

Before the West Virginia Board of Architects

West Virginia Board of Architects,

Complainant,

v.

Registration No. 4410

Case Nos: 07-07-2022

07-28-2022

09-07-2022

Steven Douglas Dye,

Respondent.

West Virginia Board of Architects' Final Decision and Order

The West Virginia Board of Architects (the “Board”) is a state entity created and governed by W. Va. Code § 30-12-1 *et seq.*, whose mission is to safeguard the life, health, property and public welfare of this state and to protect the people against the unauthorized, unqualified and improper practice of architecture. In order to carry out its regulatory duties, the Board is empowered by W. Va. Code § 30-12-8 and W. Va. Code R. § 2-2-4 to investigate and take disciplinary action against a registered architect for violation of W. Va. Code §§ 30-12-1 to 30-12-15, and the rules promulgated thereunder, which include the Rules of Professional Conduct, W. Va. Code R. §§ 2-1-9 *et seq.*

On December 13, 2022, and pursuant to W. Va. Code § 30-1-8(e)(1), the West Virginia Board of Architects (“Board”) suspended the license of Respondent Steven Dye (Certificate No. 4410), prior to having a hearing because criminal allegations of fraudulent conduct¹ were pending against him in two West Virginia counties relating to his architectural or general contracting services to clients. (See Board Exhibit 10 – Wyoming County Criminal Complaint dated November 15, 2022); (See Board Exhibit 11 – Mercer County Criminal Complaint dated December 5, 2022). Also, the Board determined that Respondent was not sufficiently familiar

¹ See W. Va. Code § 61-3-24. Obtaining money, property and services by false pretenses with intent to defraud.

with the applicable statutes and regulations governing architects in West Virginia, including statutes and regulations pertaining to construction administration. Ignorance of such statutes and regulations is a potential threat to public safety.

The Board concluded the asserted felonies bear a rational nexus to the profession or occupation requiring licensure in that registered architects shall not knowingly violate any state criminal laws. A registered architect must display “good moral character” in that he is expected to discharge the fiduciary duties of an architect to his client and to the public for the protection of health, safety, and welfare. W. Va. Code § 30-12-2(4). A registered architect’s primary duty is to protect the public’s health, safety, and welfare. The alleged felonies reflect dishonesty on the part of Respondent in carrying out general contractor or architectural construction administration duties and responsibilities, which caused financial loss to the clients. The Board concluded that his continuation in practice posed an immediate financial threat to the public.

On January 19, 2023, a hearing concerning Respondent’s summary suspension took place before Hearing Examiner Janis Reynolds (WV State Bar No. 4363). At the hearing, the Board was represented by Mark S. Weiler, Assistant Attorney General. Respondent appeared *pro se* via Microsoft Teams video conference. The parties were given the opportunity to submit proposed findings of fact and conclusions of law.

On May¹⁶, 2023 the Board met and considered Hearing Examiner Reynolds Findings of Fact, Conclusions of Law, and Recommended Decision. After considering Hearing Examiner Reynolds’ Findings of Fact, Conclusions of Law and Recommended Decision, and the underlying record² adduced in this matter, the Board voted to adopt and accept Hearing Examiner Reynolds’ Findings of Fact, Conclusions of Law and Recommended Decision except where specifically modified as set forth below.

² The Board incorporates by reference the hearing transcript and exhibits entered into evidence at the hearing.

ORDER

1. Accordingly, it is **ORDERED** the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommended Decision submitted on April 14, 2023, is adopted and accepted, including the Hearing Examiner's conclusion of law the Board met its burden of proof and established that Respondent is a "danger to the public welfare in the state of West Virginia." Respondent's continuation in the practice of architecture, including carrying out or performing construction administration services (W. Va. Code § 30-12-11a), poses an immediate danger to the public.

2. The Board does modify paragraph 8 of the Hearing Examiner's Findings of Fact to correct the record. Respondent made a \$15,000 down payment on a 2019 Chevrolet Tahoe with a sale price of \$47,200. (The receipt for the F-150 truck was for payment of personal property tax on the truck.)

3. The Board does modify paragraph 42 of the Hearing Examiner's Findings of Fact to correct the record. It was the Board's President that Respondent called a "fat f—k" and not Mr. Dickerson, who is one of the underlying complainants.

4. The Board adopts the recommendation of the Hearing Examiner and it is **ORDERED** that Respondent's summary suspension be upheld and remain in place until Respondent's disciplinary complaints pending before the Board are resolved.

5. It is upon information and belief that Respondent is currently in jail due, in part, because of the aforementioned criminal charges pending against him. For that reason, it is further **ORDERED** that the Respondent's disciplinary cases will be held in abeyance until Respondent resolves the criminal charges pending against him.

NOTICE OF RIGHT TO APPEAL

Pursuant to W. Va. Code R. § 29A-5-4, any party adversely affected by this Final Decision and Order has the right to appeal it by a filing an appeal to the Intermediate Court of Appeals as provided in W. Va. Code § 5-11-1 *et seq.* Such appeal must be filed within 30 days of the date the party receives this Final Decision and Order.

ENTERED THIS 16 DAY OF MAY, 2023.

West Virginia Board of Architects



Adam Krason, President

Prepared by:



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BEFORE THE WEST VIRGINIA BOARD OF ARCHITECTS

**WEST VIRGINIA BOARD OF ARCHITECTS,
Complainant,**

v.

**STEVEN DOUGLAS DYE,
Respondent.**

**Registration No. 4410
Case Numbers: 07-07-2022
07-28-2022
09-07-2022**

**RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED DECISION**

PROCEDURAL HISTORY

This matter came on for hearing on January 19, 2023, at the State Capitol Complex, 1900 Kanawha Boulevard East, Building 6, Fourth Floor Conference Room A, in Charleston, West Virginia. This hearing was held pursuant to the West Virginia Board of Architects Board's ("Board") Summary Suspension Order and Notice of Hearing dated December 13, 2022. On December 21, 2022, this Notice of Hearing was amended to add the date of this hearing.

At hearing, the Board was represented by Mark Weiler, Assistant Attorney General, and Emily Papadopoulos, Executive Director. The Board presented the testimony of Adam Krason, President of the Board; Ms. Papadopoulos, the Board's Executive Director; Jennifer and Scott Dickerson, Complainants; and Brad Vladu; Complainant. The Board submitted multiple exhibits admitted as evidence. Steven Dye appeared *pro se*, testified in his own behalf, but submitted no documents. But, at Respondent's request, Ms. Papadopoulos agreed to copy and submit for the record and undersigned two stacks of

documents he had previously submitted to the Board. These documents were received by the undersigned and are included in the record as the Board's Exhibits 16 and 17.

The Undersigned received the Board's Proposed Findings of Fact and Conclusions of Law in a timely manner on February 7, 2023. Respondent requested and received an extension to submit his arguments on February 13, 2023, but failed to do so. This matter became mature for decision on February 13, 2023.

ISSUE

The issue in this matter is whether the Board has proven the violations of statutes and rules cited in the Summary Suspension Order and Notice of Hearing by a preponderance of the evidence. Respondent is accused of failure to complete certain contracted work, and when terminated, he also failed to return the money he agreed he owed to the parties with whom he had contracts. These failures resulted in two complaints being filed with the Board, and subsequently two criminal complaints were filed in the appropriate counties. Additionally, the Board filed a complaint against Respondent, charging Respondent with violating numerous Statutes and Rules of the Board. The Board was concerned about Respondent's failure to protect the public's health, safety, and welfare, specifically the financial welfare of his clients. The Board also identified Respondent's "willful departure from accepted standards of professional conduct" as another area of concern. Specifically cited was Respondent's "willful failure to substantially perform in accordance with the terms of a contract." Bd. Ex. 12.

After a detailed review of the entire record, including testimony and documentary evidence, and in accordance with W. VA. CODE R. §§ 2-2-6.6.10 & 2-2-6.6.13, the undersigned Hearing Examiner makes the following Recommended Findings of Fact and

Conclusions of Law. The credibility of the witness was assessed, and the proposed findings of fact and conclusions of law submitted by the Board after hearing were reviewed and considered.

RECOMMENDED FINDINGS OF FACT

1. Respondent is licensed as a Registered Architect by the Board, and holds Registration Number 4410. Accordingly, he is subject to the license requirements and disciplinary rules of the Board.

2. The West Virginia Board of Architects ("Board") is a statutorily created regulatory body whose mission is to protect the public through the regulation of the practice of architecture. W. VA. CODE § 30-12-1, *et seq.*

3. The events giving rise to this hearing occurred from 2019 to 2022. Respondent was hired to design plans for two houses and then serve as a general contractor for two clients, Scott and Jennifer Dickerson ("Dickersons") and Brad Vladu ("Vladu").

4. Respondent describes himself as using a Design/Build approach construction. With this method, a single person, in this case Respondent, would produce architecture documents required for design, and would then serve as the general contractor for the build. Tr. at 34.

5. Respondent's West Virginia contractor's license expired on November 7, 2022, and he currently "is not in good standing with the Contractor Licensing Act." Bd. Ex. 15.

DICKERSON COMPLAINT

6. On January 19, 2019, Scott and Jennifer Dickerson hired Respondent to design a house to their desired, detailed specifications. They were pleased with the results

and paid Respondent in full, \$10,000. Respondent then explained his Design/Build approach and stated he could serve as the general contractor if they so desired. This approach made sense to the Dickersons, and Respondent was then hired to take the project to completion. Bd. Ex. 2.

7. The Dickersons and Respondent signed a contract which included certain benchmarks to be completed before the next installment of funds could be made. On April 25, 2022, the Dickersons made an initial payment of \$85,000 to Respondent to begin construction. *Id.*

8. On May 9, 2022, Respondent bought a Ford F150 truck with a down payment of \$15,000 and no trade-in. Bd. Ex. 16. (It is noted that Vladu also made his first payment on April 18, 2022.)

9. There were some delays, but construction started on or about May 9, 2022. When Mr. Dickerson visited the site, he found few materials. Tr. at 114 - 115. The Dickersons were not provided any documentation for any expenditures at any time, and when they asked Respondent, they were told it was not his policy to give out this information. Tr. at 116 - 118.

10. Mr. Dickerson had installed cameras on the site prior to the start of construction. From May 9, 2022, to June 3, 2022, Respondent was on site for seven hours. There was only a two-man crew of laborers, and they spent approximately 24 hours on the job site the first five weeks. A concrete crew worked approximately 14 hours in three days. This crew had an altercation with Respondent, and was dismissed. Tr. at 88; Bd. Ex. 5 at D. Additionally, materials and equipment were not present on site. Tr. at 115.

11. On June 3, 2022, after six weeks, the Dickersons dismissed Respondent for his failure to meet a single benchmark contained in their contract. Bd. Ex. 3.

12. At the time of termination, Respondent had spent approximately \$12,500 of the initial monetary outlay; thus, he owed the Dickersons \$72,500. By June 8, 2022, Respondent had repaid the Dickersons only \$35,000. Respondent agreed in text/telephone messages that he still owed the Dickersons \$37,500. At hearing, the Dickersons testified that they had still not received any additional monies. Bd. Ex. 3.

13. After his termination, Respondent repeatedly told the Dickersons that he must be allowed to inspect their property while it was being built, or they would be in violation of "copyright infringement." *Id.* He also insisted/demanded he had this right at hearing. Mr. Adam Krason, President, West Virginia Board of Architects, testified this was incorrect, and it appeared Respondent could be trying, as the Dickersons suggested, to use these inspections as a way to keep from repaying the rest of the money they were owed. Bd. Exs. 2 & 3; Tr. at 96, 102, & 170.

14. Respondent also posted the Dickersons' "full names and address along with a picture of their custom home on his public Face Book page" without their permission. Bd. Ex. 3.

15. On or about June 6, 2022, the Dickersons filed a criminal complaint in Mercer County. An investigation was conducted by Lt. S. A. Sommers, and he found evidence of two felonies: Obtaining Money under False Pretense and Fraudulent Scheme. Bd. Ex. 11.

16. On July 7, 2022, the Dickersons filed a complaint with the Board. *Id.*

17. Included in this complaint are phone messages from Respondent agreeing that he owed the Dickersons \$37,500. *Id.*

18. During his investigation Lt. Sommers attempted to obtain information from Respondent without success. *Id.*

19. Lt. Sommers also interviewed Steve Mullins, a laborer employed by Respondent at the site. He confirmed "no material of any magnitude had been ordered or any subcontractor employed" for the Dickersons site. *Id.*

20. On August 2, 2022, Emily Papadopoulos, Executive Director of the Board, sent Respondent a copy of the Dickersons' complaint, and informed Respondent he had thirty days from receipt to respond. She notified Respondent this complaint contained possible violations of the Rules of Professional Conduct, and failure to respond "may result in an Order to Show Cause why disciplinary action should not be pursued." This notice was served at the address listed with the Board. Bd. Ex. 3.

21. On August 10, 2022, Respondent filed a one page response to the Dickersons' complaint. He blamed delays on the excavator, rain, and holidays. He also insisted he must inspect the Dickersons' construction at key points if they used his designs, and falsely stated he "was ahead of schedule in every respect." Bd. Ex. 16, Cover Page.

VLADU COMPLAINT

22. In October 2021, Brad Vladu ("Vladu") contacted Respondent to design a home. Respondent provided these designs in early 2022, and he was paid for this service. Bd. Ex. 3.

23. Respondent informed Vladu he was also a general contractor and could build the house. Vladu asked for bids and then signed a contract with Respondent to build his house on April 18, 2022. A total of \$71,967 was to be paid. Vladu gave Respondent the first installment of \$17, 991.75 on that day. The contract specified Respondent duties were

to complete the exterior of the home. Benchmarks were specified, and when met, the next installment, in the same amount, would be made to cover the next, needed materials. *Id.*

24. When Vladu complained about slow progress, Respondent assured him the next portion of the build would go much faster. Vladu gave Respondent the next two installments, but the work was still not progressing, and the materials Vladu paid for did not appear. (The last amount was for windows and doors.) Vladu also put sweat equity into the build, following the directions of Respondent's two-man crew. Vladu continued to question Respondent about the lack of progress without a satisfactory response. *Id.*

25. On July 15, 2022, the only two crew members walked off the job, informing Vladu that Respondent did not have enough money to pay them. Vladu called Respondent, and he said he was working to get another crew. No new crew appeared, but Respondent worked with Vladu several days the next week. Vladu questioned Respondent about the additional materials he had paid for, and Respondent stated he was having trouble getting what Vladu wanted. Vladu approved a substitution of materials. *Id.*

26. After this conversation, Respondent never returned to the site. Finally, Vladu was able to reach Respondent, and Respondent said he "had no money" to purchase the supplies Vladu had already paid for and hung up on him. Vladu never received invoices or an accounting of any kind from Respondent. *Id.*

27. Shortly thereafter, Vladu filed a criminal complaint in Wyoming County. Captain T. Blankenship investigated the complaint, and found evidence of a felony, "Obtaining money under false pretenses," and a warrant was issued. Bd. Ex. 10.

28. On July 28, 2022, Vladu filed a complaint with the Board, and this complaint was sent to Respondent.

29. By letter dated September 7, 2022, the Ms. Papadopoulos informed

Respondent:

1) He had failed to respond to Mr. Vladu's complaint by the September 1, 2022 deadline;

2) The Board had voted to refer the two recent complaints to the West Virginia Contractors Licensing Board, while the Architecture Board would continued to investigate them;

3) The Board had voted to initiate a complaint against him based on "possible violations of the Board's rules and West Virginia Code;"

4) The Board was concerned Respondent had violated the professional rules related to conflict of interest by "blending the roles of architect and general contractor and not acting in your clients' best interest;"

5) The Board asserted Respondent had violated W. VA. CODE R. §§ 2-1-9.4.3., 9.5.4, & 9.5.5. and;

6) It appeared Respondent had misrepresented to Code Enforcement Officials his employment relationship with subcontractors. He was given thirty days to respond. Bd. Ex. 5.

30. As to Section 6) above in Finding of Fact 29, the Board found evidence that Respondent did not follow the rules and regulations required in filling out a permit request as it related to subcontractors. The Raleigh County Enforcement Department requires a general contractor, when completing a permit request, to identify the licensed firm or individual who will complete the work. In November 2019, Respondent completed a permit request and listed two firms who had no agreement with Respondent to perform this work. This action by Respondent caused difficulty to both the firms and homeowners. Bd. Exs. 5 - E, F, G & H.

31. On his registration renewal, dated June 15, 2022, Respondent "certiffied] that [he] had read and am familiar with Article 12 - Architects Act of the West Virginia Code

and the rules of the West Virginia Board of Architects, and I am qualified to practice architecture in the State of West Virginia." He also swore he had completed twelve hours of continuing education "designated as Health, Safety, and Welfare." Bd. Ex. 13.

32. On October 17, 2022, Respondent answered Ms. Papadopoulos' request for a response to the Dickersons' complaint. He wrote, "I would like to refute all the erroneous claims made by the Dickersons and there supporting entourage." He also stated he had not "violated any statutes, laws or regulations." He asserted he had bought additional equipment for at least \$20,608.46 and the enclosed bank statements would reflect this cost. (They did not. See Finding of Fact 33 and Bd. Exs. 16 & 17.) Respondent also maintained had "up to seven guys" for this build. The video camera at the build site did not confirm this assertion. Bd. Ex. 16. Cover Page.

33. Respondent did submit some copied pages of receipts, most of which were illegible. While these receipts appeared to be for materials, it was unclear what the materials were, and the cost did not seem sufficient to support the amount Respondent claimed to have spent. He also submitted his personal bank records to support his spending on the Dickersons and Vladu projects, as he had commingled his personal records with his business accounts. There were no notations on these bank records to identify which items were for construction. Many of the charges were for gas, food, cash advances, and telephone minutes. Additionally, there were other charges for cigarettes, medical bills, truck payments, and personal items. Accordingly, the Undersigned finds these documents do not support Respondent's assertions. See Bd. Exs. 16 & 17.

34. Respondent did not submit any itemized listing of charges designated for either the Dickersons or Vladu. There was no written record/ledger/account book of

specific building materials and crew payments, including the amount, cost, and the designated project. *Id.*

35. Respondent asked to speak to the Board, and on November 7, 2022, the Board's Complaint Committee granted this request, as long as Respondent consented to having any answers or evidence provided be admissible at a subsequent hearing on the merits. Bd. Ex. 7. Respondent agreed. At this meeting, the Board found Respondent's understanding of and knowledge about the rules governing the practice of architecture to be severely lacking, even though, he had certified/sworn on his renewal that he had read and was familiar with "Article 12 - Architects Act of the West Virginia Code and the rules of the West Virginia Board of Architects. . . ." See Finding of Fact 31.

36. On November 15, 2022, the Board's attorney, Mark Weiler, contacted Respondent by email. He noted Respondent had voluntarily spoken with the Complaint Committee and had discussed his work as an Architect, general contractor, and construction manager. Mr. Weiler then requested Respondent, or his attorney, to call him to discuss his recent arrest. He informed Respondent this information would be considered in any decision to pursue a summary suspension, as it may indicate Respondent "constitute[d] an immediate danger to the public." Respondent did not respond. Bd. Ex. 9.

37. At hearing, Ms. Papadopoulos confirmed this arrest was for domestic violence, and Respondent spontaneously interjected, "I love her." He did not object to the admission of this document, but did state he did not receive Board Exhibit 9, even though he agreed at the start of the hearing that Mr. Weiler had sent him the Board's Exhibits. It appeared he had not reviewed these documents prior to the hearing.

38. On December 13, 2022, Ms. Papadopoulos sent Respondent an Order Suspending Respondent's License. Bd. Ex. 12. The Board's Order stated, "sufficient evidence has been presented showing that Respondent's continuation in the practice of architecture, including carrying out or performing construction administrative services poses an immediate danger to the public." This Order noted the Board was mandated "to safeguard the life, health, property and public welfare of the people of the state of West Virginia and to protect the people against the unauthorized, or improper practice of architecture." W. VA. CODE § 30-12-1, *et seq.* Respondent was "directed to surrender his registration or license to the Board immediately."¹

39. Respondent was also directed to contact Ms. Papadopoulos to schedule a hearing, which he did, and the hearing was scheduled for January 19, 2023.

40. At hearing, Respondent informed the Board that the address of record was the home of his eighty-year old sister, and he was only there sporadically. Mr. Weiler and the Hearing Examiner asked for a current address to assure proper service. Respondent declined to do so stating only that "he lived in Southern West Virginia with Cole." He requested the Board send any information to his address of record even though he does not live there and only visits. Tr. at 200.

41. It should be noted that during the process of gathering data, Ms. Papadopoulos frequently sent information to Respondent both by certified letter and by

¹At hearing, it appeared from his testimony that Respondent was continuing to work. The Undersigned reminded Respondent that his license was suspended, and that meant he could not work as an architect. See also, Bd. Ex. 12 at last page. Respondent's reply to Ms. Papadopoulos dated December 20, 2022, after he had received the Summary Suspension Order also indicated he was still working.

email to ensure Respondent would receive notices and documents. She also agreed to copy the documents sent to the Board by Respondent in 2022 so they could be placed in the record as Board Exhibits 16 and 17.

42. It must be noted that Respondent had difficulty following directions and exhibiting proper behavior during the hearing. It did not appear he had reviewed the numerous documents sent by Mr. Weiler and seemed unable/unwilling to focus on the issues identified in the Summary Suspension Order² - the public was placed in financial risk because of his behavior. He frequently interrupted, even after numerous reminders that his turn to present evidence would come, made asides during testimony, and last, but certainly not least, he called Mr. Dickerson "a fat f__ k."

43. Respondent never denied he had taken the Dickersons' and Vladu's money, and he agreed he had not provided all the services and materials they had paid for. Bd. Ex. 3. By his choice, his testimony at hearing was limited. He testified the criminal complaints created problems by because he could no longer mediate them.³ He also testified: 1) the Dickersons' added to the scope of work, and 2) Vladu caused problem by poorly doing some of the work himself. (Confusingly, Respondent then testified Vladu was "a great worker."). He stated he had no intent to defraud and the criminal charges now made it impossible to settle these issues. Tr. at 193 - 197.

²Respondent was frequently redirected to the Summary Suspension Order language of the duty of the Board to protect the public's welfare.

³There is no prior mention in Respondent's responses of a desire to mediate these issues.

44. Mr. Krason delineated the differences between an architect, a construction manager, and general contractor. He noted Respondent no longer had a general contractor license, and most of the work he agreed to do for the Dickersons and Vladu in building their houses was general contracting. Additionally, separate insurance is required for an architect and general contractor. Respondent did not have general contractor insurance. Tr. at 172. Mr. Krason also noted Respondent did not demonstrate an understanding of these different roles, and how they may conflict, and how the Rules apply.

45. Mr. Krason also testified that Respondent agreed at the November meeting with the Complaint Committee that his actions had negatively impacted the welfare of these two clients. Tr. at 173.

Consistent with the above recommended Findings of Fact, the undersigned Hearing Examiner recommends the following Conclusions of Law.

RECOMMENDED CONCLUSIONS OF LAW

1. Respondent is a licensee of the Board, and is therefore subject to license requirements and disciplinary rules of the Board. W. VA. CODE § 30-12-1 *et seq.*

2. The Board is a regulatory body created for the purpose of regulating the practice of architecture in West Virginia. *Id.*

3. The Board is mandated by W. VA. CODE § 30-12-1 to safeguard the life, health, property and public welfare of the people of [West Virginia] and to protect the people against the unauthorized or improper practice of architecture.

4. A registered architect's "primary duty is to protect the public's health, safety, and welfare . . . and shall act with reasonable care and competence and shall apply the

technical knowledge and skill which are ordinarily applied by registered architects of good standing, practicing in the same location." W. VA. CODE R. § 2-1-9.1.1.

5. Respondent's license to practice architecture in the State of West Virginia is subject to regulation and discipline by the Board. W. VA. CODE § 30-12-8. The Board is authorized to suspend or revoke a registration prior to a hearing "if the person's continuation in practice constitutes an immediate danger to the public." W. VA. CODE § 30-1-8(e)(1). Additionally, W. VA. CODE R. § 2-1-10 states the Board can take these actions if an Architect "engaged in conduct, practices, or acts constituting proof of negligence or willful departure from accepted standards of professional conduct."

6. The Board may file its own complaint against an architect based on information it has received from personal knowledge, public record, the Board's records, and/or information or received through investigation. W. VA. CODE R. § 2-2-4.3.

7. Respondent was properly served with the "Order Suspending Respondent's License and Notice of Hearing" dated December 13, 2022, by depositing same in the United States mail, certified mail, return receipt requested. An Amended Notice of Hearing followed on December 21, 2022, when the hearing date was set by mutual agreement.

8. W. VA. CODE R. § 2-2-4.11 states "a complaint or Notice of alleged violation sent to registered architects . . . [is] properly served when sent to their last known address." This Order was sent to Respondent's last known address.

9. The Board may designate a Hearing Examiner to conduct hearings. W. VA. CODE R. § 2-2-6.6.10. The undersigned Hearing Examiner is a licensed attorney, and was designated by the Board to conduct this hearing. This hearing was conducted pursuant to West Virginia Code and the Board's Legislative and Procedural Rules.

10. At this hearing, the rules of evidence as applied in civil cases in the circuit courts of this state were followed. See W. VA. CODE R. §2-2-6.6.3. “[W]hen necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.” *Id.* All exhibits entered into evidence at hearing were authentic and valid and were admitted with the proper evidentiary foundation.

11. The Board bears the burden of proving the allegations in the Complaint and Notice of Hearing. W. Va. Code R. § 2-2-6.6.13. Unless otherwise stated this burden of proof is by a preponderance of the evidence. A “preponderance of the evidence” means the greater weight of the evidence, “even in the slightest degree.” *McCullough v. Clark*, 106 S.E.61, 70 (W. Va. 1921).

12. Credibility is determined by the Hearing Examiner in administrative cases, based upon thorough evaluation of witness testimony. See *Darby v. Kanawha County Bd. of Educ.*, 227 W. Va. 525, 711 S.E.2d 595 (2011). The Hearing Examiner is uniquely situated to make such determinations, and such determinations are binding unless patently without basis in the record. *Martin v. Randolph County Bd. of Educ.*, 195 W. Va. 297, 304, 465 S.E.2d 399, 406 (1965); See also, *Modi v. W.Va. Bd. of Medicine*, 195 W. Va. 230, 239; 465 S.E.2d 230, 239 (1995).

13. Credibility determinations may be based upon many factors, including the following: the general demeanor and comportment of the witness at hearing; the bias or interest of the witness; the consistency or inconsistency of the statements of the witness;

the witness' ability and acuteness to observe; the memory of the witness; the reputation for honesty of the witness; and other factors which tend to cause the trier of fact to believe or disbelieve the testimony of the witness. See *Franklin D. Cleckley, Handbook on Evidence for W. Va. Lawyers*, § 607.02(1)(b) (5th Ed. 2012).

14. The undersigned Hearing Examiner finds the testimony of Ms. Papadopoulos, Scott Dickerson, Jennifer Dickerson, Brad Vladu, and Adam Krason to be credible. Their testimony was consistent and supported by documentary evidence.

15. The undersigned finds the limited testimony of Respondent at hearing and his written responses, in general, to be less than credible and self-serving. Respondent blamed everyone but himself for his multiple construction issues. He indicated all statements made by the Dickersons were erroneous and also stated he had not "violated any statutes, laws or regulations." He did admit he owed both Complainants some money, but not the amount Vladu was seeking.

16. W. VA. CODE R. § 2-1-9.1.1. states, "a registered architect primary duty is to protect the public's health safety, and welfare" and "a registered architect shall act with reasonable care and competence."

17. W. VA. CODE R. § 2-1-2.28 states "willful departure from accepted standards of professional conduct" means, at 2.28b, "willful failure to substantially perform in accordance with the term of the contract or subcontract."

18. The Board has met its burden of proof and established Respondent was clearly a danger to the public welfare in the state of West Virginia. He signed contracts with clients, took their money and then did not come close to "substantially perform[ing] in accordance with the term of the contract." He failed to meet benchmarks, he did not

have the required insurance to protect his clients, and the Dickersons and Mr. Vladu are out thousands of dollars that they need to complete the projects he started. Respondent failed to protect their financial welfare.

19. The Board has also met its burden of proof and demonstrated Respondent "did not substantially perform in accordance with the term of the contract." The Dickersons and Mr. Vladu were left with holes in the ground or a portion of a half-completed shell. The materials they paid for were not ordered. These actions establish a "willful departure from accepted standards of professional conduct."

20. The Board has proven Respondent was not knowledgeable about the Board's rules and regulations and lied on his registration application dated June 16, 2022.

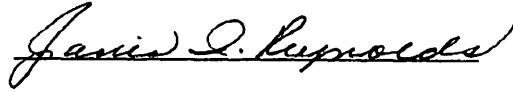
21. The Summary Suspension Order was properly issued as demonstrated by the above listed Findings of Fact and Conclusions of Laws. Respondent presents a danger to the public's welfare. At hearing, Respondent did not demonstrate a clear understanding of the serious nature of his actions, and the harm he caused to the Dickersons and Mr. Vladu.

RECOMMENDED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner **RESPECTFULLY RECOMMENDS and FINDS** that the West Virginia Board of Architects has proven the allegations identified in the Order Suspending Respondent's License dated December 13, 2022, and Amended Notice of Hearing dated December 21, 2022. Respondent's behavior and actions violated both the West Virginia Code and the Board's Legislative Rules as set forth herein. **FURTHER**, the undersigned recommends

the Board determine what disciplinary action should be taken against Respondent's architect registration.

DATED: April 14, 2023

A handwritten signature in cursive script, reading "Janis I. Reynolds". The signature is written in black ink and is positioned above the printed name.

Janis I. Reynolds, Esquire
Hearing Examiner
WV State Bar No. 4363