

LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD
9643 BROOKLINE AVENUE, SUITE 121
BATON ROUGE, LOUISIANA 70809-1443
(225) 925-6291

Received
JAN 17 2017
By LAPELS Enforcement

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| IN THE MATTER OF: |) | CASE NO. 2016-38 |
| |) | |
| THOMAS M. GARDNER, P.E. |) | |
| |) | |
| RESPONDENT |) | |
| |) | |

CONSENT ORDER

The Louisiana Professional Engineering and Land Surveying Board [hereinafter the "Board"], by and through its Executive Director, pursuant to authorization by the Board, and Thomas M. Gardner, P.E. [hereinafter "Respondent"] hereby agree to the following:

At all times material hereto, Respondent was licensed in the State of Louisiana as a professional engineer, number PE-31166. At all times material hereto, Osmose Utilities Services, Inc. [hereinafter "Osmose"] was not licensed in the State of Louisiana as a professional engineering firm and, therefore, was not authorized to practice and/or offer to practice engineering in the State of Louisiana. Osmose subsequently became licensed in the State of Louisiana as a professional engineering firm, number EF-5722, effective March 18, 2015. At all times material hereto, Respondent was an employee of Osmose. Respondent is now a supervising professional of Osmose.

An investigation was opened based upon the Board's receipt of an Application for Firm Licensure, in which Osmose disclosed that in 2013 Respondent (on behalf of and in the name of Osmose) prepared, sealed, signed and issued to their client engineering drawings in connection with a steel pole repair project in Lafourche Parish, Louisiana.

La. R.S. 37:681 and 37:700(A)(1) and (9), *to wit* LAC Title 46:LXI§2301(B), prohibit the practicing of and/or offering to practice engineering without proper licensure. La. R.S. 37:698(A)(12) prohibits licensees from aiding or assisting another person in violating the laws and/or rules of the Board. La. R.S. 37:698(H) permits the Board to take disciplinary action

against persons who violate La. R.S. 37:698(A)(12), upon a finding of guilt following the preferral of charges, notice and hearing and a majority vote of its entire membership authorized to participate in the proceeding. La. R.S. 37:681, La. R.S. 37:698(A)(12) and (H), La. R.S. 37:700(A)(1) and (9), and LAC Title 46:LXI§2301(B) were in effect at all times material hereto.

It is undisputed that (a) in 2013 Osmose was not licensed to practice and/or offer to practice engineering in Louisiana, (b) during this time period Osmose inadvertently practiced and/or offered to practice engineering in Louisiana without proper licensure and (c) Respondent unknowingly aided or assisted Osmose in the practicing of and/or offering to practice engineering in Louisiana without proper licensure.

By letter dated October 31, 2016, the Board gave notice to Respondent that it was considering the preferral of charges against Respondent on the grounds that Respondent may have violated La. R.S. 37:698(A)(12), relative to aiding or assisting another person in violating the laws and/or rules of the Board.

Wishing to dispense with the need for further disciplinary action and to conclude the instant proceeding without further delay and expense, for the purpose of this proceeding only, Respondent and the Board do hereby enter into this Consent Order, in which Respondent of his own free will consents to the issuance of a Consent Order by the Board, wherein Respondent agrees to (a) pay a fine of five hundred and no/100 (\$500.00) dollars, (b) pay administrative costs of three hundred thirty-one and 92/100 (\$331.92) dollars, (c) successfully complete the Board's online Louisiana Laws and Rules Quiz, (d) successfully complete the Board's online Louisiana Professionalism and Ethics Quiz, and (e) the publication of this Consent Order on the Board's website and a summary of this matter in the Board's official journal, the *Louisiana Engineer and Surveyor Journal*, and the reporting of this matter to the National Council of Examiners for Engineering and Surveying (NCEES), identifying Respondent by name.

Respondent admits that his conduct as set forth above, constitutes violations of the above referenced laws and/or rules as stated herein. Respondent acknowledges awareness of said laws and/or rules and states that he will comply with all applicable laws and rules henceforth. Respondent has been advised of his right to be represented by counsel before the Board and/or to appear at any hearing personally or by counsel and present witnesses and evidence in his own behalf, he hereby waives this right and his right to appeal, and he states affirmatively that he has

been afforded all administrative remedies due him under the law. Respondent further acknowledges awareness of the fact that the signed original of this Consent Order will remain in the custody of the Board as a public record and will be made available for public inspection and copying upon request.

Therefore, in consideration of the foregoing and by signing this Consent Order, Respondent does hereby waive his right to a hearing before the Board, to the presenting of evidence and witnesses in his behalf, to Findings of Fact and Conclusions of Law in this case, and to judicial review of this Consent Order.

Respondent hereby represents that (a) he fully understands the meaning and intent of this Consent Order, including but not limited to its final and binding effect, (b) he has voluntarily entered into this Consent Order and that no other promise or agreement of any kind has been made to or with him by any person whatsoever to cause the execution of this instrument and (c) the sanctions set forth in this Consent Order do not prevent the Board from taking further disciplinary or enforcement action against Respondent on matters not specifically addressed in this Consent Order.

WHEREFORE, the Louisiana Professional Engineering and Land Surveying Board and Respondent agree that:

1. Respondent shall pay a fine of five hundred and no/100 (\$500.00) dollars, which shall be tendered to the Board by certified check payable to the Board, due upon the signing of this Consent Order; and
2. Respondent shall pay administrative costs of three hundred thirty-one and 92/100 (\$331.92) dollars, which shall be tendered to the Board by certified check payable to the Board, due upon the signing of this Consent Order; and
3. Respondent shall successfully complete the Board's online Louisiana Laws and Rules Quiz with a score of 90% or higher and return it to the Board within sixty (60) days of the effective date of this Consent Order; and
4. Respondent shall successfully complete the Board's online Louisiana Professionalism and Ethics Quiz with a score of 90% or higher and return it to the Board within sixty (60) days of the effective date of this Consent Order; and
5. This Consent Order shall be published on the Board's website and a summary

of this matter shall be printed in the official journal of the Board, the *Louisiana Engineer and Surveyor Journal*, and reported to the National Council of Examiners for Engineering and Surveying (NCEES), identifying Respondent by name; and

6. This Consent Order shall not become effective unless and until it is accepted and signed by and on behalf of the Board. Should the Board not accept and sign this Consent Order, it is agreed that presentation of this matter to the Board shall not prejudice the Board or any of its members, staff, attorneys or representatives from further participation, consideration, or resolution of any further proceedings herein.

LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD

DATE: 3/13/17

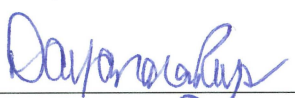
BY: 
DONNA D. SENTELL, Executive Director

DATE: 1/9/2017


THOMAS M. GARDNER, P.E., Respondent

Witnesses to the signature of
Thomas M. Gardner, P.E.


Print Name: James


Print Name: Dayana

Approved by:

Emile Joseph, Jr.
Allen & Gooch
200 Kaliste Saloom Rd., Ste. 400
Lafayette, LA 70508
Telephone: (337) 291-1000

Attorneys for Thomas M. Gardner, P.E.