

**BEFORE THE  
WEST VIRGINIA BOARD OF PROFESSIONAL SURVEYORS**

**West Virginia Board of  
Professional Surveyors,**  
Complainant,

vs.

**COMPLAINT NO.: C13-02**

**Evan Daniel Baker, Jr.**  
WV Professional Surveyor License No. 2094,  
Respondent.

**CONSENT DECREE**

The Respondent, Evan Daniel Baker, Jr., ("Respondent"), and the West Virginia Board of Professional Surveyors ("Board") execute the following Consent Decree for the purpose of resolving Complaint No. C13-02, filed against the Respondent on September 27, 2012. The parties have reached an agreement, in lieu of a hearing, which the Respondent hereby agrees and stipulates to the Findings of Fact, Conclusions of Law, Consent, and Order set forth in this Consent Decree concerning the disposition of this matter.

**FINDINGS OF FACT**

The Board adopts the following findings in this matter:

1. The Board is a state agency created by *West Virginia Code* §30-13A-4, and is authorized to regulate the conduct of Professional Surveyors in the State of West Virginia.
2. Evan Daniel Baker, Jr., ("Respondent"), is a Professional Surveyor licensed by the Board, holding license No. 2094.
3. Respondent is designated as the Surveyor-in-Charge ("SIC") for Civil & Environmental Consultants, Inc., located in Pittsburgh, Pennsylvania, which has held a Certificate of Authorization ("COA") continuously since January 1, 2008. (COA No. 5615).
4. Civil & Environmental Consultants, Inc., was contracted by Caiman Energy, a Texas Limited Liability Company, to conduct an ALTA/ACSM Land Title Survey of two parcels of land owned by the Olin Corporation, a Virginia corporation, and situate in Clay District, Marshall County, West Virginia.

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5. On August 2, 2011, the Respondent prepared and certified two (2) ALTA/ACSM survey plats.
6. On August 15, 2011, by Special Warranty Deed, ownership title to the property was transferred to Caiman Energy, and recorded in Marshall County, West Virginia, in Deed Book 743 at Page 385.
7. On September 4, 2012, the Board received a copy of the surveys prepared and certified by the Respondent.
8. On September 26, 2012, the Board filed a Complaint against the Respondent alleging incompetence, including minimum standard violations. *See W. Va. Code R. §23-5-9.1, (2008).*
9. On September 27, 2012, the Board upon preliminary review of the certified survey documents assigned Complaint Number C13-02.
10. On September 27, 2012, a Complaint Notification Letter was sent to the Respondent by certified mail and signed-for by Evan Baker on September 29, 2012.
11. On October 22, 2012, the Respondent revised and certified his two (2) ALTA/ACSM survey plats.
12. On October 24, 2012, the Respondent's response was received by the Board.
13. On November 7, 2012, the Board's Complaint Review Committee ("CRC") reviewed Complaint C13-02.
14. On November 15, 2012, the Board reviewed the Complaint and requested that the Respondent provide the field notes as requested in the complaint notification letter dated September 27, 2012, and approved an investigator to investigate Complaint C13-02.
15. On December 7, 2012, a Request for Additional Information requesting a "copy of all field notes (handwritten or electronic) of the subject survey," was sent to the Respondent by certified mail and signed-for by Evan Baker on December 19, 2012.

16. On December 13, 2012, the Board contracted Donald L. Teter, West Virginia Professional Surveyor #767, ("Investigator"), to conduct an investigation of Complaint C13-02, to ascertain additional facts and report such findings to the Board.

17. On January 3, 2013, the Respondent's response to the Request for Additional Information was received by the Board.

18. On March 15, 2013, the Investigator hand-delivered his Report of Investigation to the Board.

19. On March 15, 2013, the CRC again reviewed Complaint C13-02.

20. On March 21, 2013, the Board found probable cause that the Respondent violated the *West Virginia Professional Surveyors Act*.

### CONCLUSIONS OF LAW

1. Pursuant to *West Virginia Code* §30-1-8(a), the Board is authorized to enter into consent decrees for the informal disposition of complaints in lieu of a formal hearing.

2. Pursuant to *West Virginia Code* §30-1-8(a), the Board is also authorized to assess administrative costs against the licensee for reimbursement of costs of the investigation, hearings and other expenses relative to the complaint, when the Board finds grounds for disciplinary action.

3. Pursuant to *West Virginia Code* §30-13A-22(g), "[t]he Board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke the license or certificate of authorization of, or impose probationary conditions upon or take disciplinary action against, any licensee or certificate holder..." (2010).

4. Pursuant to *West Virginia Code R.* §23-5-7.1, the purpose of minimum standards for surveys, "[i]s to establish minimum technical criteria to govern the practice of surveying when more stringent specifications are not required. Further, the purpose is to protect the inhabitants of this state from dishonest or incompetent surveying and generally to protect the public health, safety and welfare." (2008).

5. The Respondent's disregard of existing evidence without sufficient explanation, and belief that his job is to place measurements on the ground rather than to seek, find, and analyze evidence, is a failure to meet minimum standards and generally accepted practices of surveying, in violation of *W. Va. Code R. §23-5-2.20.c*.

6. The Respondent failed to conduct adequate research for the deed first calling for the concrete monuments in violation of *W. Va. Code R. §23-5-7.3.b*.

7. The Respondent ignored found monuments in the field and gave greater weight to measurements in violation of *W. Va. Code R. §23-5-7.3.d.1*.

8. The Respondent relied upon calculated positions and then monumented them on the ground in positions in conflict with the existing and called for monuments in violation of *W. Va. Code R. §23-5-7.3.d.1*.

9. The Respondent failed to describe all corners or reference monuments on his survey plats, in violation of *W. Va. Code R. §23-5-7.3.g.6*.

10. The Respondent failed to show numerous overlaps and gaps on his plat, created from his monumentation in violation of *W. Va. Code R. §23-5-7.3.g.7*.

### CONSENT

By signing below, the Respondent agrees to the following:

1. Respondent has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein.

2. Respondent 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 and voluntarily waives such rights.

3. Respondent acknowledges that this document is a public Record as defined in *West Virginia Code* §29B-1-2(4), and as such, the Board is legally bound to allow any person to review this Consent Decree. Moreover, the results of the Board's action may be reported to other authorities and agencies.

4. Respondent consents to the entry of the following Order affecting his conduct as a professional surveyor.

### ORDER

On the basis of the foregoing, the Board hereby ORDERS as follows:

1. Respondent is hereby REPRIMANDED for his actions in the instant matter as outlined above in the Findings of Fact and Conclusions of Law. The Board finds that the Respondent violated *West Virginia Code R.* §§23-5-2.20.c, 7.3.b, 7.3.d.1, 7.3.g.6, and 7.3.g.7, (2008).

2. Respondent's license is hereby SUSPENDED for his actions in the instant matter as outlined above in the Findings of Fact and Conclusions of Law for a period of two (2) years; however, the suspension is STAYED and the Respondent is hereby placed on PROBATION pending completion of the conditions of this Order. Failure to comply with the requirements of this Order, will result in revocation of the probation and automatic suspension of Respondent's license.

3. Respondent shall pay to the West Virginia Board of Professional Surveyors a fine in the amount of **\$500.00**, (*Reference Complaint C13-02*), for minimum standard violations; to be deposited in the general fund of the State of West Virginia. Respondent shall pay the fine within ninety (90) days of entry of this Order into the records of the Board.

4. Respondent shall pay to the West Virginia Board of Professional Surveyors, by separate check, the administrative costs and legal fees associated with the Board's investigation of this complaint, which totals **\$2,276.00**, to date, (*Reference Complaint C13-02*). Respondent shall pay the administrative costs and legal fees within ninety (90) days of entry of this Order into the records of the Board.

5. Respondent shall complete, with passing grade, a three-semester hour course in Boundary Law, offered by an accredited institution of higher learning. The course shall be submitted to the Board for approval within one-hundred and eighty (180) days and completed within twelve (12) months of the entry of this Order into the records of the Board.

6. Respondent shall revise his plat and prepare a legal description and report of survey in accordance with the current minimum standards for boundary surveys, and all other standards applicable thereto. A certified and signed copy of the plat, legal description and report of survey shall be submitted to the Board and provided to the Client within one hundred and eighty (180) days of entry of this Order into the Records of the Board.

7. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Board, shall constitute a violation of this Order.

8. Respondent shall immediately advise the Board of any changes in his status and advise the Board of his current address at all times during the term of this Consent Decree.

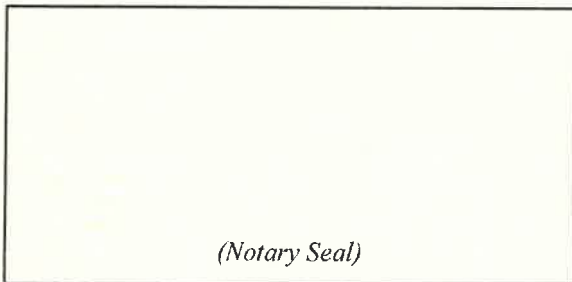
AGREED TO BY:

[Signature] 7/22/2013  
EVAN DANIEL BAKER, Jr., P.S.      DATE

Subscribed and sworn to before me this 22<sup>nd</sup> day of July, 2013.

My commission expires \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Judith A. Ratajczak, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires April 7, 2017  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES




(Notary Seal)

[Signature]

Signature of Notary Public

ENTERED into the Records of the West Virginia Board of Professional Surveyors this:

8th day of August, 2013

  
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ROY E. SHREWSBURY, II  
Chairman



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