

BEFORE THE NEBRASKA BOARD OF ENGINEERS AND ARCHITECTS

IN THE MATTER OF:)	CASE NO.: 21-41
NEBRASKA BOARD OF ENGINEERS)	
AND ARCHITECTS,)	
)	
Complainant,)	
)	SETTLEMENT AGREEMENT FOR
v.)	DISCIPLINARY ACTION
)	
TOBIAS GAY, individually and GAY &)	
ASSOCIATES, INC, a Nebraska corporation,)	
)	
Respondents.)	

COME NOW the Complainant, State of Nebraska Board of Engineers and Architects (the “Board”), and Respondents, Tobias Gay and Gay & Associates, Inc. and in consideration of the mutual covenants and agreements contained herein, stipulate and agree as follows:

THE PARTIES

1. Respondent, Tobias Gay (“Gay”), is an individual who is a licensed professional engineer (E-9749) and a licensed architect (A-2159) in the State of Nebraska and is an owner/operator of Gay & Associates.
2. Respondent, Gay & Associates, is an organization that provides engineering and architectural services in the State of Nebraska.
3. Complainant, the Board, was created by the State of Nebraska to oversee the laws and rules which govern the practice of engineering and architecture in the state in order to safeguard life, health, property and promote public welfare pursuant to Neb. Rev. Stat. §§ 81-3401 – 81-3455 and Title 110 of the Nebraska Administrative Code.
4. On December 10, 2021, the Board initiated a complaint against Gay regarding violations of Title 110 Neb. Admin. Code. Rules 5.1.1, 5.1.3 and 5.1.6 as to Gay’s practice of

engineering on two projects, (1) Virg's Garage, 367 A Street, Platte Center, Nebraska, and (2) Schweitzer's Shop, 2323 13th Street, Columbus, Nebraska.

5. The Board submitted the information obtained through the investigation to a professional engineer licensed in the State of Nebraska to provide an assessment of structural competency on the projects which Gay provided technical information.

6. On March 14, 2022, the professional engineer issued a report who was of the opinion that Gay "lacks the necessary understanding of structural engineering to practice structural engineering." The professional engineer also advised the Board of the potential risk to the health and safety of the public with regard to the Schweitzer Shop and noted potential structural engineering deficiencies of other projects.

7. The parties to this Settlement Agreement hereby stipulate that Gay and Gay & Associates have violated Title 110 Neb. Admin. Code Rule 5.1.1, 5.1.3 and 5.1.6 as it relates to Virg's Garage and Schweitzer's Shop projects. The parties also stipulate that Gay & Associates have been offering engineering and architecture services without a Certificate of Authorization as required by Neb. Rev. Stat. §81-3436 and is therefore in violation of said statute.

8. In the event there are any further violations of Nebraska statutes or regulations, the parties agree that the Settlement Agreement will not be construed as a legal admission by Gay or Gay & Associates of a violation of law or regulation, except for the limited purpose as referenced in this Agreement.

9. Gay and Gay & Associates are entitled to formal process, including a hearing as provided by law. However, the Board, Gay, and Gay & Associates, have agreed by way of this Settlement Agreement to resolve this matter, without formal process, including a formal hearing. Gay and Gay & Associates hereby waive their right to any hearing or procedure provided by law

and further waive any right to review any findings entered by the Board prior to an entry of final order in this case.

10. The Board agrees it will forego prosecuting the formal action against Gay and Gay & Associates, except if necessary to enforce the terms of this Settlement Agreement, if Gay and Gay & Associates comply with the Settlement Agreement, including the following terms:

(A) Gay and Gay & Associates will cease and desist from providing any structural engineering services on any project which is subject to regulation in accordance with the Nebraska Engineers and Architects Act Neb. Rev. Stat. §81-3401 et al:

(B) Within 30 days of the approval of this Settlement Agreement, Gay & Associates apply for and obtain a Certificate of Authorization as required by Neb. Rev. Stat. §81-3436.

(C) Within 30 days of approval of this Settlement Agreement, Gay and/or Gay & Associates will pay costs as follows:

1.	Investigatory Costs:	\$2,801.81
2.	Attorney Fees:	<u>\$2,205.00</u>
3.	Total:	<u>\$5,006.81</u>

(D) Within 30 days of approval of this Settlement Agreement, Gay and Gay & Associates agrees to pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) in addition to the costs identified in (C).

(E) Within 6 months of approval of this Settlement Agreement, Gay shall provide the Board a complete list of all clients Gay and Gay & Associates have provided structural engineering services for in the past ten (10) years, which list shall be attached to this Settlement Agreement as Exhibit "A." Gay shall also provide written notice as outlined in Attachment "B" to project owners for whom Gay and Gay & Associates have performed structural engineering

services for the last ten (10) years as to the stipulated findings in this Settlement Agreement as provided in Attachment "B" and send proof of delivery of such notice to the Board.

11. Gay and Gay & Associates voluntarily agree to the terms of this Settlement Agreement and understand the Settlement Agreement will be formally considered a disciplinary action by the Board.

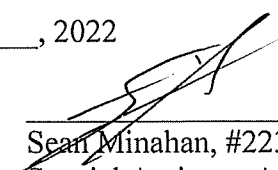
12. Gay and Gay & Associates agree and understand that if either are found to violate any other or separate provision of Nebraska law or regulation which govern the activities of licensed architects and professional engineers in the State of Nebraska within a period of five (5) years of executing this Settlement Agreement, the Board may consider matters referenced in this Settlement Agreement in imposing any subsequent penalty against Gay and Gay & Associates for separate offenses.

13. Gay and Gay & Associates agree and understand that if either does not comply in all respects with the terms of this Settlement Agreement the Board is entitled to pursue all other remedies allowed pursuant to Nebraska law and regulations, including a separate proceeding brought against Gay and Gay & Associates with respect to the violations alleged in the complaint.

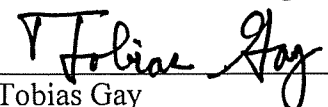
14. The parties agree and understand this Settlement Agreement is not binding unless and until it is accepted and approved by the Board.

Dated this 17 day of JULY, 2022

By: _____


Sean Minahan, #22342
Special Assistant Attorney General
Nebraska Board of Engineers and Architects

By: _____

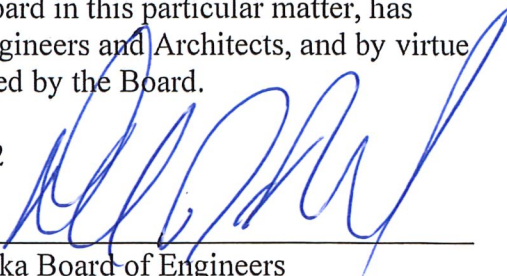

Tobias Gay

By: TOBIAS GAY
As OWNER of Gay & Associates, Inc.

BOARD APPROVAL

The foregoing Settlement Agreement, having been signed and executed by Tobias Gay and Gay & Associates, Inc. as well as the attorney for the Board in this particular matter, has been reviewed by the members of the Nebraska Board of Engineers and Architects, and by virtue of the signature below, this Settlement Agreement is approved by the Board.

Dated this 5th day of AUGUST, 2022

By: 
As Chair, Nebraska Board of Engineers
and Architects

