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

**FINDINGS OF FACT**

1. Alvah P. Breitweiser (Date of Birth: April 20, 1932) possesses a certificate of registration to practice architecture in the state of Wisconsin (number 5-2553). This registration was first granted on January 28, 1965, and is current through July 31, 2006.
2. Mr. Breitweiser's most recent address on file with the Department of Regulation and Licensing is 892 Dean Way, Fort Myers, Florida 33919.
3. On June 3, 1999, the Oklahoma Board of Governors of Licensed Architects and Landscape Architects imposed discipline against the license of Mr. Breitweiser to practice architecture in Oklahoma. The Oklahoma Board concluded that Mr. Breitweiser engaged in the practice of architecture as Alvah Breitweiser & Associates without a certificate of authority for that entity, contrary to Oklahoma statutes and rules applicable to architects.
4. On May 21, 2001, Mr. Breitweiser was convicted in United States District Court, Middle District of Florida, Ft. Myers Division, of felony Bank Fraud, contrary to 18 U.S.C. § 1344.
5. On June 7, 2002, the Colorado Board of Examiners of Architects imposed discipline against the license of Mr.

Breitweiser to practice architecture in Colorado. The Colorado Board concluded that between July 31, 2001 and April 26, 2002, Mr. Breitweiser held himself out as a registered architect in Colorado while he was in fact unlicensed, contrary to Colorado statutes and rules applicable to architects.

6. On January 15, 2004, the Florida Board of Architecture and Interior Design imposed discipline against the license of Mr. Breitweiser to practice architecture in Florida. The Florida Board's order was based upon a stipulation arising out of a five count complaint against Mr. Breitweiser which alleged the following:

(a) Count I alleged that Mr. Breitweiser signed and sealed plans and documents that were prepared by an architect not licensed to practice in Florida. Count I further alleged that in certifying the plans and documents Mr. Breitweiser accepted professional responsibility for what was contained in the plans and documents. Additionally, Count I alleged that the structural drawings contained in the plans and documents were negligently or incompetently drafted contrary to Florida statute. Finally, Count I alleged that Respondent signed and sealed plans that do not conform to acceptable standards of architectural practice, contrary to a Florida statute applicable to architects.

(b) Count II alleged that Mr. Breitweiser violated a Florida statute applicable to architects by certifying work that was beyond his ability to perform. Specifically, the complaint alleged that Mr. Breitweiser certified plans from both an architectural standpoint, and an engineering standpoint, when Mr. Breitweiser was not qualified to determine if the plans were sound from an engineering standpoint. Count IV contains essentially the same allegation, but cites a statute applicable to architects pertaining to the affixing of a seal to plans or other documents when the licensee is not competent to perform the work.

(c) Count III alleged that Mr. Breitweiser certified the plans and documents not prepared by himself or under his supervising control by another registered architect, contrary to a Florida statute applicable to architects. Count III further alleged that Mr. Breitweiser failed to maintain written documentation that he had failed to comply with the requirements of the Florida administrative code applicable to architects pertaining to accepting professional responsibility for the work of another.

(d) Count IV contains essentially the same allegation as Count II, but cites a statute applicable to architects pertaining to the affixing of a seal to plans or other documents when the licensee is not competent to perform the work.

(e) Count V alleged that Mr. Breitweiser, a licensee, assisted another person in practicing architecture without a license, contrary to Florida statutes applicable to architects.

7. On February 4, 2004, Attorney David K. Manacci of Smith, Thompson, Shaw & Mamausa, P.A., 2075 Centre Point Boulevard, Tallahassee, Florida, contacted the Wisconsin Department of Regulation and Licensing to inform the Department that his firm had been contracted with the Florida Board of Architecture and Interior Design to provide disciplinary services concerning Mr. Breitweiser. At no time before February 4, 2004, did Mr. Breitweiser inform the Department of Regulation and Licensing of the 2001 felony Bank Fraud conviction in the United States District Court, Middle District of Florida and/or disciplinary actions in Oklahoma, Colorado or Florida.

8. On May 18, 2004, Mr. Breitweiser surrendered his license to practice as an architect in the state of New York. In the Application to Surrender License, Mr. Breitweiser admitted guilt to a charge of professional misconduct under New York statutes applicable to architects based upon his felony conviction in Florida, referred to in paragraph 4, above.

9. On May 28, 2004, the Colorado Board of Examiners of Architects imposed discipline against the license of Mr. Breitweiser to practice architecture in Colorado. The Colorado Board's action was based upon the 2004 Florida Board of Architecture and Interior Design's discipline, referred to in paragraph 6 above. The Colorado Board concluded that Mr. Breitweiser had violated Colorado statutes and regulations applicable to architects.

10. On July 14, 2004, the North Carolina Board of Architecture suspended Mr. Breitweiser's license to practice architecture for six months. The suspension was based on the 2004 Florida Board of Architecture and Interior Design discipline referred to in paragraph 6, above. The North Carolina Board concluded that Mr. Breitweiser's discipline in Florida constituted violations of a North Carolina statute and administrative code applicable to architects.

11. On September 16, 2004, the South Carolina State Board of Architectural Examiners issued a consent order, accepting Mr. Breitweiser's surrender of his architectural license in that state. The South Carolina board concluded that Mr. Breitweiser was in violation of, and subject to discipline under, South Carolina statutes and regulations applicable to architects based upon the Florida Board's action referred to in paragraph 6, above.

12. On November 23, 2004, the Commonwealth of Pennsylvania, Department of State, Architects Licensure Board revoked Mr. Breitweiser's license to practice architecture in the state of Pennsylvania. The revocation was based on the 2001 felony Bank Fraud conviction in United States District Court, Middle District of Florida, referred to in paragraph 4, above. The Pennsylvania Board adopted the proposed decision of an administrative law judge, who concluded that Mr. Breitweiser had violated Pennsylvania statute applicable to architects.

13. On January 20, 2005, the Tennessee State Board of Architectural and Engineering Examiners issued a consent order against Mr. Breitweiser's Tennessee license. The discipline was based on the 2004 Florida Board of Architecture and Interior Design's discipline, referred to in paragraph 6, above. The Tennessee board concluded that Mr. Breitweiser had violated a Tennessee statute and regulation applicable to architects.

14. On February 11, 2005, the Texas Board of Architectural Examiners revoked Mr. Breitweiser's architectural registration, effective May 21, 2001. The revocation was based on Mr. Breitweiser's 2001 Felony Bank Fraud conviction in United States District Court, Middle District of Florida, referred to in paragraph 4, above. The Texas board concluded that a Texas statute and Board rule applicable to architects required revocation of Mr. Breitweiser's license.

15. Respondent did not file an Answer to the Complaint filed in this matter, and did not appear at the default hearing held in this matter.

### **CONCLUSIONS OF LAW**

1. The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, Architect Section has jurisdiction in this matter pursuant to Wis. Stats. § 443.11, and Wis. Adm. Code ch. A-E 8.

2. Respondent's conduct as described in Findings of Fact 3, 5-6 and 8-14 herein, constitutes misconduct in the practice of architecture within the meaning of Wis. Adm. Code § A-E 8.03 (3) (a), in violation of Wis. Stats. § 443.11 (1) (d).

3. Respondent's conduct as described in Findings of Fact 4 herein, constitutes misconduct in the practice of architecture within the meaning of Wis. Adm. Code § A-E 8.03 (3) (c), in violation of Wis. Stats. § 443.11 (1) (d).

4. Respondent, by failing to furnish the Board with information that he had violated provision in Wis. Stats. ch. 443, and Wis. Adm. Code ch. A-E 8, as described in Findings of Fact 3-6 and 8-14 herein, violated Wis. Stats. § 443.11 (1) (e), and Wis. Adm. Code § A-E 8.08 (1).

5. Respondent, by failing to comply with the requirements in Wis. Stats. ch. 443, and Wis. Adm. Code ch. A-E 8, and other federal and state laws which relate to the practice of architecture, violated Wis. Stats. § 443.11 (1) (e), and Wis. Adm. Code § A-E 8.09 (1).

6. The crime, bank fraud, for which the respondent was convicted, as described in Findings of Fact 4 herein, substantially relates to the practice of architecture.

7. Respondent, by having been convicted of a felony, as described in Findings of Fact 4 herein, violated Wis. Stats. § 443.11 (1) (f).

8. By failing to file an Answer to the Complaint and failing to appear at the default hearing held in this matter, respondent is in default under Wis. Adm. Code § RL 2.14.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the certificate of registration of Alvah P. Breitweiser to practice as an architect (registration #5-2553) be, and hereby is, REVOKED.

**IT IS FURTHER ORDERED** that pursuant to Wis. Stats. § 440.22, the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by a designee of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, Architect Section.

### **OPINION**

#### **I. Procedural History**

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 4, 2005. A default hearing was

held in the above-captioned matter on June 21, 2005. Atty. Mark A. Herman appeared on behalf of the Division of Enforcement. The respondent, Alvah P. Breitweiser, did not file an Answer to the Complaint and did not appear at the default hearing.

## **II. Applicable Laws**

**443.11 Disciplinary proceedings against architects, landscape architects and engineers.** (1) The examining board may reprimand an architect, registered landscape architect or professional engineer or limit, suspend or revoke the certificate of registration of any registrant, and the certificate of record of any engineer-in-training, who is found guilty of:

(d) Any gross negligence, incompetency or misconduct in the practice of architecture as a registered architect, of landscape architecture as a registered landscape architect or of professional engineering as a registered professional engineer, or in the professional activity of a holder of a certificate of record as engineer-in-training.

(e) Any violation of the rules of professional conduct adopted and promulgated by the examining board.

(f) Conviction of a felony, subject to ss. 111.321, 111.322 and 111.335, or adjudication of mental incompetency by a court of competent jurisdiction, a certified copy of the record of conviction or adjudication of incompetency to be conclusive evidence of such conviction or incompetency.

**A–E 8.03 Definitions.** In ch. 443, Stats., and chs. A–E 1 to 10:

(3) "Misconduct in the practice of architecture, landscape architecture, professional engineering, designing or land surveying" means an act performed by an architect, landscape architect, professional engineer, designer or land surveyor in the course of the profession which jeopardizes the interest of the public, including any of the following:

(a) Violation of federal or state laws, local ordinances or administrative rules relating to the practice of architecture, landscape architecture, professional engineering, designing or land surveying.

(c) Engaging in conduct which evidences a lack of trustworthiness to transact the business required by the profession.

**A–E 8.08 Maintenance of professional standards.** An architect, landscape architect, professional engineer, designer or land surveyor:

(1) Shall furnish the board with information indicating that any person or firm has violated provisions in ch. 443, Stats., rules in this chapter or other legal standards applicable to the profession.

**A–E 8.09 Adherence to statutes and rules.** An architect, landscape architect, professional engineer, designer or land surveyor:

(1) Shall comply with the requirements in ch. 443, Stats., rules in this chapter and all other federal, state and local codes which relate to the practice of architecture, landscape architecture, professional engineering, designing and land surveying.

## **III. Motion for Default**

The Notice of Hearing and Complaint were filed with the Administrative Law Judge and served on Mr. Breitweiser, by certified mail, on May 4, 2005. Mr. Breitweiser's Answer to the Complaint was due on May 24, 2005. Mr. Breitweiser did not file an Answer by the due date.

A telephone pre-hearing conference was held on May 24, 2005. During the pre-hearing conference, Mr. Breitweiser represented to the Administrative Law Judge that he would be faxing his Answer that day. The Memorandum of Pre-hearing Conference and Scheduling Order issued by the Administrative Law Judge on May 24, 2005, reflect that Mr. Breitweiser would be filing his Answer on that day.

On June 3, 2005, the Division of Enforcement filed a *Motion for Default and Motion in Limine*. Mr. Breitweiser did not file a response to the Division's motions. On June 3, 2005, a telephone pre-hearing conference was held for purposes of establishing a schedule on the State's motions. Mr. Breitweiser represented at that pre-hearing conference that he would be filing an Answer. As of this date, Mr. Breitweiser has not filed an Answer.

Wis. Adm. Code § RL 2.09 (3) and (4), read as follows:

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

In addition, Wis. Adm. Code § RL 2.14, states, in part, that if the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.

On June 21, 2005, the Administrative Law Judge issued an Interim Decision and Order granting the Division's Motion for Default based upon the allegations contained in the Division's Complaint and the exhibits attached to that document.

#### **IV. Appropriate Discipline**

As noted previously, because Mr. Breitweiser failed to file an Answer to the Complaint, he is in default under Wis. Adm. Code § RL 2.14. Therefore, the allegations contained in the Complaint and attached exhibits are deemed admitted. Those allegations establish that Mr. Breitweiser violated numerous laws relating to the practice of architecture that included Wis. Adm. Code § A-E 8.03 (3) (a) and (c), A-E 8.08 (1) and A-E 8.09 (1), and Wis. Stats. § 443.11 (1) (d), (e) and (f).

Having found that Mr. Breitweiser violated statutes and rules relating to the practice of architecture, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, Architect Section is authorized under Wis. Stats. § 443.11 (1), to reprimand an architect or limit, suspend or revoke the certificate of registration of an architect for gross negligence, incompetence or misconduct.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969).

The Division of Enforcement recommends that Mr. Breitweiser's certification of registration to practice architecture be revoked based upon the evidence of record.

The Administrative Law Judge also recommends that Mr. Breitweiser's certificate of registration to practice architecture be revoked. This measure is designed primarily to assure protection of the public and to deter other registrants from engaging in similar misconduct.

Mr. Breitweiser has shown by his conduct that he is not capable of practicing architecture in a manner that safeguards the interest of the public. He has left a trail of violations in numerous States and has totally disregarded the laws relating to the practice of architecture in Wisconsin. His conviction for bank fraud in Florida reflects that he is dishonest and untrustworthy. In addition, there is no evidence of rehabilitation in the record. Any measure short of revocation of his certificate of registration would not provide adequate protection to the public, and would not deter other registrants from engaging in similar misconduct.

## **V. Costs of the Proceeding**

Wis. Stats. § 440.22(2), 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 the respondent is a discretionary decision on the part of the Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge's 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.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Based upon the record herein, the Administrative Law Judge recommends that the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, Architect Section adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 1st day of December, 2005.



Respectfully submitted,

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Ruby Jefferson-Moore  
Administrative Law Judge