

Before the West Virginia Board of Architects

Thomas N. Smith

Complainant,

v.

License No. 4807

West Virginia Board of Architects,

Respondent.

Consent Agreement and Order

By certified letter dated July 7, 2017, the West Virginia Board of Architects (“Board”), pursuant to W. Va. Code § 30-1-8, W. Va. Code § 30-12-5, and/or applicable rules and regulations promulgated thereunder, denied Complainant Thomas N. Smith’s license renewal application because Mr. Smith failed to disclose that he entered into disciplinary consent order with the North Carolina Board of Architecture on April 23, 2015. Pursuant to W. Va. Code R. § 2-2-5, Mr. Smith has requested a hearing in this matter.

The parties have reached an agreement as to the disposition of this matter in controversy, and do hereby agree to the following.

Findings of Fact

1. The Board is a state entity charged with regulating the practice of architecture pursuant to W. Va. Code § 30-12 *et seq.*
2. The Board is empowered to review and act upon license/registration applications and renewals pursuant to W. Va. Code § 30-12-5.
3. The Board may deny an application renewal upon satisfactory proof that the registered architect has been disciplined by a licensing or disciplinary authority of any other state. W. Va. Code R. § 2-1-9.4.3 (Rules of Professional Conduct).

4. The Board may deny an application renewal upon satisfactory proof that the registered architect deliberately made a materially false statement or deliberately failed to disclose accurately and completely a material fact requested in connection with his or her application for a registration or renewal thereof or otherwise lawfully requested by the Board. W. Va. Code R. § 2-1-9.3.4.

5. The Board may deny an application renewal upon satisfactory proof that the registered architect made misleading, deceptive or false statements or claims. W. Va. Code R. § 2-1-9.5.5.

6. Mr. Smith is a licensed architect in North Carolina and practices under the company name Novus Architects, Inc.

7. On or about May 26, 2016, Mr. Smith became a reciprocal registered architect in the State of West Virginia in accordance with W. Va. Code R. § 2-1-6 and holding certificate No. 4807.

8. On or about June 26, 2017, Mr. Smith submitted a renewal application to the Board.

9. During the review of Mr. Smith's renewal application, the Board learned that Mr. Smith, individually and on behalf of Novus Architects, Inc., entered into a Consent Order with the North Carolina Board of Architecture on April 23, 2015.

10. The Consent Order recited that:

Respondent Firm offered and rendered architectural services on eight projects on eight projects in North Carolina after the firm license registration expired. Smith contends that neither he nor any principle [*sic*] or employee in the firm intentionally violated North Carolina's Architecture Rules and Laws. Nevertheless, in lieu of further proceedings, Smith and Novus Architects, Inc. have agreed to enter into this Consent Agreement.

11. Mr. Smith agreed in the Consent Order that practicing architecture through a firm not properly licensed in North Carolina violated North Carolina statutes and administrative regulations.

12. Under the terms of the Consent Order, Mr. Smith was reprimanded by the North Carolina Board and the corporation was ordered to pay a civil penalty of \$20,000, as well as renewal and late fees and administrative costs.

13. The reprimand imposed on Mr. Smith's license by the North Carolina Board is considered to be "discipline in another jurisdiction" within the meaning of W. Va. Code R. § 2-1-9.4.3, which is cause for denial of his renewal application.

14. Mr. Smith did not disclose the Consent Order with the North Carolina Board and his reprimand when he completed an affidavit and notarized the Uniform Application for Architect Registration on March 21, 2016, to obtain reciprocal registration in West Virginia. He specifically checked "no" on the form when asked if he had been disciplined by any occupational licensing board. By checking "no," Mr. Smith failed to reveal the North Carolina disciplinary action.

15. The Board alleges that by failing to disclose he had been disciplined in another jurisdiction and failing to reveal his North Carolina discipline, Mr. Smith obtained a reciprocal registration by deliberately failing to disclose "accurately and completely" a material fact requested in connection with a renewal application, which is cause to deny his renewal application under W. Va. Code R. § 2-1-9.3.4.

16. The Board alleges that by failing to disclose he had been disciplined in another jurisdiction and failing to reveal his North Carolina discipline, Mr. Smith made misleading, deceptive or false statements or claims, which is cause to deny his renewal application under W. Va. Code R. § 2-1-9.5.5.

Conclusions of Law

1. The Board is empowered to review and act upon license/registration applications and renewals pursuant to W. Va. Code § 30-12-5.
2. The Board has jurisdiction to take disciplinary action against Mr. Smith.
3. The Board is mandated by W. Va. Code § 30-12-1 *et seq.* to safeguard the life, health, proper and public welfare of the people of this State.
4. The Board is empowered to suspend, revoke or otherwise discipline a license or licensee for violation of W. Va. Code § 30-12 *et seq.*, and the rules promulgated thereunder.
5. That the actions of Mr. Smith constitute violations of W. Va. Code § 30-12 *et seq.* and the rules of the Board and such conduct are grounds for denial or his renewal application and/or disciplinary action.

Consent of Licensee

Complainant, Thomas N. Smith, by affixing his signature hereto, acknowledges the following:

1. Mr. Smith has been given the opportunity to consult with counsel of his choice with regard to this matter.
2. Mr. Smith executes this Consent Agreement and Order voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.
3. No person or entity has made any promise or given any inducement whatsoever to encourage Mr. Smith to make this settlement other than as set forth herein.
4. Mr. Smith acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently, knowingly and voluntarily waive such rights.

5. Mr. Smith acknowledges that he is aware that this Consent Agreement and Order is a public document, available for inspection at any time by any member of the public under W. Va. Code § 29B-1 *et seq.*, Freedom of Information Act, and may be reported to other governmental, professional Boards or organizations.

6. Mr. Smith waives any defense of laches, statute of limitations, estoppel, lack of jurisdiction, lack of due process, and waiver that he may have otherwise claimed as a condition of this Consent Agreement and Order.

7. Without admitting that his actions were unprofessional and a violation of the statutes and administrative regulations of the Board, Mr. Smith consents to this Consent Agreement and Order; however, this is not an admission by Mr. Smith to the Board's allegations, findings of fact or conclusions of law and shall not be construed as such.

8. Mr. Smith, by affixing his signature hereon, consents and agrees to the following terms and conditions:

ORDER

On the basis of the foregoing, the Board does hereby **ORDER** and **DECREE**:

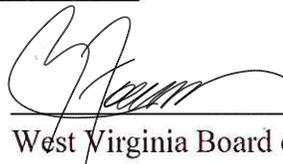
1. Mr. Smith is hereby reprimanded for his actions in this matter;
2. The Board shall began the process of renewing Mr. Smith's certificate of registration upon execution and entry of this Consent Agreement and Order;
3. Mr. Smith shall be place on probation for a period of twelve (12) months commencing upon execution and entry of this Consent Agreement and Order;
4. During the probationary period, Mr. Smith shall be entitled to engage in the practice of architecture, provided that he adheres to all of the following terms and conditions:
 - a. Mr. Smith shall comply with all provisions of W. Va. Code § 30-12 *et seq.*, and the rules, regulations, and codes of conduct promulgated thereunder.

- b. Mr. Smith shall immediately disclose to the Board any disciplinary actions by any occupational licensing boards;
- c. Mr. Smith shall immediately disclose to the Board any investigations by any occupational licensing boards concerning his license or his architect firm's license;
- d. Mr. Smith shall timely renew all licenses and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain his license in this State; and
- e. Mr. Smith shall submit every three (3) months a list of all West Virginia architectural projects worked on during the period. The list shall identify the projects worked on by date, client, location of the project, and brief description of the project and work performed.

5. Mr. Smith shall reimburse the Board for administrative and legal expenses incurred by the Board in the investigation and disposition of this matter in the amount of \$2,000, which is to be paid within thirty (30) days of the execution and entry of this Consent Agreement and Order;

6. Mr. Smith's failure to comply with the terms and conditions of this Consent Agreement and Order hereby imposed shall be deemed a violation of this Consent Agreement and Order, and should Mr. Smith violate any of the terms of this Consent Agreement and Order, the Board may take further disciplinary action against Mr. Smith's license.

Entered this 7th day of AUGUST, 2017.
 9th August

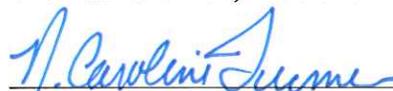
 _____, President
 West Virginia Board of Architects

Reviewed and Agreed to by:



 Thomas N. Smith, Petitioner

AUGUST 3, 2017
 Date



 Legal Counsel or Witness

8/7/2017
 Date