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**Before the
State Of Wisconsin
Joint Examining Board of Architects, Landscape Architects, Professional
Engineers, Designers and Land Surveyors**

In the Matter of Disciplinary Proceedings Against
Travis J. Kramer, Respondent

FINAL DECISION AND ORDER

Order No. **0004685**

Division of Legal Services and Compliance Case No. 15 LSR 001

On April 27, 2016, the State of Wisconsin, Joint Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, delegated authority to Department of Safety and Professional Services Chief Legal Counsel Michael Berndt to review and decide this matter. Chief Legal Counsel Berndt, 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, Joint 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 at Madison, Wisconsin on the 28th day of April, 2016.

A handwritten signature in black ink, appearing to read "Michael Berndt", written over a horizontal line.

Michael Berndt, Chief Legal Counsel
Department of Safety and Professional Services for
the Joint Examining Board of Architects, Landscape
Architects, Professional Engineers, Designers and
Land Surveyors



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
Travis J. Kramer, Respondent

DHA Case No. SPS-16-0013
DLSC Case No. 15 LSR 001

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Travis J. Kramer
52838 Walker Hollow Road
Wauzeka, WI 53826

Wisconsin Joint Examining Board of Architects, Landscape Architects, Professional
Engineers, Designers and Land Surveyors
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Renee M. Parton
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Notice of Hearing and Complaint against Respondent Travis J. Kramer (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 443.12(1) and Wis. Admin. Code § A-E 8.03 because Respondent: (1) violated Wis. Admin. Code § A-E 8.07 by failing to assist in enforcing laws which prohibit the unlicensed practice of land surveying by reporting violations to the Board; (2) violated Wis. Admin. Code § A-E 8.08(3) by failing to respond in a timely manner to a request by the Department for information in conjunction with an investigation of a complaint; and (3) violated Wis. Admin.

Code § A-E 8.11(3) by signing or sealing maps or plats prepared for the practice of land surveying after his registration has been suspended.

The Division served Respondent on January 26, 2016, by sending a copy of the Notice of Hearing and Complaint to his address on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4), and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on February 26, 2016.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on February 26, 2016. Consistent with the notice, the Division timely filed a recommended proposed decision.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–10 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Travis J. Kramer is licensed in the State of Wisconsin to practice professional land surveying, having license number 2664-8, first issued on August 4, 2003, and suspended on or about November 18, 2014.

2. Respondent's most recent address on file with the Department is 52838 Walker Hollow Road, Wauzeka, Wisconsin 53826.

3. On June 4, 2013, the Professional Land Surveyor Section of the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors (Section) reprimanded Respondent and limited his license for his failure to file survey maps and respond to requests for information by the Department in violation of, among other things, Wis. Admin. Code §§ A-E 7.05(7) and 8.08(3). *See In the Matter of the Disciplinary Proceedings Against Travis J. Kramer*, Order 0002458 (June 4, 2013).

4. On October 29, 2013, the Section ordered Respondent to pay costs in the amount of \$1,527.95.

5. On November 18, 2014, the Section suspended Respondent's license for his failure to comply with the provisions of the June 4, 2013 and October 29, 2013 orders.

6. On April 19, 2015, the Department received a complaint indicating that Respondent prepared a map and survey while his license was suspended.

7. The complaint included a survey map dated April 13, 2015 which was signed by Respondent and had an official Wisconsin Land Surveyor stamp with Respondent's name and license number.

8. On May 20, 2015, the Department opened Division Case Number 15 LSR 001 for investigation.

9. On June 1, 2015, an investigator with the Division sent Respondent a letter requesting a detailed response and copies of any paperwork regarding the complaint.

10. No response to the Division's request for information has been received.

Facts Related to Default

11. The Complaint and Notice of Hearing in this matter were served on Respondent on January 26, 2016, by both certified and regular mail consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing advised Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Section may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

12. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

13. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for February 26, 2016 at 11:00 a.m. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which he could be reached for the conference no later than February 22, 2016. The Notice instructed Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

14. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference.

15. At the prehearing conference held on February 26, 2016, the Division provided a telephone number for Respondent. The ALJ left a voicemail for Respondent indicating that Respondent should contact the ALJ at the telephone number provided by 11:15 a.m., failing which the ALJ would proceed with the conference without Respondent. Respondent failed to contact the ALJ at the telephone number provided.

16. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

17. On February 26, 2016, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than March 11, 2016, a recommended proposed decision and order.

18. The Division timely filed its recommended proposed decision and order.

19. Respondent did not file a response to the Notice of Default or to the Division's recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the February 26, 2016 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on February 26, 2016. As a result, an order may be entered against him on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations of Wisconsin Statute and Administrative Code

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 443.12(1), which states: "The professional land surveyor section may reprimand a professional land surveyor, or limit, suspend, or revoke the license of any professional land surveyor, for the practice of any fraud or deceit in obtaining the license, or any gross negligence, incompetence, or misconduct in the practice of professional land surveying."

The phrase "misconduct in the practice of professional land surveying" means "an act performed by . . . [a] professional land surveyor in the course of the profession which jeopardizes the interest of the public," and includes "[v]iolation of . . . administrative rules relating to the practice of . . . professional land surveying." Wis. Admin. Code § A-E 8.03(3).

In the instant case, Respondent violated three administrative rules, Wis. Admin. Code §§ A-E 8.07, 8.11(3), and 8.08(3), discussed below. He therefore engaged in misconduct in the practice of professional land surveying pursuant to Wis. Admin. Code § A-E 8.03(3),¹ and is subject to discipline under Wis. Stat. § 443.12(1).

Wisconsin Admin. Code § A-E 8.07 states that a professional land surveyor "[s]hall assist in enforcing laws which prohibit the unlicensed practice of . . . professional land surveying by reporting violations to the board."

Wisconsin Admin. Code § A-E 8.11(3) states: "Any registrant or licensee whose registration or license has been suspended is prohibited during the term of the suspension from engaging in . . . [s]igning or sealing plans, specifications, reports, maps, plats, or charts prepared for the practice of . . . professional land surveying."

¹ In its Complaint and recommended proposed decision and order, the Division cites Wis. Admin. Code § A-E 8.03(1), which defines gross negligence. However, the Division fails to connect the definition of gross negligence to the violations alleged. The more obvious subsection of Wis. Admin. Code § 8.03 applicable to Respondent's conduct is subsection (3), which contains the definition of "misconduct in the practice of professional land surveying" addressed here.

The undisputed facts establish that on June 4, 2013, the Section reprimanded Respondent and limited his license for his failure to file survey maps and respond to requests for information by the Department. Subsequently, on October 29, 2013, the Section ordered Respondent to pay costs of \$1,527.95. However, Respondent failed to pay the ordered costs or comply with the June 4, 2013 Order. Therefore, on November 18, 2014, the Section suspended Respondent's license for his failure to comply with the provisions of the June 4, 2013 and October 29, 2013 orders. Despite his suspended status, on April 13, 2015, Respondent signed and stamped a survey.

Based on the facts of this case and that Respondent has made no argument to the contrary, I conclude that Respondent violated Wis. Admin. Code §§ A-E 8.07 and 8.11(3).

Further, Wis. Admin. Code § A-E 8.08(3) states that a professional land surveyor "[s]hall respond in a timely manner to a request by the board, a section of the board or the department for information in conjunction with an investigation of a complaint filed against a registrant or licensee. There is a rebuttable presumption that a registrant or licensee who takes longer than 30 days to respond to a request for information has not acted in a timely manner."

The Department mailed Respondent a request for information on June 1, 2015. The undisputed facts establish that Respondent failed to respond to the Department's request. Respondent therefore violated Wis. Admin. Code § A-E 8.08(3).

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 443.12(1) and Wis. Admin. Code § A-E 8.03(3).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's professional land surveyor license be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law. "Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984).

Rules regulating professional land surveyors exist to protect health, safety and public welfare by establishing procedures and standards of practice to which all professional land surveyors are held. However, Respondent continues to work outside these standards by practicing professional land surveying while his license is suspended. Thus, Respondent has

demonstrated an unwillingness to follow the responsibilities of his profession, and as such, is not fit to be a professional land surveyor.

In addition to ignoring the requirements of the law, Respondent continues to ignore the Section's legitimate authority. Respondent has been nonresponsive throughout the Department's investigation and in this proceeding, as he was in the previous proceedings and investigations. When individuals demonstrate an inability to handle the amount of responsibility commensurate with holding professional licenses, they should not continue to be entrusted with such licenses. Therefore, revocation of Respondent's license is an appropriate response to his continuing disrespect for the law, the public welfare, and the licensing authority governing his profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is not likely in this case, as Respondent refuses to submit to the authority of the Section which granted his license. Additionally, having obtained no information from Respondent, the Section cannot even determine what competency issues may exist and therefore cannot ascertain what rehabilitative measures might be effective. Moreover, revocation in this case would send a strong message to licensees that refusing to cooperate with the Section's orders and its investigation of complaints is not an option. To allow licensees to continuously disregard the Section's authority in this way would contravene the purpose of the licensing statutes.

In light of the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's professional land surveyor license is warranted.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. Factors to be considered in assessing costs are: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, D.C.*, LS0802183CHI (Aug. 14, 2008).

Particularly relevant are the following facts. First, the Division proved all three violations of the administrative code it alleged. Second, Respondent's conduct that led to the discipline at hand resulted from continuing to practice while his license was suspended. Such conduct is serious. Third, as a result of Respondent's serious conduct, the Division seeks revocation of Respondent's license to practice land surveying in Wisconsin. The level of discipline sought is significant and recognizes the general absence of mitigating factors in this case. Fourth, Respondent did not cooperate with the Department's investigation or with these proceedings. Fifth, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in

favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all professional land surveyor licensees in Wisconsin. Finally, Respondent made no argument concerning whether costs should be assessed against him. When Respondent fails to argue a position, the Division is not obliged to make the argument for him.

Based on the factors delineated in the *Buenzli-Fritz* decision and the facts of this case, the full costs of this proceeding shall be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS HEREBY ORDERED that Respondent Travis J. Kramer's professional land surveyor license (no. 2664-8) is REVOKED, effective on the date the final decision is signed by the Section.

IT IS FURTHER ORDERED that should Respondent ever apply for a credential with the Department in the future, Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Section's consideration of any such application.

Dated at Madison, Wisconsin on March 14, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Jennifer E. Nashold

Administrative Law Judge