

MINUTES

**Board of Architecture and Interior Design
Embassy Suites-Fort Lauderdale
1100 SE 17th Street
Ft. Lauderdale, Florida 33316
954.527.2700**

**October 2, 2008
9:00 a.m.**

General Business Meeting

Call to Order

Roll Call

Mr. Kuritzky, Chair, called the meeting to order at 9:05 a.m.

Board Members Present:

John Ehrig
E. Wendell Hall
Rosanna Dolan
Eric Kuritzky, Chair
Lordes Solera
Mary Jane Grigsby
Wanda Gozdz
Joyce Shore
Garrick Gustafson

Board Member Absent:

Roymi Membiela, excused

Others Present:

Mary Ellen Clark, Board Counsel
David Minacci, Prosecuting Attorney
Juanita Chastain, Executive Director
Terri Estes, Government Analyst
Trent Manausa
Emory Johnson
Dwight Chastain
Michael O'Connor
Jeff Falkanger
Ian Martinez
Gerard Oakley
Ron Trebbi
Wayne Berenbaum

Aida Bao-Garciga
Rita Blanck

Court Reporter: Official Reporting Services, 524 South Andrews Avenue, #302N, Ft. Lauderdale, FL 33301. Telephone 954.467.8204

Disciplinary Cases

Consent Agenda

Mr. Minacci requested that the board approve the settlement stipulations that reflect the probable cause panel's recommendation on a consent agenda.

Settlement Stipulation

Licensed

DBPR vs. James R. Abney
Case Numbers 2006-010045
PCP: Rodriguez, Wirtz and Hall

DBPR vs. Scott Gershon and Gershon Group
Case Number 2007-011187
PCP: Rodriguez, Wirtz, and Gustafson

DBPR vs. Robert P. Juengert
Case Number 2008-003667
PCP: Rodriguez, Wirtz, and Gustafson

DBPR vs. James. C. Perry
Case Number 2006-010010
PCP: Rodriguez, Wirtz, and Hall

DBPR vs. Abram Sustaita
Case Number 2007-056612
PCP: Rodriguez, Wirtz, and Hall

DBPR vs. Robert Wise
Case Number 2008-009211
PCP: Rodriguez, Wirtz, and Gustafson

Unlicensed

DBPR vs. Blue Sky Environmental, Inc. and Barbara L. Murtagh-Nash
Case Number 2008-003534
PCP: Rodriguez, Wirtz and Gustafson

DBPR vs. Abner Cordero and Professional Home Design, Inc.
Case Number 2008-020398
PCP: Rodriguez, Wirtz, and Gustafson

DBPR vs. KMH Design, Inc. and Kathleen Hines Franza
Case Number 2008-001760
PCP: Rodriguez, Wirtz, and Gustafson

DBPR vs. Michael Eugene McWilliams
Case Number 2007-008065
PCP: Rodriguez, Wirtz and Gustafson

DBPR vs. Tricia H. Otto and Tricia Lee Designs
Case Number 2007-067217
PCP: Rodriguez, Wirtz, and Gustafson

DBPR vs. Ronald G. Trebbi
Case Number 2007-060123
PCP: Rodriguez, Wirtz, and Gustafson

Voluntary Relinquish

DBPR vs. Francine Newton
Case Number 2008-023432

DBPR vs. Gregory J. Olson
Case Number 2008-024318

DBPR vs. Thomas M. Phifer
Case Number 2008-037881

DBPR vs. Barbara G. Powell
Case Number 2008-024327

DBPR vs. Margaret E. Wohl
Case Number 2008-028261

Motion: Ms. Shore moved that the board approve the settlement stipulations and the voluntary relinquishments as presented.

Second: Ms. Solera seconded the motion and it passed unanimously.

DBPR vs. Betty L. Leyva and Betty's Home Interior Design
Case Number 2007-012598
PCP: Rodriguez, Wirtz, and Del Bianco

Mr. Minacci requested that this case be pulled from review due to service problems.

DBPR vs. James T. Melvin
Case Number 2007-007048

PCP: Rodriguez, Wirtz, and Gustafson

Mr. Minacci requested that this case be continued because Mr. Melvin's wife recently passed.

Motion: Ms. Solera moved that the board continue the case to next meeting.

Second: Mr. Ehrig seconded the motion and it passed unanimously.

Settlement Stipulations

Unlicensed

DBPR vs. John Adkerson Abney

Case Number 2006-010030

PCP: Rodriguez, Wirtz, and Hall

Mr. Abney was not present but represented by Diane Perera. The case was before the board based on the respondent using his father's seal to seal revisions to a residential project and offered architectural services through a business. Probable cause was found to file a four count administrative complaint practicing architecture when not licensed, using the title architect when not licensed, using the license of another, and practicing architecture through a business entity without a certificate of authorization.

The panel recommended a \$20,000 fine plus cost. The stipulation reflected a \$5,000 fine plus costs. The fine was reduced because this was a first time offense, the respondent agreed to comply, and a licensed architect was involved in the project.

Ms. Perera commented that she represented the parties involved with this case and the related cases. She commented that John Abney is a licensed contractor. She commented that John and James Abney joined with Mr. Perry, a licensed architect, to build a home. She commented that they failed to have the business entity qualified. She reported to the board that Mr. Perry initially prepared and signed and sealed the plans. The allegation was that John Abney used his father's seal, James Abney, to sign and seal revisions to the plans. She commented that John Abney did not keep Mr. Perry in the loop.

Mr. Minacci commented that Mr. Perry and Mr. Abney had a partnership. Mr. Ehrig commented that the payments were signed with John Abney on the architect signature line. Ms. Perera commented that three individuals were punished; they are accepting responsibility and have been counseled. The board discussed the penalties imposed against James Abney and Mr. Perry.

Ms. Clark commented that the panel routinely recommended the maximum penalty and they would discuss that issue at tomorrow's meeting. She commented that an unlicensed individual was penalized a higher fine than the licensed individuals. She commented that the panel recommended the maximum penalty without considering the merits of the case.

Motion: Mr. Gustafson moved that the board accept the settlement stipulation as presented.

Second: Ms. Solera seconded the motion and it passed unanimously.

Mr. Manausa commented that there were licensed individuals involved in the project so the harm to the public was not as great as if a licensed professional was not involved.

DBPR vs. Properties Solution Services and Oneila M. Duran

Case Number 2007-066282

PCP: Rodriguez, Wirtz and Gustafson

The respondent was not present but represented by Ian Martinez. Mr. Gustafson was recused from the review of the case. The case was before the board based on the respondent offering architectural services for a residential project through a business. A three count administrative complaint was filed for practicing architecture without a license, using the title architect without a license, and offering architectural services through a business entity without a certificate of authorization.

The panel recommended a \$15,000 fine plus costs. The settlement stipulation reflected a \$2,500 fine plus costs. The fine was reduced because the respondent was a permit facilitator, subject provided an affidavit from the client stating the respondent did not represent himself as an architect or offered services, and they paid the fine.

Mr. Kuritzky commented that he was concerned with the case. Mr. Minacci commented in South Florida there was a problem permit facilitators brokering architectural services.

Mr. Martinez commented that the case surrounded an employee that was not properly trained on invoicing and has since been terminated. After discussion the board made the following motion.

Motion: Mr. Hall moved that the board accept the settlement stipulation as presented.

Second: Ms. Solera seconded the motion and the motion failed.

Mr. Minacci commented that the board should consider what a fair penalty would be based on the facts of the case. He reminded the board that the respondent paid the penalty which was in their trust account and the respondent agreed to comply. He commented that if the board determined that a \$4,000 or \$5,000 fine was appropriate for the facts of case, it was not cost effective to go to formal hearing to collect that additional penalty. He commented that the stipulation was fair and requested that they approve the stipulation as presented.

Mr. Ehrig commented that he was offended by Mr. Minacci's comments that the board should accept the fine because the original recommendation was for a three count offense and a \$15,000 fine. He commented that a \$5,000 fine was more appropriate but he would vote in favor of the stipulation to save the state the money of pursuing the additional funds. He commented that what the respondent did was not appropriate since they had a prior disciplinary action imposed by the board. Mr. Ehrig requested that Mr. Minacci consider the

vast difference from the panel's recommendation to amount he accepts so the board was not put in the position of accepting a stipulation they did not agree with to avoid chasing a higher amount they may impose.

Mr. Minacci apologized for offending Mr. Ehrig by his presentation of what the outcome would be if the board did not accept the stipulation as presented. Mr. Minacci reminded the board that the panel imposed the maximum penalty to give him the latitude to negotiate a settlement. He commented that the board should not base their starting penalty on the panel's recommendation and that they should look at the facts of the case.

Mr. Kuritzky commented that his concern was the case was settled and the board was in a position of having to approve the stipulation and that was not fair to the board. Mr. Minacci commented that penalty imposed in this facilitator case was in line with prior facilitator cases.

Ms. Clark commented that the panel was required to make a finding of probable cause however the penalty recommendation was not required. She commented that board panel's do not make recommendation but give guidance to the prosecutor. She commented that the panel thoroughly reviews all cases to determine probable cause, as well as thoroughly reviews all licensed cases regarding the recommendation for penalty. She commented that the panel routinely imposes the maximum for unlicensed cases to give the prosecutor the ability to negotiate the penalty. She commented that the statute provided the maximum penalty and allowed the prosecutor the ability to negotiate the penalty up to the maximum amount based on the facts of the case and mitigating factors. She commented that the board was not prejudiced by the stipulation and they have the ability to settle or reject the stipulation. She commented that the board should rely on their prosecutor's experience with the profession.

Ms. Clark commented that the board was put on notice by the Joint Administrative Procedures Committee (JAPC) that the routine recommendation of \$5,000 per count was an unpromulgated rule and that a routine recommendation of the maximum penalty is considered no recommendation. She commented that the merits of the case had not been considered with regard to the penalty for unlicensed cases when the respondent did not appear at the Probable Cause Panel meeting. She commented that the maximum penalty was recommended by the panel for unlicensed cases and that prejudiced the board. She emphasized to the board that it was their job to determine the penalty based on the facts of the case, the history of other cases, and the prosecutor's extensive experience with the profession.

The board discussed that the panel should determine probable cause but not recommend penalty for unlicensed cases or the board should set disciplinary guidelines for unlicensed cases.

Mr. Gustafson commented that as a panel member he would like to work toward setting guidelines for unlicensed cases. Mr. Manausa commented that the maximum penalty was

a recommendation based on the facts of the case. The board requested that the prosecutor list maximum fine per count but not that it was a panel recommendation.

Mr. Kuritzky commented that he was concerned with the respondent having a prior disciplinary action.

Mr. Martinez commented that he had lengthy negotiations with Mr. Minacci. He commented that the owner of the corporation's home was in foreclosure. He commented that there were no available funds to pay a higher penalty. After discussion the board made the following motion.

Motion: Ms. Solera moved that the board accept the settlement stipulation as presented.
Second: Mr. Ehrig seconded the motion and it passed unanimously.

Mr. Minacci advised the board that unlicensed respondents do not reply until they receive the notice of a \$15,000 fine. He commented that the panel did not have the affidavit at the time they reviewed the case and that he considered that as a mitigating factor for negotiating the lower fine.

DBPR vs. MDO Designs, Inc. and Michael O'Connor
Case Number 2008-011121
PCP: Rodriguez, Wirtz, and Gustafson

Mr. O'Connor was present and sworn in by the court reporter. Mr. Gustafson was recused from the review of the case. The case was before the board based on the respondent offering architectural services through a proposal and offering the services through a business. A three count administrative complaint was filed for practicing architecture without a license, using the title architect without a license, and offering architectural services through a business without a certificate of authorization.

The panel recommended a \$15,000 fine plus. The settlement stipulation reflected a \$3,000 fine plus costs. The fine was reduced because this was a first offense, the respondent agreed to comply, and the respondent agreed to appear before the board to demonstrate future compliance with Chapter 481, Florida Statutes.

Mr. O'Connor commented that he provided a favor to a prior residential client to perform services on a commercial project. He commented that he contacted the Jacksonville Planning Department for direction as to whether he could provide the services and was given incorrect information. The board discussed the difference between the AIA appellation and licensure.

Mr. O'Connor commented that he only provided residential services and explained how he worked with engineers and architects.

Motion: Ms. Solera moved that the board accept the stipulation as presented.
Second: Ms. Shore seconded the motion and it passed unanimously.

Request for Reconsideration

DBPR vs. Gerard J. Oakley and Florida Design Architects, P.A.

Case Number 2007-011118

PCP: Rodriguez, Wirtz, and Hall

Mr. Oakley was present and sworn in by the court reporter. Ms. Clark advised that the request for reconsideration was placed on the agenda based on correspondence received from Mr. Oakley. Mr. Oakley requested reconsideration and an appeal of the case. Mr. Minacci forwarded the request to the District Court of Appeals. Ms. Clark commented that 30 days after the filing of a final order the board no longer had jurisdiction over the matter.

Ms. Clark advised that after 30 days the board could give direction to the prosecutor regarding payments of a final order and whether to file a case for failure to comply with a final order. She commented that if a mistake was made in the final order a correction could be filed. She commented that she was not aware of any mistakes in the final order.

Mr. Oakley commented that he received a 30 day extension from the District Court of Appeals. He commented that he would prefer to be judged by his peers and provided additional information prior to the meeting. He commented that the case was a mistake from the beginning. He commented that the first mistake was the original notice of the hearing was sent to the complainant's attorney not him.

Mr. Kuritzky requested that Mr. Oakley specify the mistakes in the order. Mr. Minacci commented that Mr. Oakley signed a settlement stipulation that the board accepted. Mr. Oakley commented that he was not able to attend three meetings and preferred to attend a meeting closer to his home.

Mr. Oakley commented the second mistake in the order was when he met with Mr. Minacci to agree to the stipulation the document states, "the respondent is doing away with count I". He commented that he signed the settlement stipulation to resolve the issue. The third mistake was that his request for a continuance when the board reviewed his case was not presented to the board. Mr. Oakley contacted the board office and was advised in error that the continuance was granted. The board approved the settlement stipulation at the May 6, 2008 and Mr. Oakley received the final order accepting the settlement stipulation. Mr. Oakley commented that the system was flawed.

Mr. Oakley requested that the board consider his appeal because he did nothing wrong. Mr. Kuritzky commented that the board was not in a position to reconsider the final order and referred him to the District Court of Appeals.

DBPR vs. Wayne Berenbaum and The Wayne Architectural Group, Inc.

Case Numbers 2007-055462

PCP: Rodriguez, Wirtz, and Gustafson

Mr. Berenbaum was present and sworn in by the court reporter. Mr. Gustafson was recused from the review of the case. The case was before the board based on the respondent signing and sealing plans prepared by an engineer without meeting with the

client and offered services through a business entity without a license. A three count administrative complaint was filed for improperly certifying work of another, aiding unlicensed activity, and offering architectural services through a business entity without a certificate of authorization.

The panel recommended a \$3,000 fine plus costs. The settlement stipulation reflected a \$1,500 fine plus costs. The fine was reduced because this was a first time offense, the respondent agreed to comply, and the drawings were prepared by a licensed professional. Mr. Minacci requested that the board approve the settlement stipulation as presented.

Mr. Berenbaum commented that he understood that structural engineers could perform some architectural work. He commented that the City of Pompano Beach did not require an architect be included in zoning or building permit but required an architect to review the drawings for the architectural review board for aesthetic purposes. He commented that he entered into an agreement with the engineer to review the drawing for aesthetic purposes. He commented that when he appeared before the architectural review board they asked questions about egress, accessibility, occupancy, etc. He commented that he reviewed the drawings and researched the codes. He commented that he marked the drawings and returned them to the engineer. He commented that the engineer represented that he was the owner representative and the drawings were not for permitting just review by the architectural review board.

Motion: Mr. Ehrig moved that the board accept the settlement stipulation as presented.
Second: Mr. Hall seconded the motion and it passed unanimously.

Motion for Order Waiving Formal Hearing

Licensed

DBPR vs. Michael Baker
Case Number 2008-020039
PCP: Rodriguez, Wirtz, and Gustafson

Mr. Baker was not present or represented by counsel. Mr. Gustafson was recused from the review of the case. The case was before the board based on respondent signing and sealing plans prepared by an unlicensed draftsman without meeting with the client. A two count administrative complaint was filed for improperly certifying work prepared by another and aiding unlicensed activity. Service of the administrative complaint was achieved by certified mailed and the respondent returned a signed election of rights waiving his right to be heard.

The panel recommended a reprimand, \$1,000 fine plus costs. Ms. Clark commented that this was not a waiver due to lack of response.

Motion: Ms. Shore moved that the administrative complaint was properly served, the respondent did not dispute the material facts and that it was appropriate to conduct a hearing pursuant to Chapter 120.57(2), Florida Statutes.

Second: Ms. Grigsby seconded the motion and it passed unanimously.

Motion: Mr. Ehrig moved that the board impose a reprimand, a \$1,000 fine plus costs.

Second: Ms. Solera seconded the motion and it passed unanimously.

Unlicensed

DBPR vs. Urban Ideology, Inc. and Allie Elhage

Case Number 2007-062088

PCP: Rodriguez, Wirtz, and Gustafson

The respondent was not present or represented by counsel. Mr. Gustafson was recused from the review of the case. The case was before the board based on the respondent offering architectural services on a commercial project without a license. A two count administrative complaint for practicing architecture without a license and offering architectural services through a business entity without a certificate of authorization. The administrative complaint was served by hand delivery to the last known address on July 2, 2008 and the respondent has failed to respond.

The panel recommended a \$10,000 fine plus costs.

Motion: Ms. Grigsby moved that the administrative complaint was properly served upon the respondent and the respondent waived the right to dispute the facts for failure to timely respond thereto.

Second: Ms. Shore seconded the motion and it passed unanimously.

Motion: Ms. Grigsby moved that the board adopt the findings of fact and conclusions of law as set forth in the administrative complaint.

Second: Ms. Shore seconded the motion and it passed unanimously.

Motion: Mr. Ehrig moved that the board impose a \$10,000 fine plus costs.

Second: Mr. Hall seconded the motion.

Ms. Clark commented that the panel recommended the maximum fine without consideration of the merits of the case. She requested that the board use their judgment or discretion based on the merits of the case when imposing the penalty.

Mr. Minacci commented that the respondent ignored the entire process and he would not enter into a settlement stipulation with a respondent unless he is comfortable that the respondent understands and will comply with Chapter 481, Florida Statutes. He commented that the respondent was hand served that he could be fined \$10,000 and they did not respond. Mr. Manausa commented that the board should consider the merits of the case and determine if there was mitigating circumstances in determining the penalty. Ms. Solera commented that because the respondent did not respond that was not a reason to impose the maximum.

The question was called and the motion passed unanimously.

Settlement Stipulation

Licensed

DBPR vs. Roberto E. Paredes and Associated Space Design, Inc.
Case Numbers 2007-004559 and 2007-004520

PCP: Rodriguez, Wirtz, and Gustafson

The respondent was not present or represented by counsel. Mr. Gustafson was recused from the review of the case. The cases were before the board based on respondent's web site offering architectural services from multiple offices without a responsible supervisor in control of each office. A two count administrative complaint was filed for failure to exercise responsible supervisory control and offering architectural services through a business entity without a certificate of authorization.

The panel recommended a \$5,500 fine plus costs, two years probation and four additional hours of continuing education. The settlement stipulation reflected a \$5,500 fine plus costs and four of continuing education in laws and rules. Probation was deleted because it was not a reporting probation. Mr. Minacci requested that the board approve the settlement stipulation as presented.

Mr. Ehrig requested that he be recused from the review of the case because prior to being appointed to the board he had prior conversations with a representative of the case. Ms. Clark explained the difference between a reporting probation and non-reporting probation.

Motion: Ms. Solera moved that the board accept the settlement stipulation as presented.

Second: Mr. Hall seconded the motion and it passed unanimously.

Unlicensed

DBPR vs. Thomas Adamo
Case Number 2007-044901

PCP: Rodriguez, Wirtz, and Hall

Mr. Adamo was not present or represented by counsel. The case was before the board based on the respondent offering design services on a web site for a commercial project without a license. A one count administrative complaint was filed for offering architecture services without a license.

The panel recommended a \$5,000 fine plus costs. The settlement stipulation reflects a \$3,000 fine plus costs. The fine was reduced because this was a first offense and the respondent agreed to comply. The board discussed the fact that an engineer can perform incidental architectural work to a project and that an engineer was involved with the project.

Motion: Mr. Gustafson moved that the board accept the settlement stipulation as presented.

Second: Ms. Solera seconded the motion and it passed unanimously.

DBPR vs. American Hotel Registry, Co. and James F. Leahy

Case Number 2007-064344

PCP: Rodriguez, Wirtz, and Gustafson

The respondent was not present or represented by counsel. Mr. Gustafson was recused from the review of the case. The case was before the board based on the respondent contracting to provide interior design services on a commercial project without a license. A three count administrative complaint was filed for offering interior design services without a license, using the title interior design without a license, and offering interior design services through a business entity without a certificate of authorization.

The panel recommended a \$15,000 fine plus costs. The settlement stipulation reflected a \$5,000 fine plus costs. The fine was reduced because this was a first offense, the respondent agreed to comply, and the respondent is located outside the state of Florida. Mr. Minacci commented that the respondent initially elected a formal hearing and they resolved the issue before formal hearing.

Motion: Mr. Ehrig moved that the board accept the settlement stipulation as presented.

Second: Ms. Shore seconded the motion and it passed unanimously.

DBPR vs. Hirsch Bedner & Associates and Howard Pharr

Case Numbers 2007-068978

PCP: Rodriguez, Wirtz and Gustafson

The respondent was not present or represented by counsel. Mr. Gustafson was recused from the review of the case. The case was before the board based on the respondent contracting to provide interior design services on a commercial project without a license. A three count administrative complaint was filed for offering interior design services without a license, using the title interior design without a license, and offering interior design services through a business entity without a certificate of authorization.

The panel recommended a \$15,000 fine plus costs. The settlement stipulation reflected a \$7,500 fine plus costs. The fine was reduced because this was a first time offense. Mr. Minacci commented that this case was recognized nationally.

Motion: Mr. Ehrig moved that the board accept the settlement stipulation as presented.

Second: Ms. Shore seconded the motion and it passed unanimously.

DBPR vs. Kukes Simons Interiors and Patricia Kukes

Case Number 2007-066231

PCP: Rodriguez, Wirtz, and Gustafson

The respondent was not present or represented by counsel. Mr. Gustafson was recused from the review of the case. The case was before the board based on the respondent offered interior design services through a business entity without a license however they had a licensed interior designer on staff. This was a second offense. A one count administrative complaint was filed for offering interior design services through a business entity without a certificate of authorization.

The panel recommended a \$5,000 fine plus costs. The settlement stipulation reflected a \$2,500 fine plus costs. The fine was reduced because the respondent agreed to comply and an application for certificate of authorization was pending approval of the settlement stipulation.

Motion: Ms. Shore moved that the board accept the settlement stipulation as presented.
Second: Mr. Ehrig seconded the motion and it passed unanimously.

DBPR vs. Richard Roeser and Building Design Services, Inc.

Case Number 2007-022054

PCP: Rodriguez, Wirtz, and Gustafson

The respondent was not present or represented by counsel. Mr. Gustafson was recused from the review of the case. The case was before the board based on the respondent contracting to offer architectural services on a residential project. A three count administrative complaint was filed for practicing architecture without a license, using the title architect without a license, and offering architecture services through a business entity without a certificate of authorization.

The panel recommended a \$15,000 fine plus costs. The settlement stipulation reflected a \$3,600 fine plus costs. The fine was reduced because this was a first time offense and he agreed to comply.

Motion: Mr. Ehrig moved that the board accept the settlement stipulation as presented.
Second: Ms. Shore seconded the motion and it passed unanimously.

Application Review

Kukes Simons Interiors, Inc.

Motion: Mr. Ehrig moved to approve the application as presented.
Second: Ms. Shore seconded the motion and it passed unanimously.

Discussion

Mr. Minacci provided a copy of the annual report for the board's review. He advised the board that due to the budget cuts Investigator, Les Smith was retiring. Mr. Minacci requested that the board present Mr. Smith with a Resolution recognizing his work at the January meeting.

The meeting recessed at 11:30 a.m.
The meeting reconvened at 1:00 p.m.

Motion for Final Order by Hearing Not Involving Disputed Issues of Material Fact

Unlicensed

DBPR vs. Rita Blanck

Case Number 2007-038565

PCP: Rodriguez, Wirtz, and Gustafson

Ms. Blanck was present, sworn in by the court reporter and represented by Mike Beane. Mr. Gustafson was recused from the review of the case. The respondent was previously licensed as interior designer but voluntarily relinquished her license December 28, 2005. The case was before the board based on the respondent holding herself out as an interior designer on letterhead presented for a residential project in 2007. A two count administrative complaint was filed for holding herself out as an interior designer and practicing on an inactive license.

The panel recommended a \$10,000 fine plus costs. On September 25, 2008 the respondent filed an election of rights form and did not dispute the material facts.

Ms. Blanck apologized to the board for using the stationery and stated she retired in 2002. She explained her relationship with the complainant and the nature of the residential project. She commented that she used old stationery that she had left over from when she practiced. She commented that the complainant requested correspondence reflecting payments for products purchased. She commented that as a friend she assisted with decorating her residence and did no design work.

Ms. Clark asked Ms. Blanck about an advertisement in a newsletter that included her business card. Ms. Blanck read a letter into the record that stated that her business card was used based on a contribution made to an organization that she was member of and it was published prior to the license expiring. Ms. Clark commented that based on the rule she advertised with her business card and stationery.

Mr. Johnson referred the board to other references and uses of the stationery after the license was expired. Ms. Blanck commented that the complainant released her contractor and requested an example of a release letter which was provided to the complainant's son who was an attorney. She commented that the letter was sent only to the attorney as an example and the attorney sent the official letter to the contractor.

Mr. Hall commented that it appeared to be a personal issue between the respondent and complainant. Ms. Blanck provided a brief history of their friendship, the project and their disagreement. Mr. Johnson commented that as the expert reviewer of the case he came to the conclusion based on the multiple uses of the letterhead reflecting her expired license number that she was offering interior design services. Ms. Blanck commented that the use of the stationery was because it was the conclusion of the project and the complainant asked that bills and correspondence regarding the decorating services be on letterhead.

Mr. Kuritzky commented that he noticed the stationery changed in 2007 removing all references to interior design. Ms. Blanck commented that she updated the letterhead when she was notified of the open case.

Motion: Ms. Grigsby moved that the board adopt the findings of fact and conclusions of law as set forth in the administrative complaint.

Second: Ms. Shore seconded the motion and it passed unanimously.

Mr. Hall commented that he felt this was a personal vendetta and the case should be dismissed or closed with no penalty be imposed.

Motion: Mr. Ehrig moved that the board impose no penalty.

Second: Mr. Hall seconded the motion and it passed unanimously.

Discussion

The board briefly discussed the upcoming paperless agenda process. Ms. Chastain advised that the Department's initiative was to move toward paperless agendas. However, for some of the smaller board it may not be cost effective to go paperless. She advised that the board would receive the computers and training at the January meeting if it was determined that this board was going to paperless agendas.

Mr. Ehrig expressed a concern for carrying two laptops. Ms. Chastain commented that there were security and technology issues that the Technology Unit would address at the next board meeting or a telephone conference call. She requested that the board members e-mail her their concerns.

Mr. Kuritzky commented that he would like to discuss interior decorators vs. interior designers being allowed to design interiors of the time share units. The interiors of time share units are considered residential but his experience with the building department was they consider it similar to commercial buildings or hotels. He requested that the board members think about the issue and be prepared for additional conversation at tomorrow's meeting.

Mr. Kuritzky commented that he wanted to discuss the responsible supervisory control issue for plans drawn outside of the office. He commented that he had concern with how the responsible supervising architect would monitor and control a project when plans were drawn by someone in India or someone across the street based on new technology.

Mr. Kuritzky commented that he wanted to discuss the process for when an architect permitted a project then died and the owner wanted to make modifications to the plans. He commented that there was some confusion on how to address the liability with a deceased architect. He commented that in some cases an architect would not have all the information available to him or her. He commented that he wanted to address the liability of the project during the construction administration phase not the drawing phase. He commented that his concern was during construction and the new architect modifying the project is not liable for those changes to the plans.

Mr. Manausa commented that Mr. Kuritzky was voicing concerns for changes that protect the profession not the public. Mr. Kuritzky commented that he did not want to discipline an

architect for the guidelines in the rules. Mr. Ehrig commented that when a contractor or owner changed the architect's plans during the construction to save a dollar and the building is compromised then it was a public and safety issue with the liability falling back to the architect. Mr. Manausa commented that would be a civil issue.

The board discussed that other architects or construction administrators are interpreting drawings and making decisions for pay outs for banks but not accepting liability for those decisions.

Mr. Johnson commented that all of the items they were discussing would require Legislative changes. He commented that the associations could not afford to pursue legislative language because of budget issues they were lobbying to save the Privatization Contract instead of other issues.

Ms. Dolan reviewed the Legislative process as explained to her by the Department.

The board discussed new technology and the difficulty of identifying the owner. Mr. Kuritzky commented that he believes there should be consistency when applying the rules of responsible supervision of the documents because the board provides direction through the rules but with new technology he would like them clarified. He commented that it would assist with disciplining architects as well as protecting the public.

Mr. Kuritzky commented that he felt that at time the board only punished people and he would like to protect the public by improving the profession. Ms. Solera commented that it was not the board's duty to improve the profession but to protect the public because it was the association's interest to improve the profession.

Mr. Ehrig requested that the board review the NCARB six month requirements and he would like the board to notify the graduating students of the requirements. He commented that he would like a representative from the board to visit all schools, colleges, and universities that offer accredited program to architecture and interior design students. Ms. Chastain informed the board that board staff does outreach and visits the schools, colleges, and universities providing information on board meetings, the laws and rules, examination, internship, and the overall requirements for licensure.

The board requested that staff inform and invite all school, colleges, and universities to the board meetings. Mr. Minacci commented that the interior design programs are more involved than the architecture programs. Ms. Dolan commented that the problem with the educators' of architecture are not required to obtain licensure for their job and therefore may not encourage licensure or provide information on licensure.

New Business

No new business.

Old Business

No old business.

Recess

The meeting recessed at 2:30 p.m.

MINUTES

**Board of Architecture and Interior Design
Embassy Suites-Fort Lauderdale
1100 SE 17th Street
Ft. Lauderdale, Florida 33316
954.527.2700**

**October 3, 2008
General Business Meeting**

Call to Order

Roll Call

Mr. Kuritzky, Chair, called the meeting to order at 9:08 a.m.

Board Members Present:

John Ehrig
E. Wendell Hall
Rosanna Dolan
Eric Kuritzky, Chair
Lordes Solera
Mary Jane Grigsby
Wanda Gozdz
Joyce Shore
Garrick Gustafson

Board Member Absent:

Roymi Membiela, excused

Others Present:

Mary Ellen Clark, Board Counsel
David Minacci, Prosecuting Attorney
Juanita Chastain, Executive Director
Terri Estes, Government Analyst
Charles Drago, Secretary of the Department of Business and Professional Regulation
Trent Manausa
Emory Johnson
Dwight Chastain
Pascale Duwat

Court Reporter: Official Reporting Services, 524 South Andrews Avenue, #302N, Ft. Lauderdale, FL 33301. Telephone 954.467.8204

Mr. Kuritzky introduced and welcomed Secretary Drago. The Secretary advised that he was trying to meet with all of the board's prior to session starting in 2009. He provided a brief background of his experience and involvement with the Department prior to being appointment as the Secretary of the Department. He thanked the board for their service to the state.

The Secretary informed the board that the Governor initiated a program called "Accelerate Florida" which tasks agencies to get out of the way of business, stimulate business, and help the economy. The Department touched a million people in Florida. He reported that the Department was reviewing the application processes and requirements to remove unnecessary items to speed up the licensure process. He commented that the board was in place to protect the public and help individual's receive a license to work.

The Secretary informed the board that the Department began a program called "On the Road to Better Business" to meet with and receive feedback from licensees on how the Department can improve the licensure process. He reported that he had received a lot of feedback both negative and positive. He commented that the Department's web site listed future meeting locations for "On the Road to Better Business".

The Secretary reported that the Department had issues with the Customer Contact Center and the Application Intake Unit. He reported that the average wait time for the Customer Contact Center had decreased from 30 minutes to five minutes. He reported that the Department was completing the document imaging process which would reduce the frequency of documents being lost. The Secretary requested that the board report issues or concerns to the Department so we can work on them.

Pascale Duwat - Letter to board about disciplinary cases posted on web site

Ms. Duwat was present and sworn in by the court reporter. Mr. Minacci commented that based on the privatization contract with the board he posts the public disciplinary results on his web site. He commented that the purpose of the web site was to put the public on notice regarding licensed and unlicensed offenses. He commented that Google and Yahoo search engines pick up his web page notices. He commented that other disciplined individual's have requested that their disciplinary actions be removed from the web site and the board has not approved those requests.

Mr. Minacci reported that Ms. Duwat's case was based on an order to cease and desist issued in 2004. The web posting provides a summary of the case and the penalty imposed. The Department's web page provides information regarding whether the individual complied with the penalty.

Mr. Minacci commented that this particular case was an advertising violation, probable cause was found, and a notice of cease and desist was issued. He closed the case when Ms. Duwat signed the cease and desist notice. He reported that the board reviews the case when the respondent does not signed the notice and administrative complaint is filed.

Ms. Duwat commented that based on the Google search clients question her ethics. She commented that she lost contracts based on the information listed on Google. She requested that the disciplinary action be reversed because she did not place or write the advertisement. She commented that she received a letter from an attorney office not the board.

The board discussed removing the disciplinary case from the list. Ms. Clark commented that Mr. Minacci's web site was created based on compliance with the public record laws. She commented that she did not believe he could remove one individual's case because it had to be consistent with the Department's public records laws.

The board discussed adding a notation that the affidavit was returned and the case was closed. Ms. Duwat commented that she did nothing wrong and the case was false.

Ms. Clark commented that her petition should be directed to the Department. Ms. Chastain commented that she would have the General Counsel with the Department review her request to have the information removed.

The board discussed that they could not remove her information because that would be treating her different then all other cases listed and it was a huge workload. Mr. Ehrig requested that Mr. Minacci attach a notation to her case stating that she complied. Ms. Chastain commented that the conclusion of cases was on the Department's web page. Mr. Ehrig requested that Mr. Minacci put a notation on his web site to refer to the Department's web page for conclusion of the case.

The board discussed the fact that if they provide the opportunity for Ms. Duwat to have her case removed from the web site or a special note attached to her case summary then they should expect thousands of requests to come.

The board requested that Ms. Chastain provide an update on the the Department's position at the January meeting.

Ratification Lists

Applicants

Motion: Mr. Ehrig moved that the board approve the applicant ratification list as presented in the agenda.

Second: Mr. Gustafson seconded the motion and it passed unanimously.

Continuing Education

Motion: Mr. Gustafson moved that the board approve the continuing education ratification list as presented in the agenda.

Second: Ms. Solera seconded the motion and it passed unanimously.

Ms. Dolan commented that she met a continuing education task force reviewer and she asked why they were no longer invited to the board meetings. Ms. Chastain commented

that the board was not able to pay for them to attend the meetings but offered for them to attend telephone conference calls. The board discussed that the statute does not allow for the task force.

Architecture Discussion

Assuming another architect's responsibility during construction administration
Rule 61G1-18.002

Ms. Solera commented that some agencies state in their contracts that they own the documents. She commented that the rule does not state that an architect must get permission from the prior architect. The board discussed that the new architect assumes responsibility and only has to notify the original architect.

Ms. Solera's issue was with the fact that when an agency owns the drawings and five years down the road want to use the same plans to build another building. Mr. Kuritzky commented that ownership of the documents was a contractual issue. The board discussed that the new architect must follow the rule in order to use the drawings. Mr. Manausa commented that the rule was put in place to relieve the first architect from the liability and responsibility if another architect used them.

Mr. Kuritzky commented that his issue was with another architect providing construction administration to a building that was already in process. He commented that his concern was with architects monitoring and observing construction in progress and changes that were made during construction.

Mr. Kuritzky commented that he had a concern with deviations from the drawings during construction therefore the original drawings were changed. Mr. Ehrig commented that the rule relates to the production of the documents not the construction aspect of the project.

Mr. Ehrig asked if they had authority to write a rule that would require construction administration. He commented that they are required to sign pay applications stating that the building was built in compliance with the contract documents and codes. He commented that an architect was liable for making sure a contractor builds a building in compliance with the contract documents. An architect cannot attest to that if they are not observing and providing construction administration.

Ms. Clark commented that she did not find that the board had specific authority to write a rule defining construction administration. Mr. Ehrig commented that he wanted to write rules when an architect was responsible for the construction administration on a project.

The board discussed that the rules and issues were connected.

Responsible Supervisory Control – Rule 61G1-23, F.A.C.

Enforcement of responsible supervision for the architect of record while working with drafting services, remote offices, within a large office, and plan production and electronic media

The board did not discuss this item.

Reports

IDAF Report – Aida Bao-Garciga

Ms. Bao-Garciga reported that IDAF confirmed its commitment to supporting the privatization contract for investigative and prosecutorial services. She reported IDAF and Florida AIA worked together to educate lobbyist about their services. She reported that they were working to address and resolve their concerns about office furniture dealers. She reported that IDAF was monitoring the national media attack against the investigative and prosecutorial services for unlicensed activity. She reported that the media defended individuals that designed hotels, restaurant and commercial spaces without knowledge or education on the Florida Building Codes.

Ms. Bao-Garciga reported that IDAF was monitoring economy's impact on licensees and Florida. She reported that they were concerned for licensees and the general impact of the loss of sales tax revenues.

Ms. Bao-Garciga thanked the board and prosecutorial staff for their public service to Florida.

Ms. Bao-Garciga reported that IDAF's was involved with community service, the Florida Building Code, and green initiatives.

Ms. Bao-Garciga reported that this was her last meeting as IDAF's President and introduced Janice Young as the incoming President.

Interior Design Discussion

NCIDQ Board of Directors Teleconference minutes June 24, 2008

NCIDQ Board of Directors Meeting minutes July 18, 2008

NCIDQ Motion to Change Council Bylaws 2008-1

NCIDQ Motion to Change Council Bylaws 2008-2

Ms. Shore reported that the NCIDQ meeting was scheduled for November 14-15, 2008 in Kansas City, MO. She reported that Ms. Grigsby was an officer candidate for the Board of Directors for NCIDQ.

Ms. Shore reviewed the bylaw changes. The board discussed ethical issues and the differences of serving on state, regional, and national boards.

Interior Architecture vs. Interior Design

Mr. Kuritzky commented that he met an interior decorator that was performing work on the interiors of time share units. He commented that he interpreted building code as time share

units as a commercial project similar to hotels. He commented that the Mr. Minacci advised that time share units were residential.

Mr. Kuritzky commented that building departments review plans for time share and hotel buildings the same. The interiors of the units have the same egress, fire, and accessibility requirements. The building code treats time shares the same as hotels. The board reviewed the exemptions in the Chapter 481.229, Florida Statutes. The board discussed the conflict between the building code and the statute.

Rules Report and Discussion

Rule Tracking

Ms. Clark reviewed the report. Rule 61G1-12.001(3), F.A.C., grounds for disciplinary proceedings, the board received a letter from JAPC objecting to the sentence, "An architectural firm may not offer services to the public under a firm name which contains only the name of an individual not licensed as professional engineer or architect in any state" because it was not supported by statutory authority. Ms. Clark commented that she fought for a year to defend the language and JAPC rejected them all.

Ms. Clark commented that in July she reported that when there are changes to rules the board must provide a Statement of Estimated Regulatory Cost (SERC). The board voted in July that the changes to the rule would not impact small businesses. JAPC is requesting that the board justify their vote because they believe it will impact small business.

The board discussed the matter and determined that Ms. Clark should respond to their request that was excessive regulation and JAPC did not have the authority to challenge the board's decision. Mr. Ehrig commented that removing the sentence would have no financial impact on small business because most small businesses are in the individual's name. He commented that removing the sentence would not impact small or large businesses.

Ms. Clark reported the Rule 61G1-21.003, F.A.C. and 24.002, F.A.C the continuing education handbooks, Florida Administrative Code, will be effective October 16, 2008.

Letter from JAPC, Marjorie Holladay regarding Unadopted Rules Implementing Disciplinary Penalties for Unlicensed Practice

Ms. Clark commented that JAPC received a letter regarding unlicensed individuals receiving excessive fines for unlicensed practice because they did not understand the statute or rules. She commented that the probable cause panel recommends and the board imposes the maximum fine for unlicensed practice. She commented that JAPC has determined that the board should have a meaningful range of penalties based on the severity and repetition of specific offenses.

Ms. Clark referred the board to Chapter 455.2273(2), Florida Statutes. She advised the board that she could respond that the board was not required to have disciplinary guidelines because the section refers to Chapter 455.227, Florida Statutes, which were guidelines for licensees.

Ms. Clark commented that when the panel repeatedly recommends the maximum fine for unlicensed cases it becomes an unadopted rule. She commented that the panel and board must stop recommending and imposing the maximum penalty. The board could create guidelines for defining all unlicensed types of offenses which would be difficult.

Mr. Gustafson commented that advertising, use of the title or offering services on contracts and the use of another's seal were a few offenses that were commonly seen for unlicensed individuals. He commented that multiple offenses were sighted on unlicensed cases.

Mr. Minacci commented that a simple advertising case could end with multiple offenses once the investigation begins. He commented that the board must look at the facts of the case and not necessarily the number of counts. Mr. Kuritzky commented that defining all the possible scenarios would be difficult and the panel should not recommend the maximum for every case.

The board discussed that unlicensed individuals are not invited to probable cause meetings and at yesterday's meeting an individual acknowledged that she ignored the letter. Ms. Clark advised the board that they had the authority to develop a citation rule for unlicensed offenses. The board discussed changing the consent agenda practice that streamlined the process for the large volume of cases.

Ms. Clark recommended that the board change their practice with handling the panel's recommendations and the penalties imposed by the board.

Motion: Mr. Ehrig moved that the board direct Ms. Clark to respond to JAPC that they would not create rules Implementing Disciplinary Penalties for Unlicensed Practice and that the board develop a citation rule for unlicensed practice.

Second: Mr. Gustafson seconded the motion.

Mr. Minacci commented that creating a list of unlicensed cases would be difficult because a majority of the minor violations are resolved with a cease and desist order. He commented that they could work on the citation rule and did not feel it would have an impact on the process. The board discussed the difficulty of defining all of the mitigating factors and scenarios for disciplinary guidelines and citations. Ms. Clark commented that Mr. Minacci pursuing the maximum fine was different than the panel recommending the maximum fine. Mr. Minacci commented that a panel's recommendation was helpful when resolving the cases.

The board discussed that if the panel wanted to recommend the maximum penalty then they should make no recommendation and if they wanted to recommend less than the maximum penalty they should make a recommendation. Mr. Gustafson requested that Mr.

Minacci put a notation on his information sheet if the respondent was present or represented by counsel at the probable cause meeting.

Ms. Clark commented that she understood that the board wanted her to respond to Ms. Holladay that there is no statutory authority for disciplinary guidelines but have decided to enter into rule making for a citation rule. Mr. Ehrig commented that the board should allow Mr. Gustafson the opportunity to work on citation language.

Mr. Minacci commented that if the board had some citations available it would move cases through the process faster. Mr. Ehrig commented that the board should not rubber stamp the recommendations of the panel.

Ms. Clark will file a notice of rule making for a citation.

The board voted and the motion carried unanimously.

Election of Officers

Motion: Ms. Grigsby moved to nominate Ms. Shore as Chair.

Second: Ms. Solera seconded the motion and it passed unanimously.

Motion: Mr. Gustafson moved to nominate Mr. Ehrig as Vice-Chair.

Second: Mr. Kuritzky seconded the motion and it passed unanimously.

Reports

Chair's Report – Eric Kuritzky

Mr. Kuritzky had nothing to report.

Executive Director's Report – Juanita Chastain

Ms. Chastain advised that renewal notices would be mailed in November. She advised that she was working on the next newsletter and requested articles. Mr. Minacci would write an article about common violations. Mr. Ehrig would write an article about the new intern development program six-month rule.

Ms. Clark suggested that Mr. Gustafson arrive on November 12, 2008 early enough to have a committee meeting to work on citation rule language. This was the day before the Probable Cause Panel Meeting. A telephone conference call was scheduled for November 4, 2008 at 2:00 p.m.

Ms. Chastain requested that the board members e-mail her about their concerns about the paperless agenda process. Technology would be included in the conference call meeting to answer questions and concerns about the process.

Ms. Clark requested that staff notice the November 12, 2008 at 3:00 p.m. rules committee meeting.

AIA Report – Vicki Long

Mr. Ehrig advised that they were not available and had no report.

Prosecuting Attorney's Report – David K. Minacci

Licensed Architecture Legal Cases

Licensed Interior Design Legal Cases

Unlicensed Architecture Legal Cases

Unlicensed Interior Design Legal Cases

Licensed/Unlicensed Investigative Cases

Fines Chart

Billable Hours July 2008

Billable Hours August 2008

Press Releases/Speaking Engagements/Other Correspondence

Mr. Minacci reviewed the reports. Mr. Minacci confirmed that a Probable Cause Panel meeting was scheduled for November 13, 2008 in Tallahassee.

The board was advised that the meeting dates for January were changed to allow the panel members to attend the rules meeting on January 8, 2009.

Future Board Meetings

January 7-8, 2009 – General Business, Tallahassee (updated)

January 9, 2009 – Probable Cause Panel, Tallahassee (updated)

May 6, 2009 – Probable Cause, Location to be determined

May 7-8, 2009 – General Business, Location to be determined

July 27, 2009 – Probable Cause, Tampa

July 28-29, 2009 – General Business, Tampa

October 21, 2009 – Probable Cause, Location to be determined

October 22-23, 2009 – General Business, Location to be determined

New Business

The board discussed designating members to review continuing education courses. Ms. Chastain requested that at least two board members from each profession review the courses and reminded them of the Sunshine Law. She commented that when the board members denied an application it would be reviewed by the entire board.

Ms. Clark commented that the Joint Administrative Procedures Committee (JAPC) determined that the board does not have the statutory authority for a Task Force as defined in the handbook. She commented that the board cannot delegate their duties to anyone other than a board member unless the individual is compensated.

The board designated John Ehrig and Lourdes Solera to review architecture continuing education courses and Joyce Shore and Mary Jane Grigsby to review interior design continuing education. The board briefly discussed application review process. The board members assigned to review the application will meet in January for training.

Review and Approval of Minutes

June 16, 2008 General Business Telephone Conference Call

Motion: Ms. Solera moved that the board approve the June 16, 2008 minutes as presented.

Second: Ms. Grigsby seconded the motion and it passed unanimously.

Continuing Education Request for Extension based on hardship

Miriam Collada-Myers

Ms. Chastain commented that the statute allowed exceptions to the requirements for continuing education due to hardships. Ms. Clark advised the Ms. Collada-Myers should petition for a variance or waiver from the requirement. She commented that she would respond to Ms. Collada-Myers request and advise her of the petition requirements.

Ms. Chastain requested that the board open Rule 61G1-22.002 and 22.003, Florida Administrative Code to be noticed for development to update the experience and education requirements.

Motion: Ms. Grigsby moved to notice Rule 61G1-22.002, F.A.C. and 22.003, F.A.C. for development.

Second: Ms. Shore seconded the motion and it passed unanimously.

Old Business

No old business.

Adjourn

The meeting adjourned at 12:10 p.m.