BEFORE THE ARIZONA STATE BOARD OF TECHNICAL REGISTRATION

In the Matter of:	}
Andrew McQuality,	Cases No. P20-003
Non-Registrant,,	}
and	FINDINGS OF FACT CONCLUSIONS OF LAW AND FINAL BOARD ORDER
McQuality Designs & Services LLC,)
Non-Registrant Firm,)
	'
Respondents,	

On October 27, 2020 this matter came before the Arizona Board of Technical Registration ("Board") for consideration of the State's Motion to Deem Allegations Admitted regarding the Complaint and Notice of Hearing and the imposition of disciplinary action pursuant to A.R.S §32-128(F). Respondents were not present and were not represented by legal counsel. The State was represented by Assistant Attorney General Deanie Reh. The Board received independent legal advice from Assistant Attorney General Mona Baskin. The Board, after due consideration of the issues before it, granted the State's Motion to Deem the Allegations Admitted and adopted the Findings of Fact, Conclusions of Law, and issued the following Order:

FINDINGS OF FACT

- 1. The Board is the duly constituted authority for the regulation and control of the practice of land surveyors, etc., and the firms under which surveyors practice pursuant to A.R.S. § 32-101, et seq.
- 2. Respondents are not, and never have been, registered with the Board to practice land surveying.

- 3. The Board is the duly constituted authority for the regulation and control of the profession of land surveying.
 - 4. Respondent is not registered with the Board as a land surveyor.
 - 5. Respondent Firm is not registered with the Board as a land surveying firm.
- 6. On July 12, 2019, the Board received a complaint alleging that Respondents advertised aerial photographs depicting property boundary lines: "For all of your aerial photography needs we only charge \$89.00 for 7-11 aerial photos and \$119.99 if you want the property lines to be identified in the photos."
- 7. On August 13, 2019, Board staff received Respondent's response to the Board's notice of investigation. In his response, the Respondent provided a written statement in which he stated that he provides Real Estate agents with aerial photos showing where the approximate property lines are, which he obtains from the county's GIS System. He added that he has never once used the term survey in any of his ads.
- 8. On August 14, 2019, Board staff prepared and sent this case for assessment to Mark Hanshaw R.L.S. #26058 with a request that the assessment be completed by September 5, 2019.
- 9. On August 22, 2019, Board staff received a case assessment from Mr. Hanshaw, who wrote Respondent is not providing or offering to provide a Board regulated activity and unsubstantiated the allegation.
- 10. On September 24, 2019, the Board reviewed the complaint and sent the investigation back to Staff for further assessment and a review by an Enforcement Advisory Committee ("EAC").
- 11. On October I, 2019, Board staff prepared and sent this case for assessment to Michael Fondren, R.L. #35113.
- 12. On October 3, 2019, Board staff received a case assessment from Mr. Fondren who, after review of the information provided, did not believe the allegation was substantiated. He did not believe Respondent was offering "Land Surveying".

13. On October 22, 2019, Board staff mailed Respondent notification that an EAC meeting was scheduled to occur at the Board office on November 22, 2019. Respondent was provided with copies of the assessments that were completed and invited to participate in the meeting.

14. On November 22, 2019, an EAC meeting was held in this case at the Board office. Present during the meeting were the alleger, Board staff and four EAC members. The Committee included the two assessors who originally unsubstantiated the complaint, who, together with all members of the committee, voted to substantiate the allegation; based on the opinion of the EAC that the advertising by the Respondents on social media would lead the public to identify Respondent as a surveyor, or Respondent Firm as a land surveying firm, in view of: (1) the offer to indicate boundary lines; (2) the failure of the offer to state that the boundary lines were "approximate;" (3) the placement of the survey "disclaimer" in a non-obvious location; and (4) indicia [indicated] that the photographs with boundary lines could be used for real estate, development, agriculture, construction, and possibly for drainage assessments.

CONCLUSIONS OF LAW

- 15. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq., including A.R.S. § 32-106.02(A).
- 16. The conduct alleged in the Factual Allegations, constitutes grounds for discipline pursuant to A.R.S. § 32-145(1), in that Respondent practiced or offered to practice a Board-regulated profession without Board registration.
- 17. The conduct alleged in the Factual Allegations, constitutes grounds for discipline pursuant to A.R.S. § 32-145(2), in that Respondent advertised or displayed a device to indicate Respondent was qualified to practice a Board-regulated profession without Board registration.
- 18. The conduct alleged in the Factual Allegations, constitutes grounds for discipline pursuant to A.R. S. § 32-141, as Respondent Firm has practiced or offer to practice a Board-regulated profession without Board registration.

ORDER

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

- 1. CIVIL PENALTY. Within ninety (90) days of the effective date of this Order, Respondents shall pay to the Board a civil penalty in the amount of two-thousand dollars (\$2,000.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration or by credit card. A.R.S. § 32-106.02(B).
- 2. COST OF INVESTIGATION. Within ninety (90) days of the effective date of this Order, Respondent shall pay to the Board the cost of investigation in the amount of sixhundred and twenty dollars (\$620.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration or by credit card. A.R.S. § 32-128(H).
- 3. ATTORNEYS FEES. Within ninety (90) days of the effective date of this Order, Respondents shall pay to the Board attorneys fees in the amount of two-hundred thirty-six dollars (\$236.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration or by credit card. A.R.S. § 32-128(H).

Right to Petition for Rehearing or Review

Respondents are hereby notified that they have the right to file a motion for rehearing or review. Pursuant to A.R.S. § 41-1092.09(B) and A.A.C. R4-30-126(A) the motion for rehearing or review must be filed with the Board's Executive Director within 30 days after service of this Order. Service of this Order is defined as five calendar days after mailing.

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

ı	DATED this 2 day of November 2020.	
2	Arizona Board of Technical Registration	
3		
4	03-7	
5	Jason Fonse, Chairman	
6	ORIGINAL filed this day of	
7		
8	Board of Technical Registration 1110 West Washington, Suite 240	
9	Phoenix, Arizona 85007	
10	COPY mailed via Certified Mail No. 9214 890194344600074863	
11	and First Class mail this 2 day of November, 2020, to:	
12	McOuality Designs & Services LLC	
13		
14	Chino Valley, AZ 86323 akmcquality@aol.com	
15	Respondent	
16	COPY of the foregoing emailed this 2 day of Navember, 2020 to:	
17	Deanie Reh	
18	Assistant Attorney General deanie.reh@azag.gov	
19		
20	Mona Baskin Assistant Attorney General	
21	Mona.baskin@azag.gov	
22	By: Kurt Winter	
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