

BEFORE THE WEST VIRGINIA BOARD OF PROFESSIONAL SURVEYORS

**WEST VIRGINIA BOARD OF
PROFESSIONAL SURVEYORS,**

Complainant,

v.

Case Nos. C18-03 and C18-05

**RANDALL RAY MYERS,
Licensed Professional Surveyor,
WV License No. 751,**

Respondent.

CONSENT AGREEMENT AND ORDER

The West Virginia Board of Professional Surveyors ("Board") has before it two matters, designated as Case Nos. C18-03 and C18-05, wherein it determined there is probable cause to believe that Respondent, Randall Ray Myers ("Respondent"), exhibited unprofessional conduct in the practice of surveying in violation of certain provisions of W. Va. Code §§ 30-13A-1 *et seq.* and W. Va. Code R. §§ 23-1-1 *et seq.* The Board gave Respondent written notice of the allegations against him and the opportunity to request an administrative hearing under the rules of the Board and the laws of this State. Rather than proceeding to an administrative hearing, the parties have agreed to the entry of this *Consent Agreement and Order* to resolve and dispose of the above-captioned cases.

FINDINGS OF FACT

The Board adopts the following factual findings in Case No. C18-03:

1. Respondent is a licensee of the Board, having been issued License No. 751, and at all times relevant hereto, held an active license issued by the Board.

2. On or about September 14, 2016, the Board received a written complaint from Richard L. McGee alleging deficiencies in the boundary survey that Respondent had completed for him on May 21, 2016.
3. On September 22, 2016, upon preliminary review, the complaint of Richard L. McGee was assigned Case No. C17-05.
4. On October 28, 2016, Respondent faxed to the Board his response to Mr. McGee's complaint and included therewith a certified survey plat with a "Revised Date" of September 15, 2016.
5. The Board's Complaint Review Committee reviewed Mr. McGee's complaint and Respondent's response thereto, and by correspondence dated December 22, 2016, requested that Respondent provide a final plat and corresponding legal description, as the complaint documentation at that point contained four different certified plats, none of which were the same.
6. On January 3, 2017, Respondent submitted to the Board his final plat and corresponding legal description for the boundary survey he had performed for Mr. McGee.
7. The Board's Complaint Review Committee reviewed this final plat and legal description, and on March 7, 2017, the Board found probable cause to believe that Respondent was in violation of the Minimum Standards for Surveys set forth in W. Va. Code R. § 23-5-7.
8. In June 2017, the Board and Respondent entered into a Consent Agreement and Order in Case No. C17-05, which, *inter alia*, required Respondent to "revise his plat and prepare a legal description in accordance with the current minimum standards for boundary surveys" and notified Respondent that any failure to comply with the terms and conditions thereof "shall constitute a violation of this Order which may result in further discipline[.]"

9. The Board received a revised plat and legal description from Respondent on July 31, 2017, which plat bears the notation "Revised July 28, 2017."

10. By correspondence dated September 18, 2017, the Board informed Respondent that it had reviewed his revised plat and legal description, but found that both items failed to meet minimum standards, and therefore the Board was initiating disciplinary action against him for violating the Consent Agreement and Order. Respondent was directed to provide a written response within 30 days and to appear before the Board for an informal conference on October 24, 2017.

11. By facsimile dated October 18, 2017, Respondent submitted to the Board his written response along with a revised plat, report of survey, and legal description.

12. The Board reviewed these revised documents at its regularly-scheduled meeting on October 26, 2017, and thereafter issued a Statement of Charges dated December 19, 2017 and designated as Case No. C18-03, wherein the Board charged Respondent with "fail[ing] to file a revised plat and prepare a legal description in accordance with the current minimum standards for boundary surveys pursuant to Item numbered 2 of the Consent Decree."

13. The Board also issued a Notice of Hearing dated December 19, 2017, which notified Respondent that a hearing was to be held in Case No. C18-03 on January 25, 2018.

14. Respondent, by his legal counsel, Arie M. Spitz, Esq., moved to continue the hearing set for January 25, 2018, which motion was granted.

15. The Board retained licensed professional surveyor, Donald L. Teter, to provide expert analysis and testimony in Case No. C18-03. Mr. Teter issued a report dated December 27, 2018, which report was provided to Respondent's legal counsel on January 3, 2019.

16. In his report, Mr. Teter opined that Respondent failed to comply with the Consent Agreement and Order entered in Case No. C17-05 by submitting to the Board a plat, legal

description, and report of survey that do not comply with the Minimum Standards for Surveys set forth in W. Va. Code R. § 23-5-7. More particularly, Mr. Teter found the following minimum standards deficiencies in the documents that Respondent submitted to the Board on October 18, 2017:

- a. **General requirements:**
§ 23-5-7.3.c. Probable failure to notify adjoining landowner.
- b. **Plat requirements:**
§ 23-5-7.3.g.4. Bearing on plat does not match bearing in description.
§ 23-5-7.3.g.8. Several errors in tax map and parcel numbers.
§ 23-5-7.3.g.9. Adjoining landowners incorrectly identified.
§ 23-5-7.3.g.10. Several incorrect conveyance references.
- c. **Description requirements:**
§ 23-5-7.3.h.2.B. Lot and block numbers not given.
§ 23-5-7.3.h.2.C. Bearing on the easternmost line in the description does not match the bearing on the plat. Adjoining landowners incorrectly identified.
§ 23-5-7.3.h.4. Deed of current owner incorrectly identified, and grantor and grantee are not listed.
- d. **Report requirements:**
§ 23-5-7.3.i.1. Failure to discuss the weight and relevance of the cited deeds.
§ 23-5-7.3.i.3. Failure to discuss apparent conflicting evidence.

17. The Board issued a Notice of Hearing on February 7, 2019, which notified Respondent that a hearing would be held in Case No. C18-03 on March 14, 2019.

18. On March 13, 2019, the parties reached a tentative agreement to resolve Case No. C18-03 without the need for a hearing and, therefore, continued the hearing indefinitely.

The Board adopts the following factual findings in Case No. C18-05:

19. Respondent is a licensee of the Board, having been issued License No. 751, and at all times relevant hereto, held an active license issued by the Board.

20. The Board received a written complaint, dated September 26, 2017, from Arlie Campbell and Tammy Campbell regarding certain surveying work performed by Respondent. The

Campbells submitted various exhibits with their complaint, including four survey plats completed by Respondent.

21. On October 13, 2017, a Complaint Acknowledgement Letter was sent to the Campbells, and Respondent was copied thereon.

22. Following a preliminary review of the Campbells' complaint, the Board sent a copy of the same to Respondent on January 4, 2018 via certified mail, which was received and signed for by Respondent on January 8, 2018. Respondent was instructed to submit a written response to the Board within 30 days and include therewith certain relevant documents.

23. During its preliminary review, the Board's Complaint Review Committee found reference to a boundary survey completed by David Lee, a professional surveyor. The Committee then requested a copy of that survey from the Campbells via correspondence dated January 18, 2018.

24. On January 25, 2018, the Board received the boundary survey that was completed by David Lee for the Campbells regarding "that certain tract, piece or parcel of real estate situate on the waters of Stewart's Run in Grant District, Monongalia County, West Virginia[.]"

25. On February 8, 2018, the Board received Respondent's one-page response, wherein he states, "I probably do not have any more paperwork than what you supplied me" and, further, "I have never done any surveying for Campbell, and he had hired surveyor David Sypolt to resurvey my lines that I surveyed for Whetzell, and Dave agreed where I have placed corner pins, and Campbell fired him (I do not know if Dave got paid for his work or not)."

26. On March 29, 2018, the Board's Complaint Review Committee reviewed the Campbells' complaint, Respondent's response, and the other documents submitted therewith and pertinent thereto, and then recommended to the Board that an independent investigator be hired to review the matter.

27. At its meeting on April 10, 2018, the Board considered the matter, including the recommendation of the Complaint Review Committee, and voted to hire a professional surveyor to conduct an independent investigation of the matter and generate a report regarding the same.

28. In his report dated August 4, 2018, the investigator, Jason T. Smithson, P.S., found that Respondent "did not conform to the Seals and Document Certification requirement set forth in § 23-5-4" and "did not properly conform to the West Virginia Minimum Standards for Surveys due to the lack of properly describing monuments as found or set." Further, Mr. Smithson completed a West Virginia Board of Surveyors Minimum Standards for Boundary Surveys Plat Requirements Checklist for each of the four plats prepared by Respondent and noted any deficiencies therein.

29. After reviewing the aforementioned complaint, response, investigation report, and accompanying documents, the Board, by majority vote at its Board meeting on September 6, 2018, determined there was sufficient evidence to warrant further proceedings and that further action should be taken against Respondent. Specifically, the Board found probable cause to believe that Respondent had violated W. Va. Code § 30-13A-22(g)(3) and W. Va. Code R. §§ 23-5-4.3.a, 23-5-6.1, and 23-5-7.3.g.

30. A Complaint and Statement of Charges describing the foregoing was provided to Respondent's legal counsel on January 3, 2019.

31. On March 13, 2019, the parties reached a tentative agreement to resolve Case No. C18-05 without the need for a hearing.

CONCLUSIONS OF LAW

1. Respondent is a licensee of the Board, holding License No. 751, and is therefore subject to the license requirements 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 was properly notified of the allegations against him and given the opportunity for a hearing in Case Nos. C18-03 and C18-05, pursuant to the rules of the Board and the laws of this State.

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

CONSENT OF LICENSEE

I, Randall Ray Myers, 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 admit that my conduct described herein violated the statutes and rules of the West Virginia Board of Professional Surveyors.

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

The Respondent, Randall Ray Myers, 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 Case Nos. C18-03 and C18-05.
2. Respondent shall be placed on probation beginning on the date of entry of this Order, with supervision by a Board-approved supervisor, which supervision shall focus on Respondent's compliance with the Standards for the Practice of Surveying in West Virginia, including but not limited to the Minimum Standards for Surveys. The supervisor must be a professional surveyor who holds an active license issued by the Board, and the following terms shall apply to the supervision requirement:
 - a. Any and all surveying work that Respondent performs in the State of West Virginia during the probationary period shall be under the review of the Board-approved supervisor and subject to his/her approval.
 - b. The supervisor shall be identified through the execution of a Supervisory Agreement. The supervisor shall be required to enter into such Supervisory Agreement as well as the parties to this *Consent Agreement and Order*.

- c. Respondent shall be responsible for making his first contact with the supervisor no later than fifteen (15) days from the date of entry of this Order and, during that contact, agree with the supervisor on a work review process to be followed during the probationary period.
- d. Respondent shall be responsible for any and all costs associated with the supervision.
- e. The supervisor shall submit to the Board a progress report regarding each boundary survey performed by Respondent in the State of West Virginia during the probationary period, as well as a letter of completion at the conclusion of the probationary period unless the supervisor determines that Respondent has failed to comply with the terms of supervision or has otherwise failed to practice in conformity with the statutes and rules of the Board. If the supervisor makes such determination, the probationary period shall be extended until the supervisor submits a letter of completion to the Board.
- f. The Board adopts and incorporates all terms of the Supervisory Agreement as requirements imposed by this *Consent Agreement and Order*.

3. Subject to the provisions of Paragraph 2(e) of this Order, Respondent's probation shall end two years from the date of entry of this Order or upon the successful completion of six boundary surveys for separate properties situate in the State of West Virginia, whichever should occur first.

4. For the minimum standards violations identified in Case No. C18-03, Respondent shall pay to the Board a monetary fine of Two Thousand Dollars and Zero Cents (\$2,000.00) within 90 days of the date of entry of this Order.

5. For the minimum standards violations identified in Case No. C18-05, Respondent shall pay to the Board a monetary fine of One Thousand Dollars and Zero Cents (\$1,000.00) within 90 days of the date of entry of this Order.

6. Within 90 days of the date of entry of this Order, Respondent shall reimburse the Board in the amount of Eight Thousand Sixty Dollars and Twenty Cents (\$8,060.20) for the expenses incurred by the Board in its investigation and disposition of Case Nos. C18-03 and C18-05.

7. Should Respondent at any time during the probationary period fail to comply with the provisions of this *Consent Agreement and Order* and the *Supervisory Agreement* incorporated herein, Respondent's license shall be summarily suspended pending a hearing to address such failure(s) and Respondent shall immediately return to the Board his current license, wallet card, and the certificate of authorization issued to Randall Myers Land Surveyor. Following said hearing, additional disciplinary sanctions may be levied, including but not limited to further suspension or revocation of Respondent's license.

8. This document is a public record as defined in West Virginia Code § 29B-1-2.

9. This *Consent Agreement and Order* and the *Supervisory Agreement* incorporated herein contain the entire agreement of the parties with regard to the matters referenced herein and supersede any prior agreements as to such matters.

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

WEST VIRGINIA BOARD OF PROFESSIONAL SURVEYORS

By: R. Michael Shepp
R. Michael Shepp, P.S.
Board Chairman

Entered: 22 May 2019
Date

REVIEWED AND AGREED TO BY:

Randall Ray Myers
Randall Ray Myers, P.S.
Respondent

5/16/2019
Date

This day personally appeared before me, Randall Ray Myers, 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 16 day of May, 2019.

My Commission expires: 4/26/2021

Bonita P. Mersch-Lawson
Notary Public

