

**State of New Hampshire  
Board of Architects  
Concord, New Hampshire 03301**

In the Matter of:  
Nicholas J. Tricarico  
No.: 1112  
(Adjudicatory Proceedings)

Docket No. 12-01

**SETTLEMENT AGREEMENT**

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of architecture, the New Hampshire Board of Architects (“Board”) and Nicholas J. Tricarico. (“Mr. Tricarico”), an architect licensed by the Board, do hereby stipulate and agree to resolve certain adjudicatory proceedings now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 310-A:47; 310-A:48 and Architecture Administrative Rules (“Arch”) 200 and 402, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by licensed architects.
2. The Board first granted Mr. Tricarico a license to practice architecture in the State of New Hampshire on August 17, 1979. Respondent holds license number 1112. Mr. Tricarico practices architecture at Tricarico Architecture and Design, P.C., Wayne, New Jersey.
3. In or about April of 2012, the Board received information that Mr. Tricarico may have failed to disclose disciplinary action allegedly taken in another jurisdiction.
4. In response to this, the Board conducted an investigation and obtained information from various sources, including evidence provided by Mr. Tricarico.

5. On November 7, 2012, the Board held an adjudicatory hearing to consider evidence of Mr. Tricarico's alleged non-disclosure. At the hearing, Mr. Tricarico appeared pro se and introduced numerous exhibits in his defense. On December 11, 2012, the Board issued a decision that found professional misconduct and imposed certain discipline. On January 11, 2013, Mr. Tricarico exercised his right to file a Motion for Rehearing. In his Motion, Mr. Tricarico, citing the applicable standard of review for a rehearing motion, argued, in part, that the Board's decision was unreasonable in light of all the evidence introduced. On February 22, 2013, the Board temporarily suspended its previous decision in order to take Mr. Tricarico's rehearing arguments under advisement, and to possibly consider the parties' further responses. The parties negotiated this Settlement Agreement for the Board's consideration and approval in lieu of further litigation.

6. The Board's investigation revealed the following facts:

A. On June 7, 2006, Mr. Tricarico and the Nevada State Board of Architecture, Interior Design & Residential Design ("Nevada State Board") entered into a Stipulation and Order to resolve information received "which constitute[d] sufficient grounds for the initiation of an Administrative Complaint." Specifically, the Stipulation and Order stated in part "[t]he subject matter which this Stipulation is intended to resolve relates to information received that the RESPONDENT [was] alleged to not have been in responsible control of drawings that he signed and sealed for six wireless retail store projects." The Stipulation and Order also stated that Mr. Tricarico "has elected to enter

into this Stipulation rather than face the possibility of a Formal Hearing before the BOARD” and called for Mr. Tricarico to make an administrative payment of \$10,000 and to pay \$3,500 to reimburse the Nevada State Board for costs incurred.

- B. Mr. Tricarico did not disclose the Nevada Stipulation and Order when he filed renewal applications for his New Hampshire license in 2008, 2010 and 2012. The potentially relevant question on each of those renewal applications was “[h]ave you ever had any disciplinary action brought against you by any Board or jurisdiction?”
- C. On December 13, 2010, Mr. Tricarico and the Oregon Board of Architect Examiners (“Oregon State Board”) entered into a Stipulated Final Order to resolve a pending Notice of Intent to Impose Civil Penalty. At issue in the Oregon matter was whether Mr. Tricarico had improperly failed to disclose the Nevada Stipulation and Order when he renewed his Oregon license in 2006, 2007 and 2008. The Oregon Stipulated Final Order provided that “Respondent claims that Respondent did not intentionally misrepresent any facts to the Board; that Respondent understood and believed that his answers to the legal history questions in connection with his 2006 – 2008 renewal applications were proper insofar as he understood the question presented; and that he answered the legal history question differently in 2009 after the Board changed the wording of the question, and thereby acknowledged and informed the Board of the 2006 Stipulation and Order with Nevada.” Pursuant to the the

Oregon Stipulated Final Order, Mr. Tricarico “agree[d] to pay “recompense of \$3,000” to the Oregon State Board.

- D. When Mr. Tricarico filed his 2012 renewal application in New Hampshire, he did not disclose the Oregon Stipulated Final Order. Again, the potentially relevant question on the renewal application was “[h]ave you ever had any disciplinary action brought against you by any Board or jurisdiction?”
- E. In or about April of 2012, during the Board’s routine search of the National Council of Architectural Registration Boards (“NCARB”) disciplinary database, the Board learned that the Stipulated Final Order negotiated by Mr. Tricarico with the Oregon State Board was reported by that Board to NCARB.
- F. Mr. Tricarico believed that the Nevada Stipulation and Order was a non-disciplinary resolution. Mr. Tricarico held that belief because, among other reasons, the extended negotiations that preceded the final agreement had resulted in the elimination of any references to discipline, guilt, investigation, and fine or penalty.
- G. Mr. Tricarico also believed that the Oregon Stipulated Final Order was a non-disciplinary resolution. Mr. Tricarico held that belief because, among other reasons, the final agreement did not include any admissions to violations, or any wrongdoing, or any findings of fact or conclusions of law regarding any violation.
- H. In October of 2009, the Delaware Board of Architects commenced an investigation into whether Mr. Tricarico failed to disclose the Nevada

Stipulation and Order as a disciplinary action on his 2007 Delaware renewal application. In February of 2010, the Delaware Board ruled that Mr. Tricarico did not act improperly in failing to disclose the Nevada resolution as discipline.

- I. In July of 2011, the South Carolina Board of Architectural Examiners commenced an investigation to determine whether the Oregon Stipulated Final Order provided a basis to impose reciprocal discipline against the Mr. Tricarico in South Carolina. In August of 2011, the South Carolina Board dismissed its case upon deciding that the Oregon Stipulated Final Order was not discipline.
- J. During the past several years, Mr. Tricarico has disclosed the Nevada and Oregon matters on numerous state board renewal applications. For instance, he has disclosed these matters to the Board in Alabama, Arizona, Arkansas, the District of Columbia, Indiana, Mississippi, and Rhode Island. Mr. Tricarico disclosed the Nevada and Oregon matters to these state boards because he interpreted the relevant renewal application question to require an affirmative response.
- K. To date, no state board has issued a final decision that interpreted the Nevada and/or Oregon matter to be disciplinary action.
- L. Mr. Tricarico's decision to not disclose the Nevada and Oregon matters when filing his New Hampshire renew application was not intended to deceive or defraud the Board in order to procure a license.

- M. Although Mr. Tricarico did not intend to be deceitful or fraudulent, the Board finds and Mr. Tricarico acknowledges that, even though he reasonably believed that the Nevada and Oregon resolutions were not discipline, he should have disclosed those matters with his explanation as why those resolutions were not discipline so that the Board could make its own determination of whether those actions constituted discipline.
7. The Board finds that Mr. Tricarico's failure to disclose the Nevada and Oregon resolutions when submitting his New Hampshire renewal applications could be construed as professional misconduct under RSA 310-A:47, II(c), which authorizes discipline for unprofessional conduct. Mr. Tricarico contends that his good faith failure to disclose was not willful and therefore should not be considered a violation of RSA 310-A:47, II(c).
8. Based upon the above facts, acknowledgements and admissions, and to resolve the pending adjudicatory proceedings without further delay, expense and proceedings, Mr. Tricarico agrees to pay an administrative fee of three thousand dollars (\$3,000.00) as a full and final resolution of this matter pending against him. Mr. Tricarico shall pay this amount in full within thirty (30) days of the effective date of this *Settlement Agreement*, as defined further below, by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 57 Regional Drive, Concord, New Hampshire 03301.

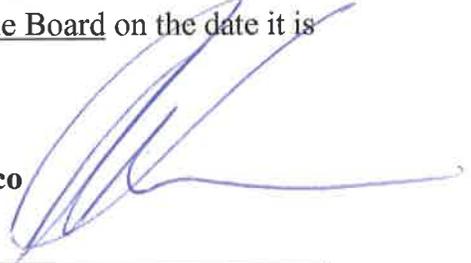
9. The Board may consider Mr. Tricarico's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of disciplinary charges by the Board based upon the alleged conduct described above. However, the Board may consider the evidence outlined above as a pattern of conduct in the event that similar alleged conduct is discovered in the future.
11. This *Settlement Agreement* shall become a permanent part of Mr. Tricarico's file, which is maintained by the Board as a public document.
12. Mr. Tricarico voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
13. The Board agrees that in return for Mr. Tricarico executing this *Settlement Agreement*, the Board will not proceed further with the adjudicatory process. The Board's adjudicatory decision dated December 11, 2012 shall be permanently rescinded upon the effective date of this *Settlement Agreement*, as defined further below.
14. Mr. Tricarico understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
15. Mr. Tricarico has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this *Settlement Agreement*.

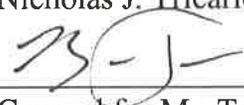
16. Mr. Tricarico understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Mr. Tricarico specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* has prejudiced his right to a fair and impartial rehearing and/or reconsideration in the future if this *Settlement Agreement* is not accepted by the Board.
17. Mr. Tricarico specifically waives any claim that the Board is not authorized to receive the agreed upon administrative fee in settlement of this matter.
18. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

Date: 3/22/13

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**For Mr. Tricarico**

  
\_\_\_\_\_  
Nicholas J. Tricarico

  
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Counsel for Mr. Tricarico

**FOR THE BOARD**

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 4/4/13

  
\_\_\_\_\_  
(Signature)

Louise Lavertu  
\_\_\_\_\_  
(Print or Type Name)  
Authorized Representative of the  
New Hampshire Board of Architects