

BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION

In the Matter of:

Case No.: P22-017

Jon Lee
Non-Registrant

CONSENT AGREEMENT
and
ORDER OF DISCIPLINE

Data Aero, LLC
Non-Registered Firm

Respondents

In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration (“Board”) and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. § 32-101 et seq., and A.A.C. R4-30-120(G), the undersigned party, Jon Lee, Non-Registrant, (“Respondent”), Data Aero LLC, Non-Registrant Firm (“Respondent Firm”), and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order (“Consent Agreement”) as a final disposition of this matter.

RECITALS

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

2. Respondent understands that he has a right to a public administrative hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly, voluntarily, and irrevocably waives his right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action concerning the matters set forth herein.

1 3. Respondent affirmatively agrees that this Consent Agreement shall be
2 irrevocable.

3 4. Respondent understands that this Consent Agreement or any part of the
4 agreement may be considered in any future disciplinary action by the Board against him.

5 5. The Consent Agreement, any record prepared in this matter, all investigative
6 materials prepared or received by the Board and all related exhibits and materials, are
7 public records upon acceptance by the Board of this Consent Agreement and may be
8 retained in the Board's files pertaining to this matter.

9 6. Respondent understands this Consent Agreement deals with Board case
10 number P22-017 involving allegations that Respondent engaged in conduct that would
11 subject him to discipline under the Board's statutes and rules. The investigation into
12 these allegations against Respondent shall be concluded upon the Board's adoption of
13 this Consent Agreement.

14 7. Respondent understands that this Consent Agreement does not constitute a
15 dismissal or resolution of any other matters currently pending before the Board, if any,
16 and does not constitute any waiver, express or implied, of the Board's statutory authority
17 or jurisdiction regarding any other pending or future investigation, action or proceeding.

18 8. Respondent also understands that acceptance of this Consent Agreement does
19 not preclude any other agency, subdivision, or officer of this State from instituting any
20 other civil or criminal proceedings with respect to the conduct that is the subject of this
21 Consent Agreement.

22 9. Respondent acknowledges and agrees that, upon signing this Consent
23 Agreement and returning this document to the Board's Executive Director, he may not
24 revoke his acceptance of the Consent Agreement or make any modifications to the
25 document regardless of whether the Consent Agreement has been signed on behalf of the
26 Board. Any modification to this original document is ineffective and void unless
27 mutually agreed by the parties in writing.
28

1 6. On or about April 21, 2021, Respondent produced an aerial image of a lot,
2 with lot boundary lines overlaid on the image, for Parcel 205-13-433B in Yavapai
3 County, Arizona. Respondent provided the image, along with measurement data, to his
4 client; a member of the public.

5 7. On September 22, 2021, the Board received a complaint alleging that on or
6 about April 21, 2021, Respondent and Respondent Firm engaged in the practice of land
7 surveying by providing a topographical survey to a client for Parcel 205-13-433B,
8 located in Yavapai County, which included the marking of lot lines without a disclaimer.

9 8. It was also alleged that Respondent and Respondent Firm offered a product
10 that included the measurement of land and the location of land ownership through their
11 website.

12 9. On March 4, 2022, an Enforcement Advisory Committee Meeting (“EAC”)
13 convened to review the complaints against Respondent. After reviewing the evidence and
14 interviewing the involved parties, including Respondent, the Committee substantiated the
15 allegations that Respondent and Respondent Firm practiced Land Surveying, a Board
16 regulated profession, without Board registration or firm registration.

17 a) The Committee determined that, even if the map/image Respondent
18 provided to Alleger included a disclaimer indicating that Respondent was
19 not a licensed land surveyor, Respondent still practiced land surveying by
20 producing and providing data to the public for the purpose of being used to
21 create a survey map, which constituted “preparing and perpetuating field
22 note records” per § A.R.S. 32-101.22(d) “*Land surveying practice means*
23 *the performance of one or more of the following professional services: (d)*
24 *Measurement by angles, distances and elevations of natural or artificial*
25 *features in the air, on the surface and immediate subsurface of the earth,*
26 *within underground workings and on the surface or within bodies of water*
27 *for the purpose of determining or establishing their location, size, shape,*
28 *topography, grades, contours, or water surface and depths, and the*

1 *preparation and perpetuation of field note records and maps depicting*
2 *these features.”*

- 3 b) The Committee determined that “*measurements*”, as mentioned in the
4 above statute, include those taken automatically by a drone.
- 5 c) Respondent acknowledged that he provided measurement data to the client
6 to be used to create a topographical map containing contour lines.
- 7 d) The committee further determined that Respondent Firm’s website, and
8 Respondent’s verbal statements, give the distinct impression to the public
9 that Respondent and Respondent Firm are qualified to offer land surveying
10 services by using such language as “use this version to calculate volumes,
11 perform site surveys, optimize traffic management, design road layouts, and
12 much more”.

13 **CONCLUSIONS OF LAW**

14 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq,
15 including A.R.S. § 32-106.02(A).

16 2. The conduct alleged in the Findings of Fact, constitutes grounds for
17 discipline pursuant to A.R.S. § 32-106.02(A), A.R.S. § 32-121, and A.R.S. § 32-145(1),
18 in that Respondent practiced or offered to practice a Board regulated profession without
19 Board registration.

20 3. The conduct alleged in the Findings of Fact, constitutes grounds for
21 discipline pursuant to A.R.S. § 32-121 and A.R.S. § 32-141, in that Respondent Firm
22 practiced or offered to practice a Board regulated profession without firm registration.

23 **ORDER**

24 Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues
25 the following Order:

26 1. CIVIL PENALTY. Within One Hundred Eighty (180) days from the
27 effective date of this Consent Agreement, Respondent shall pay a civil penalty of One
28 Thousand Four Hundred Dollars (\$1400.00) by certified check or money order made

1 payable to the State of Arizona Board of Technical Registration, according to the
2 provisions of A.R.S. § 32-106.02(A).

3 2. COST OF INVESTIGATION. Within Ninety (90) days from the effective
4 date of this Consent Agreement, Respondent shall pay the cost of investigation of this
5 case to the Board in the amount of Five Hundred Twenty Dollars (\$520.00) by certified
6 check or money order made payable to the State of Arizona Board of Technical
7 Registration, according to the provisions of A.R.S. § 32-128(H).

8 3. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws,
9 related to the practice of Land Surveying in the State of Arizona. The Board shall
10 consider any violation of this paragraph to be a separate violation of the statutes
11 governing the Arizona Board of Technical Registration.

12 4. EFFECTIVE DATE. The effective date of this Consent Agreement is the
13 date the Respondent and Board sign the Consent Agreement. If the dates are different, the
14 effective date is the later of the two dates.

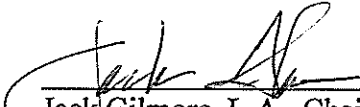
15 5. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with
16 complying with this Consent Agreement.

17 6. NONCOMPLIANCE. If Respondent violates this Order in any way or fails
18 to fulfill the requirements of this Order, the Board may seek a Petition for Injunction in
19 accordance with the provisions set forth in A.R.S. § 32-106.01.

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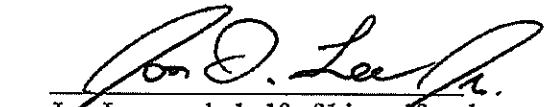
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ACCEPTED and ORDERED this 29 day of April, 2022.



Jack Gilmore, L.A., Chairman
Arizona State Board of
Technical Registration

Consent Agreement and Order, No. P22-017 accepted this 31 day of March, 2022.



Jon Lee, on behalf of himself and
Data Aero, LLC, Respondents

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ORIGINAL filed this 25 day of

April, 2022, with:

Arizona State Board of Technical Registration
1110 W. Washington, Suite 240
Phoenix, AZ 85007

COPY of the foregoing mailed via Certified Mail
No. 9214 8901 9434 4600 0874 67 and

First Class mail this 26 day of April, 2022, to:

Jon Lee
6575 S. Midnight Snap Lane
Prescott, AZ 86303

By: Daniel Carthel

