

**State of New Hampshire
Joint Board of Licensure & Certification
Board of Land Surveyors
Concord, New Hampshire**

In the Matter of:
Ryan MacDonald, LLS, #944
(Adjudicatory/Proceeding)

Docket No. 12-01

FINAL DECISION AND ORDER

Before the New Hampshire Joint Board of Licensure & Certification, Board of Land Surveyors ("Board") is an adjudicatory/disciplinary proceeding in the Matter of Ryan MacDonald ("Respondent" or "Mr. MacDonald") in Docket Number 12-01.

This proceeding was commenced by a Notice of Hearing issued December 6, 2011 by the Board of Licensure for Land Surveyors ("the Board"), to determine whether Ryan MacDonald, LLS, #944 engaged in unprofessional conduct pursuant to RSA 310-A:70 and administrative rule Lan 402.01 and 501.02 (b) and (c).

Background Information

On or about January 7, 2011, the Board received a complaint regarding Respondent's failure to complete a contracted-for project. Respondent had been paid an advanced fee of \$1,200 for this project.

A hearing was held on January 26, 2012, at the Board office commencing at 9:30 a.m. at which Mr. MacDonald appeared, accompanied by his mother, Mrs. MacDonald and offered testimony and evidence to demonstrate why he had not engaged in professional misconduct. Sarah Blodgett, Assistant Attorney General was Hearing Counsel and prosecuted the matter.

Testimony was also received at the hearing from Investigator Todd Flanagan. Mr. Flanagan is the investigator from the Department of Justice, Administrative Prosecution Unit (APU.) Board members present¹ were:

Earl Sandford, Chairperson, Presiding Officer
John Myhaver, Vice Chairperson
Tracey Sweeney, Board Member
Gregory Brown, Board Member
Richard Bond, Public Member

The following exhibits were introduced into evidence and accepted into the record:

1. Board's January 18, 2011 letter to Respondent, advising him of the complaint and requesting a response by February 21, 2011, including delivery confirmation.
2. Board's February 24, 2011 letter to Respondent, advising that he had not responded to previous letter and requesting a response by March 10, 2011, including delivery confirmation.
3. APU's March 30, 2011 letter to Respondent, including delivery confirmation.
4. APU's May 11, 2011 letter to Respondent, including delivery confirmation.
5. Respondent's June 2, 2011 response to APU.
6. Respondent's NH Land Surveyor Renewal Form, received by the Board on January 26, 2011.
7. APU's September 21, 2011 letter to Respondent, including delivery confirmation.
8. The Respondent's Exhibits: The Respondent did not provide any exhibits.

Findings of Fact

1. The Board first granted Ryan MacDonald, LLS ("Mr. MacDonald" or "Respondent") a license to practice as a land surveyor in the State of New Hampshire on December 6, 2006. Respondent holds license number 944 and last practiced in Laconia, New Hampshire.

¹ The same Board members also deliberated and voted on this Final Decision and Order.

2. On or about January 7, 2011, the Board received a complaint regarding Respondent's failure to complete a contracted-for project. Respondent had been paid an advanced fee of \$1,200 for this project.

3. A hearing was held on January 26, 2012 concerning this complaint. At this hearing, the Board heard evidence from Investigator Todd Flanagan, Respondent, and Mrs. MacDonald. The Board also reviewed Exhibits 1 through 7 as part of its deliberative process.

The Board finds as follows:

- A. The Respondent ignored numerous requests from the complainant that Respondent either complete the project or reimburse the money.
- B. After reviewing the complaint, the Board submitted numerous requests to Respondent asking for a written response to the allegations against him. The deadline for this response was February 22, 2011. These communications were sent to Respondent's address in Laconia, New Hampshire. This was the address on record with the Board. The Board then attempted to contact Respondent via e-mail and telephone. Respondent did not respond to the Board's communications.
- C. This matter was then referred to the Administrative Prosecutions Unit ("APU") for investigatory assistance. APU was unable to contact Mr. MacDonald at his address on record with the Board. On or around May 5, 2011, it was learned that Mr. MacDonald had relocated to Plymouth, New Hampshire. Respondent did not provide the Board with this address within 30 days of his move.
- D. Respondent ultimately provided APU with a cursory response to the complaint dated June 5, 2011. He acknowledged that he had not completed the work for the complainant. Respondent asserted that he would contact the complainant to

address the outstanding issues. As of the date of the hearing, January 26, 2012, he had not contacted the complainant, but at the hearing expressed a desire to do so.

- E. Respondent's individual license to practice expired on June 30, 2010. Respondent admitted to practicing without a license from December 21, 2010 through December 31, 2010.
- F. In a letter dated September 21, 2011, Respondent was asked to provide additional information to APU by October 17, 2011. Respondent did not submit the requested information. Respondent did not request an extension of this deadline.
- G. Respondent had been suffering from mental health issues that severely compromised his ability to practice land surveying and to run a land surveying business. These same issues affected his willingness and ability to respond to repeated requests by the Board and APU in a timely fashion.

Rulings of Law

Based on testimony and exhibits at the January 26, 2012 hearing, the Board makes the following findings by a preponderance of the evidence:

In accordance with paragraph 6.A. of the Notice of Hearing ("NOH"), the Board finds that between February 18, 2011 and June 2, 2011, Respondent engaged in professional misconduct by ignoring numerous requests from the Board to respond to an investigation into a complaint of alleged misconduct, in violation of RSA 310-A:70, II (c); RSA 310-A:70, II (g); RSA 310-A:58, VI; and/or Lan 501.03(l)(1).

In accordance with paragraph 6.B. of the NOH, the Board finds that on or around May 5, 2011, Respondent engaged in professional misconduct by failing to report a change to his residential license, in violation of RSA 310-A:58, VI; and Lan 501.03(l)(5).

In accordance with paragraph 6.C. of the NOH, the Board finds that between January 7, 2011 and November 28, 2011 the Respondent engaged in professional misconduct by failing to either reimburse the complainant or complete the complainant's project, in violation of RSA 310-A:70, II (c).

In accordance with paragraph 6.D. of the NOH, the Board finds that between October 17, 2011 and November 28, 2011 Respondent engaged in professional misconduct by failing to cooperate with additional requests for information, related to the Board's investigation, in violation of RSA 310-A:70, II (c); RSA 310-A:70, II (g); RSA 310-A:58, VI; and Lan 501.03(l)(1).

In accordance with paragraph 6.E., the Board finds that around or between December 21, 2010 and December 31, 2010, Respondent engaged in professional misconduct by practicing as a land surveyor after his individual license to practice had lapsed, in violation of RSA 310-A:72.

The Board did not find any evidence to suggest that Respondent acted out of malice or with intent to defraud. Rather, the Board's opinion is that the mental health issues afflicting Mr. MacDonald affected him to such a degree that he was unable to complete professional obligations or cooperate with the Board's investigation. At this point in time, he is incapable of practicing in a competent and professional manner because of these issues. Respondent acknowledged and conceded this fact at the January 26, 2012 hearing.

Disciplinary Action

Based upon the above, the Board has voted the following:

IT IS ORDERED that the Respondent's license to practice as a land surveyor is suspended for a minimum of six (6) months. Prior to asking the Board to lift the suspension, the Respondent must comply with the following requirements:

- A. Respondent shall undergo a fitness-to-practice assessment within ninety (90) days of the issuance of this Final Decision and Order ("Order"). This assessment must be conducted by a licensed psychologist or psychiatrist who has been pre-approved by the Board (evaluator.)
- B. The pre-approved evaluator will review the Board's Order in this matter before completing the evaluation.
- C. The pre-approved evaluator shall provide a copy of the evaluation, under seal, to the Board, within one hundred twenty (120) days of the issuance of this Order.
- D. Respondent shall comply with all recommendations from the evaluation, including continuing counseling or medical treatment. Respondent shall submit supporting documentation of compliance with all recommendations to the Board. This documentation shall be filed under seal, on a quarterly basis.
- E. Respondent shall execute any and all releases necessary to authorize the Board to communicate with the evaluator and any subsequent mental healthcare providers.
- F. Respondent shall demonstrate a ninety (90) day period of compliance with all recommendations prior to asking the Board to lift the suspension of his license.
- G. Respondent shall establish a payment plan to reimburse any clients for whom work was not completed, and provide the Board with supporting documentation evidencing a payment plan to reimburse payments for any outstanding incomplete work projects.

IT IS FURTHER ORDERED THAT although Respondent's license expires on June 30, 2012, if Respondent completes the above mentioned requirements on or before June 30, 2013, he can reapply for licensure by renewal rather than reinstatement.

A. This order shall become a permanent document in the Respondent's file which is maintained by the Board as a public document.

B. This Order shall take effect on the date it is signed by an authorized representative of the Board.

C. A motion for rehearing, reconsideration, or clarification shall be filed within 30 days of the effective date of this Order. This motion shall be in accordance with Lan part 213. Filing a motion for rehearing or reconsideration shall be a prerequisite to appealing this Order.

Dated: February 29, 2012

BY ORDER OF THE BOARD



Louise Lavertu
Executive Director