

BEFORE THE WEST VIRGINIA BOARD OF PROFESSIONAL SURVEYORS

**WEST VIRGINIA BOARD OF
PROFESSIONAL SURVEYORS,**

Complainant,

v.

Case No. C24-02

**MERLE LEROY SAVILLE,
Licensed Professional Surveyor,
WV License No. 1507,**

Respondent.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Professional Surveyors (“Board”) and Merle Leroy Saville (“Respondent”) for the purpose of agreeing to disciplinary action which shall be taken against Respondent in the above-referenced matters. As a means of compromise, the Board and Respondent hereby agree to resolve these matters by and through a voluntary agreement and consent to disciplinary action, with consideration given to appropriate safeguards for protection of the public.

WHEREAS, Respondent acknowledges that the Board may file a Statement of Charges alleging that he has violated certain provisions of W. Va. Code §§ 30-13A-1 *et seq.* and W. Va. Code R. §§ 23-1-1 *et seq.*, and proceed to hearing and seek disciplinary action in these matters.

WHEREAS, Respondent hereby waives the filing of a formal Statement of Charges and the parties mutually desire to settle these matters without further prosecution and a formal hearing.

WHEREAS, the Board agrees and acknowledges that this agreement is a compromise of

claims disputed by Respondent.

THEREFORE, it is hereby STIPULATED and AGREED between the undersigned parties that these matters be settled and resolved, the parties having reached an understanding concerning the proper disposition of the matters in controversy, and the Board, approving such an agreement, does hereby FIND and ORDER as follows:

FINDINGS OF FACT

1. Respondent is a licensee of the Board, having been issued License No. 1507, and at all times relevant hereto, held an active license issued by the Board. Furthermore, Respondent is listed with the Board as the surveyor-in-charge of DiMagno Consulting, Inc. (“DiMagno”), 61 Eagle School Road, Martinsburg, West Virginia, 25404.

2. On September 27, 2023, the Board sent a board-initiated complaint to Respondent. The complaint alleged that Respondent signed a plat on behalf of Keller Engineering, a firm that performed a survey in West Virginia without a valid Certificate of Authorization (“COA”), in violation of professional standards.

3. On October 6, 2023, upon preliminary review, the complaint was assigned Case No. C24-02. Through the same correspondence, the Board transmitted a copy of the complaint to Respondent and requested that he provide a written response thereto within 30 days.

4. On or about November 1, 2023, Respondent filed a response to the Board’s complaint. Respondent stated that he is the owner of Antietam Design (“Antietam”) located in Hagerstown, Maryland, and is also licensed in West Virginia. Respondent explained that Keller Engineers, Inc. (“Keller”) acquired the assets of Antietam on January 1, 2004, and that Antietam operated as a branch office of Keller until Antietam was closed on June 30, 2009. Respondent maintained that after Antietam was closed, he worked for Keller as a “subconsultant,” and that

Respondent is responsible for supervising survey work performed in West Virginia. Respondent added, “I review (perform quality assurance/quality control) survey work, make corrections and/or recommendations, and have the final decision on the survey draft before sealing and signing the survey draft.” Indeed, on October 15, 2022, Respondent signed a plat for Keller.

5. The Board’s Complaint Review Committee reviewed the Board’s complaint, Respondent’s response, and the documentation submitted in this matter.

6. Upon recommendation of the Complaint Committee, the Board, by majority vote at its meeting on August 28, 2024, found probable cause to believe that Respondent violated the Standards for the Practice of Surveying in West Virginia. The Board found that Respondent violated the “Surveyor-in-charge requirements” set forth in West Virginia Code § 30-13A-21(c) by performing surveyor-in-charge duties for Keller, while being listed as surveyor-in-charge for DiMagno, without the Board’s approval. Additionally, Respondent violated West Virginia Code § 30-13A-22(g)(3) and West Virginia Code of Rules § 23-5-6.1.g., by engaging in unprofessional conduct which placed the public at risk and by associating with a firm that was engaging in fraudulent or dishonest business or professional practices.

CONCLUSIONS OF LAW

1. Respondent is a licensee of the Board, holding License No. 1507, and is therefore subject to the license requirements and disciplinary rules of the Board.

2. The Board is a state entity created and governed by W. Va. Code §§ 30-13A-1 *et seq.*, and is empowered to regulate the practice of surveying in the State of West Virginia.

3. In order to carry out its regulatory duties, the Board has the power to hold a hearing and to suspend or revoke a license, reprimand a licensee, impose probationary

conditions, or take other disciplinary action under W. Va. Code §§ 30-13A-5 and 30-13A-22 and W. Va. Code R. §§ 23-3-6 and 23-5-9.

4. Respondent does not contest that the Board has probable cause to charge him with one or more violations of the Board's governing statutes and rules with regard to the allegations at issue in these matters.

5. Respondent's actions in this matter, if proven, would constitute violations of W. Va. Code §§ 30-13A-21 and 22 and W. Va. Code R. §§ 23-5-1 *et seq.* Such conduct is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, Merle Leroy Saville, by signing this *Consent Agreement and Order*, acknowledge the following:

1. After having had the opportunity to consult with an attorney of my choice, I sign this Consent Agreement and Order voluntarily, freely, without compulsion or duress, and understand that my signature has legal consequences.

2. No person or entity has made any promise or given any inducement whatsoever to encourage me to make this settlement other than as set forth in this document.

3. I am aware that I may pursue this matter through appropriate administrative and/or court proceedings. I am aware of my legal rights regarding this matter, but I have chosen to waive those rights intelligently, knowingly, and voluntarily.

4. I waive any defenses including, but not limited to, laches, statute of limitations, and estoppel, that I may have otherwise claimed as a condition of this agreement.

5. I acknowledge that the execution of this document constitutes disciplinary action by the Board and is therefore considered to be public information.

The Respondent, Merle Leroy Saville, by affixing his signature hereto, agrees to the following Order:

ORDER

Based on the foregoing, the Board does hereby ORDER and DECREE as follows:

1. Respondent is hereby REPRIMANDED for his actions in this matter.
2. Within six (6) months from the date of entry of this Order, Respondent shall complete two (2) hours of Board-approved continuing education on the subject of ethics, and shall submit to the Board a certificate of completion or other documentary proof of successful completion. These two (2) credit hours of continuing education will not count toward the continuing education requirement for license renewal.
3. Within six (6) months from the date of entry of this Order, Respondent shall complete two (2) hours of Board-approved continuing education on the subject of minimum technical standards, and shall submit to the Board a certificate of completion or other documentary proof of successful completion. These two (2) credit hours of continuing education will not count toward the continuing education requirement for license renewal.
4. Any failure to comply with all provisions in this Consent Agreement and Order may result in additional disciplinary action, up to and including the suspension or revocation of Respondent's license to practice surveying in the State of West Virginia.
5. This document is a public record as defined in West Virginia Code § 29B-1-2.
6. This Consent Agreement and Order constitutes the entire agreement between the parties.

In recognition of this *Consent Agreement and Order*, we hereby affix our signatures.

WEST VIRGINIA BOARD OF PROFESSIONAL SURVEYORS

By: _____
Sefton R. Stewart, P.S.
Board Chairman

Entered: _____
Date

REVIEWED AND AGREED TO BY:

Merle Leroy Saville, P.S.
Respondent

Date

This day personally appeared before me, Merle Leroy Saville, whose name is signed to the foregoing document and who is known to me, having acknowledged before me that the statements in the foregoing document are complete, true and correct, to the best of his knowledge, information, and belief, and executed the document voluntarily on the date shown above.

Given under my hand and seal on this the _____ day of _____,
_____.

My Commission expires: _____

Notary Public