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**BEFORE THE ARIZONA STATE  
BOARD OF TECHNICAL REGISTRATION  
IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

4 **In the Matter of:**

) **Docket No. 21F-P21-076-BTR**

5 **James D. Smith, Non-Registrant,**  
6 **and**  
7 **James D. Smith Architects, Unregistered**  
8 **Firm,**

)  
) **FINDINGS OF FACT,**  
) **CONCLUSIONS OF LAW**  
) **AND ORDER**

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10  
11 **Respondents.**

12 This matter came before Kay A. Abramsohn, Administrative Law Judge (ALJ) for the  
13 Office of Administrative Hearings on January 26, 2022 in the Office of Administrative Hearings,  
14 for the purpose of determining whether good cause exists for the Arizona Board of Technical  
15 Registration ("Board") to take disciplinary action against James D. Smith ("Respondent") and  
16 James D. Smith Architects ("Respondent Firm").

17 At its regularly scheduled monthly meeting held on March 22, 2022, the Board  
18 considered the ALJ's recommended decision for Respondents to pay a civil penalty and the costs  
19 and fees incurred by the Board during the investigation and prosecution of this matter. Assistant  
20 Attorney General Seth Hargraves was present to provide the Board with independent legal  
21 advice. Respondent appeared remotely at the meeting and was represented by an attorney, Bret  
22 Shaw, who appeared remotely. Assistant Attorney General Deanie Reh appeared remotely on  
23 behalf of the State. Ms. Reh presented proposed modifications to the ALJ's recommended  
24 Findings of Fact, Conclusions of Law and Final Order for the Board's consideration.

25 After hearing from the parties and discussing the recommended decision, the Board voted  
26 to adopt the ALJ's Findings of Fact and Conclusions of Law with the following modifications  
27 proposed by the State:  
28

- 1 - Finding of Fact #1, replaced “expired” with “cancelled” and corrected the date from  
2 “October 31, 2020” to “October 27, 2020” in the second sentence to accurately reflect  
3 that the Registration was cancelled, not expired, on October 27, 2020.
- 4 - Finding of Fact #7, reworded to correct the names and positions of the stated  
5 individuals, as they were reversed by the ALJ. As modified, the Finding should read:  
6 “On June 14, 2021, Arizona architect Ed Marley forwarded to Doug  
7 Parlin, a Board staff/member, an e-mail that Mr. Marley had received,  
8 unsolicited, from Respondent, in which Respondent and Firm were  
9 offering architectural services in Arizona.”
- 10 - The decision was not clear whether the finding of violation related to Respondent as  
11 an individual, or was found as to both Respondent and Respondent Firm. Given that  
12 the ALJ found in Conclusion of Law #6 that, “the action taken by Respondent  
13 through his Firm, constitutes grounds for a civil penalty”, the last sentence of  
14 Conclusion of Law #6 was modified to clarify that there was one violation by  
15 Respondent as an individual. As modified, the sentence should read:  
16 “The Administrative Law Judge concludes that it is appropriate for a civil  
17 penalty to be imposed against Respondent in the amount of \$500.00 and in  
18 an amount to cover the Board’s investigative and administrative hearing  
19 costs in this matter.”
- 20 - Recommended Order: The ALJ recommended that Respondent “pay the sum of  
21 \$500.00 and the Board’s investigative and administrative hearing costs in this matter  
22 as a civil penalty pursuant to A.R.S. § 32-106.02(B) and (C).” The Order was  
23 modified to include the specific amount of the investigative costs (\$1,034.00) and  
24 attorney’s costs (\$2,423.74), and to specify the timeframe (consistent with A.R.S. §  
25 32-106.02(E)) in which the civil penalty and costs are required to be paid to the  
26 Board.

27 Based on the ALJ’s Recommended Decision, the administrative record in this matter and  
28 modifications adopted by the Board, the Board issues the following Order:

1 **FINDINGS OF FACT**

2 1. The Board adopts Findings of Fact, paragraphs 1 through 18, of the Administrative  
3 Law Judge's Recommended Decision attached hereto and incorporated herein by this reference,  
4 to include the modifications to Findings of Fact #1 and #7 stated above.

5 **CONCLUSIONS OF LAW**

6 2. The Board adopts Conclusions of Law, paragraphs 1 through 6, of the  
7 Administrative Law Judge's Recommended Decision attached hereto and incorporated herein by  
8 this reference, to include the modifications to Conclusion of Law #6 stated above.

9 **ORDER**

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

12 1. **CIVIL PENALTY.** Within thirty (30) days of the effective date of this Order,  
13 Respondent shall pay to the Board a civil penalty in the amount of five-hundred dollars  
14 (\$500.00) by certified check or money order made payable to the State of Arizona Board of  
15 Technical Registration or by credit card.

16 2. **COST OF INVESTIGATION.** Within thirty (30) days of the effective date of  
17 this Order, Respondent shall pay to the Board the cost of investigation in the amount of one-  
18 thousand thirty-four dollars (\$1,034.00) by certified check or money order made payable to the  
19 State of Arizona Board of Technical Registration or by credit card.

20 3. **ATTORNEYS COST AND FEES.** Within thirty (30) days of the effective date  
21 of this Order, Respondent shall pay to the Board attorneys costs and fees in the amount of two-  
22 thousand four-hundred twenty-three dollars and seventy-four cents (\$2,423.74) by certified  
23 check or money order made payable to the State of Arizona Board of Technical Registration or  
24 by credit card.

25  
26 **Right to Petition for Rehearing or Review**

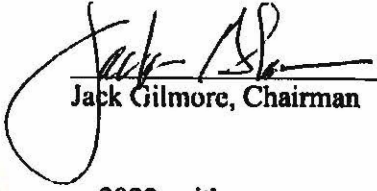
27 Respondents are hereby notified that they have the right to file a motion for rehearing or  
28 review. Pursuant to A.R.S. § 41-1092.09(B) and A.A.C. R4-30-126(A) the motion for rehearing

1 or review must be filed with the Board's Executive Director within thirty (30) days after service  
2 of this Order. Service of this Order is defined as five (5) calendar days after mailing. A.A.C. R4-  
3 30-126(A).

4 The motion for rehearing or review must set forth legally sufficient reasons for granting a  
5 rehearing or review. A.A.C. R4-30-126(C). If a petition for rehearing or review is not filed, the  
6 Board's Order becomes effective thirty-five (35) days after it is mailed to Respondents.  
7 Respondents are further advised that the filing of a motion for rehearing or review is required to  
8 preserve any rights of appeal to Superior Court.

9  
10 DATED this 23 day of MARCH, 2022.

11 Arizona State Board of  
12 Technical Registration

13  
14   
15 Jack Gilmore, Chairman

16  
17 ORIGINAL filed this 24 day of March, 2022, with:

18 Arizona State Board of Technical Registration  
19 1110 W. Washington, Ste. 240  
20 Phoenix, AZ 85007

21 COPY mailed via Certified Mail No. 9214 8901 9434 4600 0872 07

22 First Class mail this 24 day of March, 2022, to:

23 James D. Smith  
24 James D. Smith Architects  
25 522 Bay Lane  
26 Centerville, MA 02632  
27 jamesdsmith@jsmitharchitects.onmicrosoft.com  
28

1 **COPY** of the foregoing e-mailed this 24 day of March, 2022, to:

2  
3 Bret S. Shaw  
4 [bshaw@udalllaw.com](mailto:bshaw@udalllaw.com)

5 Deanie Reh  
6 [Deanie.reh@azag.gov](mailto:Deanie.reh@azag.gov)

7 Seth Hargraves  
8 [Seth.hargraves@azag.gov](mailto:Seth.hargraves@azag.gov)

9 **COPY** mailed, pursuant to A.R.S. § 41-1092.08(B),  
10 this 24 day of March, 2022, to:

11 Karen Fann  
12 President of Arizona State Senate  
13 Arizona State Capitol Complex, Rm 205  
14 1700 W Washington St  
15 Phoenix, AZ 85007

16 Russell Bowers  
17 Speaker of the Arizona House of Representatives  
18 Arizona State Capitol Complex, Rm 223  
19 1700 W Washington St  
20 Phoenix, AZ 85007

21 **COPY** of the foregoing submitted through the OAH Portal 24 day of March, 2022, to:

22  
23 Kay A. Abramsohn  
24 Office of Administrative Hearing  
25 1740 W Adams St  
26 Phoenix, AZ 85007

27  
28 By: Kurt Winter

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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of:

**No. 21F-P21-076-BTR**

James D. Smith, Non-Registrant,  
and  
James D. Smith Architects, Unregistered  
Firm,  
Respondents.

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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**HEARING:** January 26, 2022

**APPEARANCES:** Brett Shaw, Esq., represented James D. Smith and James D. Smith Architects, Respondents. Assistant Attorney General Deanie Reh represented the Arizona Board of Technical Registration.

**ADMINISTRATIVE LAW JUDGE:** Kay A. Abramsohn

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**FINDINGS OF FACT**

1. James D. Smith (“Respondent”) previously held Arizona Architect Registration No. 64477.<sup>1</sup> That Registration expired on October 31, 2020, because Mr. Smith failed to renew his registration.<sup>2</sup>

2. Respondent is a sole proprietor who operates his practice out of Massachusetts under a firm name, James D. Smith Architects.

3. James D. Smith Architects (“Firm”) never held an Arizona Registration.<sup>3</sup>

4. In 2021, Respondent began the process to re-register in Arizona. On June 2, 2021, Respondent emailed the Board regarding licensure paperwork.<sup>4</sup> He indicated that he might have some potential projects and wanted to take care of the licensure quickly.

5. On June 2, 2021, the Board staff person responded that Respondent’s Registration had been cancelled and he would need to reapply.<sup>5</sup>

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<sup>1</sup> See Respondent’s Exhibit 4. Prior to that Registration, Respondent had been granted Registration No. 31502 in 1997. See Board Exhibit 5.

<sup>2</sup> See Board Exhibit 7. At hearing, Respondent indicated that, at about that time, his wife had been ill and the renewal had gotten lost in the midst of the situation.

<sup>3</sup> At hearing, Respondent indicated that he had been unaware that, in Arizona, the operation of a practice under a firm name required that the firm itself also be registered; he believed that such was not the case at the time he had previously been Arizona-registered.

<sup>4</sup> See Respondent’s Exhibit 1.

<sup>5</sup> See Board Exhibit 4 at 13.



1           6.     On June 15, 2021, prior to being reregistered, Respondent reached out to  
2 an architect acquaintance regarding future possible work for Arizona locations.<sup>6</sup>

3           7.     On June 14, 2021, Arizona architect Doug Parlin forwarded to Arizona  
4 Architect Ed Marley, a Board staff/member, an e-mail that Mr. Parlin had received,  
5 unsolicited, from Respondent, in which Respondent and Firm were offering architectural  
6 services in Arizona.<sup>7</sup>

7           8.     The unsolicited email, dated June 14, 2021, claimed that Respondent has  
8 been registered as an architect in Arizona for over twenty years and had a project  
9 manager living in Phoenix who could cover site visits in Arizona.

10          9.     The Board's staff/investigator reviewed the matter and found that  
11 Respondent's website identified Phoenix, Arizona as one of the locations in which the  
12 Firm had an office.<sup>8</sup>

13          10.    On July 2, 2021, prior to hearing from the Board, Respondent notified his  
14 assistants that no one from his firm should be marketing in Arizona and that no one should  
15 send any emails into Arizona.<sup>9</sup> Respondent further notified his assistants that he needed  
16 to renew the Arizona registration and had not realized that it had lapsed.

17          11.    Once notified regarding the complaint and investigation, Respondent  
18 provided his response to the Board on July 16, 2021 noting the following:

19           I have an ongoing marketing effort in which I have five people doing  
20 marketing for me all over the country. One of my people ACCIDENTALLY  
21 began sending out emails to Contractors in AZ and when I realized it I  
22 stopped them immediately. I can prove that it was unintentional AND that I  
23 also more importantly, have NOT PRACTICED in AZ for years and certainly  
24 not after my license expired. The first email I offer as evidence is below,  
25 wherein you can see on June 2, 2021 I approached [Board staff] to find out  
26 what needed to be done to become reinstated. ...<sup>10</sup>

27 In another responsive email on July 16, 2021, Respondent noted, in pertinent part:

28 <sup>6</sup> See Respondent's Exhibit 2.

29 <sup>7</sup> See Board's Exhibit 2.

30 <sup>8</sup> See Board's Exhibit 6.

<sup>9</sup> See Respondent's Exhibit 3.

<sup>10</sup> See Board's Exhibit 4 at 11.

1 And again, the few emails that went out to GC's by accident were  
2 immediately stopped when I realized they had been sent out so I never had  
any intent to practice OR to do marketing in AZ while not registered.<sup>11</sup>

3 12. The matter was not resolved informally between the parties and the Board  
4 noticed the matter for administrative hearing at the Arizona Office of Administrative  
5 Hearings.<sup>12</sup>

6 13. At hearing, Respondent testified credibly regarding his practice and his plan to  
7 become registered in more states to build his practice into a national practice.  
8 Respondent's marketing is an in-house process with family members doing research for  
9 the Firm and, specifically, with his daughter sending out the marketing offers. Respondent  
10 indicated that his overall plans to expand were discussed but that he never told his  
11 daughter to send out any marketing in Arizona.

12 14. Respondent testified that he maintained a spreadsheet of his registrations  
13 which he had not updated with sufficient information; that spreadsheet indicated state-  
14 registrations but did not indicate the current status of the various registrations. However,  
15 Respondent has associations with persons in all states who, among them, are registered  
16 in various states.

17 15. At hearing, Respondent's daughter, Chelsea Smith, testified credibly that she,  
18 herself, had prepared the template email and had sent out the email to Arizona  
19 contractors, not knowing at that time that the spreadsheet was not completely accurate  
20 with regard to "current" registration status. Ms. Smith testified that Respondent had not  
21 directed her to send out any marketing to Arizona and, when she told him she had started  
22 to send them out, he immediately told her to stop because he was not current on the  
23 Arizona license/registration.

24 16. At hearing, Respondent specified that he had not continued to proceed with a  
25 re-registration for Arizona because he thought it would be denied simply due to this  
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27 <sup>11</sup> *Id.* at 15

28 <sup>12</sup> While the hearing record reflects that the Board offered Respondent a Consent Order to resolve the  
29 matter, the hearing record does not contain a copy of the Consent Order; by the time of administrative  
30 hearing, a Consent Order is typically considered to be an offer to settle the matter which is inappropriate  
for consideration by the Tribunal.



1 investigation and he wanted to clear this up to have a clean record. As to any possible  
2 discipline in regard to the unintentional offer, Respondent requested that the criteria in  
3 A.R.S. § 32-106.02 be considered because he had no history of violations, had not  
4 benefited economically from the alleged violation, and, overall, his firm had simply  
5 honestly mistakenly sent out the email and immediately stopped that marketing.

6 17. At hearing, the Board indicated that this investigation would not have put an  
7 automatic stop to Respondent's re-registration. As to a severity of discipline, the Board  
8 indicated that only a current registrant is entitled to a letter of concern<sup>13</sup> and that, in this  
9 case and under these circumstances, the Board's authority permits imposition of a civil  
10 penalty and the cost of the Board's investigation.

11 18. The Board argued that, in this case, the evidence demonstrated the violations  
12 of Respondent and Firm offering to practice in Arizona without being properly registered  
13 in Arizona and that Respondent holds the liability for statutory violations. The Board  
14 argued that, in allowing his daughter to take the blame for mistakenly sending out the  
15 email to some Arizona contractors, Respondent failed to take responsibility for the  
16 violation.

### 17 **CONCLUSIONS OF LAW**

18 1. The Board is the duly constituted authority for the regulation and control of  
19 the practice of architecture, including the unregistered practice or offer to practice  
20 pursuant to A.R.S. § 32-101 *et seq.*

21 2. Pursuant to A.R.S. § 32-106.02(A), the Board may initiate an administrative  
22 hearing on receipt of a complaint that any person, who is not exempt from regulation and  
23 who is not registered/certified, is practicing or offering to practice a Board-regulated  
24 profession.<sup>14</sup>

25 3. Pursuant to A.R.S. § 32-106.02(B), following an administrative hearing, if  
26 the Board determines that the person committed a violation under A.R.S. § 32-145, the  
27 Board is empowered to impose a civil penalty up to \$2,000.00 per violation. However,

28 <sup>13</sup> See A.R.S. § 32-128(B).

29 <sup>14</sup> "Person" means any individual, firm, partnership, corporation, association or other organization. See  
30 A.R.S. § 32-101(B)(27)

1 pursuant to A.R.S. § 32-106.02(C), in determining the civil penalty, the Board is required  
2 to consider the violator’s history of any violations, the seriousness of the violations, and  
3 the economic benefit obtained by the violations.

4 4. The evidence presented at hearing established by a preponderance of the  
5 evidence that Respondent through his Firm “offered” to practice, but did not practice, the  
6 Board-regulated profession of architecture in the absence of current registration with the  
7 Board in violation of A.R.S. §§ 32-121, 32-145(1), and 32-141(C).<sup>15</sup> The hearing evidence  
8 also established that the “offer” was honestly mistakenly made.

9 5. Neither Respondent nor Firm is exempt from the Board’s registration  
10 requirements. However, the Board’s position at hearing was that it could not discipline  
11 Respondent with a letter of concern pursuant to A.R.S. § 32-128(B) because Respondent  
12 was not a registrant. Therefore, the Administrative Law Judge concludes that, because  
13 neither Respondent nor Firm are registered, the Board has fewer options in such matters.

14 6. Considering the arguments of the parties, the Administrative Law Judge  
15 concludes that the action taken by Respondent through his Firm constitutes grounds for  
16 a civil penalty pursuant to A.R.S. § 32-106.02(B) and (C). While the Board is statutorily  
17 authorized to impose a civil penalty of no more than \$2,000.00 per violation, A.R.S. § 32-  
18 106.02(C) requires that consideration be given to the absence of any evidence of any  
19 prior violation by Respondent during his two prior registration periods, the lack of any  
20 economic benefit obtained by Respondent as a result of the mistaken emails into Arizona,  
21 and the credible evidence that the mistaken marketing stopped as soon as Respondent  
22 found out about it. The Administrative Law Judge concludes that it is appropriate for a  
23 civil penalty to be imposed in the amount of \$500.00 and in an amount to cover the  
24 Board’s investigative and administrative hearing costs in this matter.<sup>16</sup>

25 **RECOMMENDED ORDER**

26  
27  
28 <sup>15</sup> A firm cannot “practice” in the absence of being registered, and a firm wishing to practice or to offer to  
29 practice in Arizona is required to file an application for registration. See A.R.S. § 32-145(A)(B) and (C).

30 <sup>16</sup> The Board shall give Respondent advance notice of both the “investigative and administrative hearing  
costs.”

1 IT IS ORDERED the Board requires Respondent to pay the sum of \$500.00 and  
2 the Board's investigative and administrative hearing costs in this matter as a civil penalty  
3 pursuant to A.R.S. § 32-106.02(B) and (C).

4 *In the event of certification of the Administrative Law Judge Decision by the*  
5 *Director of the Office of Administrative Hearings, the effective date of the Order will be*  
6 *five days from the date of that certification.*

7 Done this day, February 15, 2022

8 /s/ Kay A. Abramsohn  
9 Administrative Law Judge

10 Transmitted electronically to:

11 Judith Stapley, Executive Director  
12 Board of Technical Registration  
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