

BEFORE THE NEBRASKA BOARD OF ENGINEERS AND ARCHITECTS

IN THE MATTER OF:)	CASE NO.: 17.15
NEBRASKA BOARD OF ENGINEERS)	
AND ARCHITECTS,)	
)	
Petitioner,)	
)	
v.)	ORDER OF
)	DISCIPLINARY ACTION
)	
WTA LAND, LLC and WAMSLEY)	
CONSTRUCTION, LLC,)	
)	
Respondent.)	

This matter comes on for hearing on February 2, 2018. Testimony was heard and evidence was received. Based on the testimony and evidence received, the Nebraska Board of Engineers and Architects (the Board) finds and rules as follows:

The Parties

1. Respondent, WTA Land, LLC (“WTA”) is a limited liability company registered in the State of Michigan which owns real property located at 1200 Pole Creek Crossing, Sidney, Cheyenne County, Nebraska (the “Property”).
2. Respondent, Wamsley Construction, LLC, (“Wamsley”) is a limited liability company registered in the State of Nebraska, with its principal office located at 1403 Illinois Street, Sidney, Cheyenne County, Nebraska.
3. The Board of Engineers and Architects (the “Board”) was created to administer the Engineers and Architects Regulation Act, Neb. Rev. Stat. §§81-3401 to 81-3455.

The Hearing

4. On or about April 3, 2017, Petitioner received a submission of unsealed plans and a copy of the Plan Submittal Application from the Nebraska State Fire Marshal's Office of renovations to 1200 Pole Creek Crossing, Sidney, Nebraska (the "Project") which is owned by Respondent WTA. The renovations were to be performed by Respondent Wamsley.

5. On or about December 18, 2017, counsel for the Board served a Petition for Disciplinary Action and Notice of Hearing to Respondents by United States Registered Mail. The Petition notified Respondents that a hearing would be held on February 2, 2018 before the Board to address the Board's concern that the renovations to the Property constituted the unlicensed practice of engineering and architecture in violation of the Engineers and Architects Regulation Act, Neb. Rev. Stat. §§81-3401 to 81-3455 (the "Act").

6. The hearing was held on February 2, 2018. A quorum of the Board was present. The Board was represented through counsel, Special Assistant Attorney General Sean Minahan. The Respondents did not appear and were not represented at the hearing.

Findings of Fact

7. WTA owns the Property and authorized Wamsley to submit plans for renovating the Property.

8. On March 15, 2017 Wamsley submitted a Plan Submittal Application along with unsealed plans to the Nebraska State Fire Marshal describing and outlining the renovations to be performed on the Property.

9. On April 3, 2017, the Board received notice from the Nebraska State Fire Marshal's Office of the submission of unsealed plans and the Plan Submittal Application and a report that Wamsley was in the process of modifying or remodeling the Property.

10. Compliance Officer, Lindy Rauscher, contacted Wamsley and confirmed the renovations on the Project had begun and that no licensees were involved in the Project.

Wamsley also provided a description of the work involved in the renovation.

11. Upon review of the Project, unsealed plans and description of the Project, the Board determined the Project impacted the entire structure comprising 5,000 square feet and initiated a complaint.

12. On May 30, 2017, Board Executive Director, Jon Wilbeck, filed Complaint 17.15 on behalf of the Board on the basis that the Project appeared to constitute the unlicensed practice of engineering and architecture in violation of the Act. Lindy Rauscher issued Complaint 17.15 and served notice to WTA and Wamsley of Complaint 17.15.

13. On June 13, 2017 Wamsley responded to the Complaint and denied any violation of the Act.

14. On June 19, 2017, and upon inquiry from the Board, Wamsley provided a description of the scope of work for the Project. Wamsley's description of scope of work was reviewed by the Board which then authorized remediation of the Project pursuant to Board Rule 8.4 (Title 110, Neb. Admin. Code).

15. On July 6, 2017, Lindy Rauscher, pursuant to Board authorization, served notice to WTA and Wamsley ordering the Project undergo the remediation process described in Board Rule 8.4 (Title 110, Neb. Admin. Code) and requiring Respondents submit a written plan of remediation by July 28, 2017.

16. Wamsley contacted Lindy Rauscher informing her that they had contacted a professional engineering firm to begin the remediation process.

17. On July 19, 2017, Lindy Rauscher was contacted via email by Megan Hayward, a licensed architect, from the organization of Joseph R. Hewgley and Associates, to discuss the remediation process and potential deficiencies that were observed during a preliminary evaluation.

18. On July 21, 2017 Wamsley submitted a letter to the Board confirming that Wamsley had contacted an architectural firm to conduct a preliminary inspection and provide a second opinion for the remediation process.

19. On August 14, 2017, Lindy Rauscher, on behalf of the Board, forwarded a letter to WTA and Wamsley requesting a written plan for completion of the remediation process by September 12, 2017.

20. On August 22, 2017, Wamsley sent an email informing Lindy Rauscher that the Project was complete and the Property was now occupied pursuant to an occupancy permit from the City of Sidney. Wamsley also indicated that Respondents would like the matter settled and they were willing to pay a fine for their lack of knowledge and any perceived infraction.

21. On August 30, 2017, Lindy Rauscher, on behalf of the Board, responded to Wamsley's August 22nd email and inquired whether Respondents were planning to have the Project reviewed by a Nebraska licensed architect or professional engineer as required by the remediation process.

22. On August 30, 2017, Wamsley responded to Lindy Rauscher's inquiry and informed Lindy Rauscher that Respondents were not planning on having a Nebraska licensed architect or professional engineer review the Project.

23. On December 18, 2017, counsel for the Board served a Petition for Disciplinary Action and Notice of Hearing to Respondents by United States Registered Mail.

24. Thereafter, Wamsley and Lindy Rauscher spoke about the February 2, 2018 hearing on the Petition for Disciplinary Action and whether Wamsley was required to attend or be represented. Lindy Rauscher suggested the Respondents attend but that Respondents were not required to attend or be represented.

25. On January 16, 2018, Lindy Rauscher received an email from Larry McCaslin, a Nebraska licensed professional engineer. Larry McCaslin informed Lindy Rauscher that he had met with Wamsley to discuss the Petition for Disciplinary Action and Respondents had asked Larry McCaslin to assist Respondents in preparing a written remediation action plan. Larry McCaslin had agreed the Project required plans and specifications be designed and stamped by an engineer or architect.

26. On January 18, 2018, Larry McCaslin submitted a Remediation Action Plan which included Larry McCaslin's review of the Project and opinions as to deficiencies in the design of the Project. Larry McCaslin opined that there were no deficiencies in the design and construction of the Project based on the following:

- The plans were reviewed and approved by the City of Sidney Chief Building Official who issued a Certificate of Occupancy;
- The plans were reviewed and approved by the State Fire Marshal's office who issued a statement of approval;
- The HVAC system was designed and installed according to design recommendations of the equipment manufacturer;
- Existing restrooms were expanded to accommodate the expanded office area; and
- Visual observations of the Project indicated construction in a professional and workmanlike manner.

27. Larry McCaslin's Remediation Action Plan failed to address deficiencies that had been originally noted in the prior review of the Project by the Joseph R. Hewgley and Associates firm. The Remediation Action Plan failed to provide any analysis as to whether the Project met any of the engineering and architectural standards to which Nebraska licensed architects and professional engineers are held in order to perform work constituting the practice of architecture or engineering. Larry McCaslin's opinions are based primarily on the opinions and reviews of other individuals who are not Nebraska licensed architects or professional engineers. Larry McCaslin has not sealed the original plans submitted by Respondents or provided sealed plans for the Project.

Conclusions of Law

28. Through its conduct, Respondent WTA has been engaged in the practice of architecture and engineering in violation of § 81-3441.

29. Through its conduct, Respondent Wamsley has been engaged in the practice of architecture and engineering in violation of § 81-3441.

30. Respondents WTA and Wamsley have failed to provide a Remediation Action Plan which meets the requirements of Board Rule 8.4 (Title 110, Neb. Admin. Code).

31. The practice of architecture and engineering without a license is a violation of the Engineers and Architects Regulation Act, Neb. Rev. Stat. § 82-3401 to 81-3455, and Respondents WTA and Wamsley are subject to disciplinary action.

Order

32. Respondents WTA and Wamsley are hereby directed to cease and desist all acts constituting the unlicensed practice of architecture and engineering, including, but not limited to the construction, remodeling, alteration, renovation, or remediation of any buildings on the

Property, subject to the Act, unless such construction, remodeling, alteration, renovation, or remediation is designed and supervised by an appropriately state licensed architect or professional engineer.

33. The Board further finds that Respondents WTA's practice of architecture and engineering without a license or without proper authorization is a substantial risk to the life, health and property of the public and hereby imposes a civil penalty of \$5,000.00 as allowed under Neb. Rev. Stat. § 81-3444(1)(e).

34. The Board further finds that Respondent Wamsley's practice of architecture and engineering without a license or without proper authorization is a substantial risk to the life, health and property of the public and hereby imposes a civil penalty of \$5,000.00 as allowed under Neb. Rev. Stat. § 81-3444(1)(e).

35. The Board assesses costs of these proceedings against Respondents WTA and Wamsley as follows:

- a. Investigatory Costs: \$ 84.17
- b. Attorney's Fees: \$ 3,541.00
- c. Court Reporter: \$ 160.00
- d. Total: \$ 3,785.17

36. Due to the mitigating circumstances of Respondents attempts to provide a Remediation Action Plan, the Board defers enforcement of the civil penalties, investigatory costs, attorney's fees, and court reporter for a period of six (6) months upon execution of this Order while Respondents submit to the Board a Remediation Action Plan that sufficiently meets the requirements of Board Rule 8.4 (Title 110, Neb. Admin. Code).

37. Upon compliance with the requirements of Board Rule 8.4, as approved by this Board, the Board shall waive the civil penalties, investigatory costs, attorney's fees, and court reporter outlined above.

38. In the event Respondents fail to provide to the Board a Remediation Action Plan that sufficiently meets the requirements of Board Rule 8.4 (Title 110, Neb. Admin. Code) the Board will order the civil penalties and costs due immediately and take the necessary steps to enforce the civil penalties and costs.

39. Respondents WTA and Wamsley are individually liable for their respective civil penalty, and jointly and severally liable for all costs.

Dated: April 20, 2018.

THE NEBRASKA BOARD OF ENGINEERS
AND ARCHITECTS, Petitioner

By: Jennifer Klein

Its: Chair

