

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
DAVID A. HORNICAK,	:	LS0902051ENG
RESPONDENT.	:	

Division of Enforcement Case No. 08 ENG 003

The parties to this action for the purposes of section 227.53 of the Wisconsin statutes are:

David A. Hornicak
650 Smithfield Street
Suite 2600
Pittsburgh, Pennsylvania 15222

Professional Engineer Section
Examining Board of Architects, Landscape Architects,
Professional Engineers, Designers and Land Surveyors
Post Office Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation and Licensing
Division of Enforcement
Post Office Box 8935
Madison, Wisconsin 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Professional Engineer Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors. The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. David A. Hornicak (Date of Birth: November 4, 1971) is duly registered to practice as a professional engineer in the state of Wisconsin (using registration number 6-35934). This registration was first granted on January 24, 2003, and is current until July 31, 2010.

2. Mr. Hornicak's most recent address on file with the Department of Regulation and Licensing (Department) is 650 Smithfield Street, Suite 2600, Pittsburgh, Pennsylvania 15222.

3. On November 8, 2007, Mr. Hornicak was disciplined by the Iowa Engineering and Land Surveying Examining Board. That discipline ordered Mr. Hornicak to be reprimanded and to pay a civil penalty of \$1,500.00. The basis for the discipline was that Mr. Hornicak failed to complete the required Iowa professional development hours. A true and correct copy of the Iowa Engineering and Land Surveying Examining Board's Revised Consent Order on Stipulated Charges is

attached to this document as Exhibit A. Exhibit A is incorporated into this document by reference.

4. Mr. Hornicak did not inform the Department of the Iowa discipline.

5. In resolution of this matter, David A. Hornicak consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Professional Engineer Section of the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors has jurisdiction to act in this matter pursuant to Wis. Stat. Sec. 443.11.

2. The Professional Engineer Section of the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors is authorized to enter into the attached stipulation, pursuant to Wis. Stat. Sec. 227.44(5).

3. Wis. Admin. Code § A-E 8.03 (3) (a) defines “Misconduct in the practice of architecture, landscape architecture, professional engineering, designing or land surveying” to mean 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 violation of federal or state laws, local ordinances or administrative rules relating to the practice of architecture, landscape architecture, professional engineering, designing or land surveyor.

4. By the conduct described in Findings of Fact 3. and 4., David A. Hornicak violated Wis. Admin. Code § A-E 8.09(1) which requires an architect, landscape architect, professional engineer, designer or land surveyor to comply with the requirements in ch. 443, Stats., rules in chapter A-E 8, and all other federal, state and local codes which relate to the practice of architecture, landscape architecture, professional engineering, designing and land surveying.

5. By failing to report the Iowa discipline to the Section, David A. Hornicak violated Wis. Admin. Code § A-E 8.08 (1), which requires an architect, landscape architect, professional engineer, designer or land surveyor to furnish the board with information indicating that any person or firm has violated provisions in ch. 443, Stats., rules in chapter A-E 8 or other legal standards applicable to the profession.

6. By violating Wis. Administrative Code §§ A-E 8.08 (1) and A-E 8.09 (1), David A. Hornicak has engaged in misconduct in the practice of professional engineering.

7. Wis. Stat. §. 443.11 (1) (d) provides that the examining board may reprimand a 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 any misconduct in the practice of professional engineering.

8. Wis. Stat. §. 443.11 (1) (e) provides that 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 any violation of the rules of professional conduct adopted and promulgated by the examining board.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that David A. Hornicak’s Wisconsin certificate of registration (registration number 6-35934) to practice as a professional engineer in the state of Wisconsin is REPRIMANDED.

Mr. Hornicak shall pay full costs in the amount of FOUR HUNDRED dollars (\$400.00) in this matter. All payments shall be submitted within 90 days from the date of this order. Payment shall be made by ***certified check or money order***, payable to the Wisconsin Department of Regulation and Licensing and submitted to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
Post Office Box 8935
Madison, Wisconsin 53708-8935
608-267-3817

In the event that Mr. Homicak fails to comply with any of the terms of the Order, the Wisconsin certificate of registration to practice as a professional engineer of David A. Homicak (registration number 6-35934) **SHALL BE SUSPENDED**, without further notice or hearing, until David A. Homicak has complied with the terms of this Order.

This Order shall become effective upon the date of its signing.

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

By	Martin J. Hanson	2/5/09
	A Member of the Professional Engineers Section	Date

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

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
DAVID A. HORNICAK,	:	LS#09 _____ ENG
RESPONDENT.	:	

Division of Enforcement Case Number 08 ENG 003

It is hereby stipulated between David A. Hornicak and Claudia Berry Miran, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Enforcement (08 ENG 003). Mr. Hornicak consents to the resolution of this investigation by Stipulation and without the issuance of a Formal Complaint.
2. Mr. Hornicak understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including:
 - the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence;
 - the right to confront and cross-examine the witnesses against him;
 - the right to call witnesses on his behalf and to compel their attendance by subpoena;
 - the right to testify himself;
 - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
 - the right to petition for rehearing; and
 - all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.
3. Mr. Hornicak is aware of his right to seek legal representation and has been provided an opportunity to obtain legal advice prior to signing this Stipulation.
4. Mr. Hornicak agrees to the adoption of the attached Final Decision and Order by the Professional Engineer Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (Section). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Mr. Hornicak waives all rights to any appeal of the Section's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Section, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Section, the parties agree not to contend that the Section has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Section ever assigned as an advisor in this investigation may appear before the Section in open or closed session, without the presence of Mr. Hornicak or his attorney, for purposes of speaking in support of this agreement and

answering questions that any member of the Section may have in connection with the Section’s deliberations on the Stipulation. Additionally, any such Section advisor may vote on whether the Section should accept this Stipulation and issue the attached Final Decision and Order.

7. Mr. Hornicak is informed that should the Section adopt this Stipulation, the Section’s final decision and order is a public record and will be published in accord with standard Department procedure.

8. The Division of Enforcement joins David A. Hornicak in recommending the Professional Engineer Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors adopt this Stipulation and issue the attached Final Decision and Order.

David A. Hornicak
Respondent
650 Smithfield Street
Suite 2600
Pittsburgh, Pennsylvania 15222
Registration Number 6-35934

Date

Claudia Berry Miran
Attorney
Division of Enforcement
Wisconsin Department of Regulation and Licensing
Post Office Box 8935
Madison, Wisconsin 53708-8935

Date