

**BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION**

<p>In the Matter of:</p> <p>David Schwinghamer Non-Registrant</p> <p>3DD/Third Dimension Design, LLC Non-Registered Firm</p> <p style="text-align: center;">Respondents</p>	<p style="text-align: center;">Case No. P20-039</p> <p style="text-align: center;">CONSENT AGREEMENT and ORDER OF DISCIPLINE</p>
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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, David Schwinghamer, Non-Registrant, ("Respondent"), 3DD/Third Dimension Design, 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.

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

4. Respondent understands that this Consent Agreement or any part of the agreement

1 may be considered in any future disciplinary action by the Board against him.

2 5. The Consent Agreement, any record prepared in this matter, all investigative
3 materials prepared or received by the Board and all related exhibits and materials, are public
4 records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this Consent
5 Agreement and may be retained in the Board's files pertaining to this matter.

6 6. Respondent understands this Consent Agreement deals with Board case number
7 P20-039 involving allegations that Respondent engaged in conduct that would subject him to
8 discipline under the Board's statutes and rules. The investigation into these allegations against
9 Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

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

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

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

22 10. This Consent Agreement is subject to the approval of the Board and is effective
23 only when accepted by the Board and signed on behalf of the Board. If the Board does not accept
24 this Consent Agreement, the Board retains its authority to hold a formal administrative hearing
25 pursuant to A.R.S. § 32-128(E). In the event that the Board does not approve this Consent
26 Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor
27 introduced in any action by any party, except that the parties agree that should the Board reject
28 this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that

1 the Board was prejudiced by its review and discussion of this document or any records relating
2 thereto.

3 11. If a court of competent jurisdiction rules that any part of this Consent Agreement is
4 void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full
5 force and effect.

6 12. Respondent understands that any violation of this Consent Agreement may result in
7 disciplinary action, including suspension or revocation of the registration under A.R.S. § 32-150.

8 13. Respondent agrees that the Board will adopt the following Findings of Fact,
9 Conclusions of Law and Order.

10 **FINDINGS OF FACT**

11 1. The Board is the duly constituted authority for the regulation and control of the
12 practice of Professional Engineering in the State of Arizona.

13 2. Respondent is not registered with the Board as a Professional Engineer.

14 3. Respondent Firm is not registered with the Board.

15 4 At its February 25, 2020 meeting, the Board directed staff to open a complaint
16 against Respondent and Respondent Firm alleging that Respondent engaged in the practice of
17 engineering on a Commercial TI Project at 1044 N. Cave Creek Road in Phoenix, Arizona,
18 without registration with the Board. It was further alleged that on or about May 7, 2019,
19 Respondent applied the seal and signature of registrant Steven Seitz, P.E. (Civil) #33562 on
20 engineering plans for the Commercial TI project.

21 5. It is also alleged that Respondent and Respondent Firm engaged in the practice of
22 engineering without firm registration with the Board and advertised the practice of engineering
23 on a website. Board records show no indication that either Respondent or Respondent Firm has
24 ever been registered by the Board.

25 6. On September 29, 2020, an Enforcement Advisory Committee ("EAC") convened
26 to review the complaint against Respondent. After reviewing the evidence and interviewing
27 Respondent, the Committee found the following:
28

1 a. The Committee agreed that this project did not fall under any exemptions for
2 non-registrant projects.

3 b. Respondent practiced engineering in the way he consulted, coordinated, evaluated,
4 planned, and in some of the designs. In addition, Respondent made collection efforts with the
5 client for the project.

6 c. Respondent acknowledged that he acted as the projected lead for this commercial
7 project.

8 d. The Committee agreed that Respondent's references to landscape architecture and
9 architecture on Respondent Firm's website do not include that he is hiring professionals to
10 complete a registered professional's job; therefore, is advertising landscape architecture and
11 architecture. Respondent Firm's website makes no indication to the public that Respondent
12 provides drafting services, and is misleading to the general public.

13 e. The Committee agreed that it is clear that Respondent used Mr. Seitz's seal and
14 Respondent's use of Mr. Seitz's seal was inappropriate.

15 f. The Committee agreed that Respondent displayed Respondent Firm's name in the
16 title block of professional documents without Board registration. The Committee explained that
17 this represents to the client either directly or indirectly that Respondent and Respondent Firm are
18 able to provide these professional services, which Respondent and Respondent Firm are not
19 qualified to provide.

20 CONCLUSIONS OF LAW

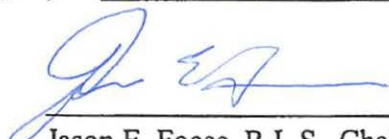
21 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq,
22 including A.R.S. § 32-106.02(A).

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


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

1 fulfill the requirements of this Order, the Board may seek a Petition for Injunction in accordance
2 with the provisions set forth in A.R.S. § 32-106.01.

3
4 ACCEPTED and ORDERED this 8th day of DECEMBER, 2020.

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6 
7 Jason E. Foose, R.L.S., Chairman
8 Arizona State Board of
9 Technical Registration

10 Consent Agreement and Order, No. P20-039 accepted this 23 day of OCTOBER 2020.

11
12 
13 David Schwinghamer on behalf of himself
14 and on behalf of 3DDD/Third Dimension
15 Design, LLC, Respondents

16 ORIGINAL filed this 8th day of
17 December, 2020, with:

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

21 COPY of the foregoing mailed via Certified Mail
22 No. 9214890194344600760 10 and
23 First Class mail this 10th day of December, 2020, to:

24 David Schwinghamer
25 3DDD/Third Dimension Design, LLC
26 6330 E. Desert Cove
27 Phoenix, AZ 85254

28 By: 