

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

Thomas Flavin, LLS
License No.: 587
(Adjudicatory/Disciplinary Proceeding)

Docket No. LS 269

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 Thomas Flavin ("Respondent" or "Mr. Flavin") in Docket Number LS269.

BACKGROUND INFORMATION

This proceeding was commenced by a Notice of Hearing issued August 13, 2013 by the Board of Land Surveyors ("the Board"), to determine whether Thomas Flavin, licensed land surveyor #587 committed professional misconduct pursuant to RSA 310-A:70, II (c), RSA 310-A:70, II (g), and/or Lan 501.03(1)(1) by 1) failing to cooperate with numerous requests from the Board to respond to an investigation of a complaint of alleged misconduct and 2) whether between the dates of April 21, 2010 and May 1, 2013, Respondent failed to report a change in his residential address in violation of Lan 501.03 (1) (5).

A disciplinary hearing was held on Thursday, October 17, 2013 at the Board office. A Notice of Hearing (NOH) and exhibits were sent to Mr. Flavin at the Board's last on-file address via US Mail return receipt requested dated August 13, 2013. The US Mail return receipt was signed for on August 15, 2013 by Gordon Flavin. The NOH was also sent to Mr. Flavin by US Mail on August 15, 2013 and again on October 8, 2013. The Respondent failed to appear at the hearing. Testimony was received at the hearing from Thomas McCabe, Joint Board Investigator. Mr. McCabe is the Joint Board staff member that is responsible for conducting investigations on behalf of the Board.

Board members present were¹

Gregory Brown, LLS, Chairperson, Presiding Officer
Tracey Sweeney, LLS, Vice-Chairperson
Richard Bond, Public Member
Kevin McEneaney, LLS, Board Member
William Doucet, LLS, Board Member

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

1. A report of investigation dated February 4, 2013 regarding the complaint filed by Jerome and Catherine Riesenber.
2. A letter from the Board's Investigator to Mr. Flavin dated April 18, 2013 requesting information related to the pending complaint filed by Mr. and Mrs. Reinsenber and a certified US mail receipt signed for by Gordon Flavin dated May 8, 2013.
3. An e-mail from Investigator McCabe to Mr. Flavin dated June 4, 2013 requesting a response to the May 18, 2013 registered letter.
4. A letter from the Board's Investigator to Mr. Flavin dated June 11, 2013 requesting information related to the pending complaint filed by Mr. and Mrs. Reinsenber and a certified US mail receipt signed for by Gordon Flavin dated June 13, 2013.

FINDINGS OF FACT

1. The Respondent was granted a license as a Land Surveyor in the State of New Hampshire on August 9, 1979 and said license is current through April 30, 2014.
2. The Respondent was notified by letter, US Mail return receipt requested on April 18, 2013 that the Board was investigating allegations in a complaint submitted by Jerome and Catherine Riesenber. The Respondent was instructed to provide information to the Board regarding whether he placed the Riesenber's twelve boundary pins. The letter was sent to Mr. Flavin's on-file mailing address and requested a response by May 17, 2013.

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

3. On May 9, 2013 the Board office received the US Mail return receipt sent with the Board's April 18, 2013 letter signed for by Gordon Flavin on May 8, 2013.
4. The Respondent failed to respond to the Board's April 18, 2013 inquiry.
5. The Respondent was notified by letter, US Mail return receipt requested on June 11, 2013 that the Board was investigating allegations in a complaint submitted by Jerome and Catherine Riesenbergs and indicated that the Respondent failed to respond to the Board's April 18, 2013 request for information. The Respondent was again instructed to provide information to the Board regarding whether he placed the Riesenbergs's twelve boundary pins. The letter was sent to Mr. Flavin's on-file mailing address and requested a response by July 1, 2013. The Respondent was also informed that failure to respond to the Board's inquiry will result in possible disciplinary action pursuant to Lan 501.03 standards of conduct.
6. On June 13, 2013 the Board office received the US Mail return receipt sent with the Board's June 11, 2013 letter signed for by Gordon Flavin.
7. On July 31, 2013 at 8:15 a.m. Mr. McCabe telephoned Thomas Flavin's business number and left a voice message requesting that Mr. Flavin contact him at the Board office; Mr. McCabe left the same message on Mr. Flavin's home phone. At 12:15 p.m on July 31, 2013 Mr. McCabe made a repeated telephone call to Mr. Flavin's business number informing him that if he did not respond by August 5, 2013, the Board would review his lack of cooperation at their meeting on August 8, 2013.
8. Board Investigator McCabe drove to Surry, New Hampshire, Mr. Flavin's on file town of residence on August 6, 2013 to determine if he could locate Mr. Flavin's residence in order to speak with him about the complaint and his lack of response to the Board. Mr. McCabe located Mr. Flavin's residence but no one answered the door. Mr. McCabe left his business card taped to

the front door of Mr. Flavin's house, indicating he needed to speak with Mr. Flavin. Investigator McCabe has never received a response to his August 6, 2013 inquiry from Mr. Flavin.

9. A Notice of Hearing regarding the Respondent's failure to respond to the Board's inquires was issued on August 13, 2013 by the New Hampshire Board of Land Surveyors sent via US mail return receipt requested in which the Respondent was afforded the opportunity to appear before the Board on October 17, 2013 and show cause why any and all rights he may have to practice land surveying in New Hampshire should not be suspended or subject to disciplinary action. The Notice of Hearing was sent via US mail, return receipt requested and signed for by Gordon Flavin on August 15, 2013. The Notice of Hearing was also sent to the Respondent's on-file address by US Mail on August 15, 2013 and October 8, 2013.

10. A disciplinary hearing was held on October 17, 2013 at the Board office. The Respondent was absent from the hearing therefore the hearing was held in absentia.

CONCLUSIONS OF LAW

Because of the Respondent's lack of responsiveness to the Board and failure to attend the hearing, the Board was unable to determine if the Respondent violated Lan 503.01 (l) (5) which requires licensees to report to the board the establishment of a business/home address or the change or abandonment of a business/home address within 30 days.

Administrative Rule Lan 501.03 (1) (1) states that the licensee shall cooperate with investigations and requests for information from the board and the board's representatives.

The Board finds that the Respondent intentionally failed to respond to the Board and the Board's Investigator.

Failure to respond to the Board and the Board's Investigators constitutes "unprofessional" and "dishonest" conduct within the meaning of RSA 310-A:70 II (c). Failure to respond to the

Board and the Board's representatives further violates administrative rule Lan 501.03 (1) (1), which requires licensees to cooperate with investigations and requests for information from the board and the board's representatives. Honesty and integrity are essential to the practice of land surveying. Further, the Respondent's repeated failure to respond to the Board and the Board's representatives is "willful or repeated violation of the provisions of this subdivision" within the meaning of RSA 310-A:70 II (g).

The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 310-A:70 II (c), RSA 310-A:70, II (g) and Lan 501.03 (1) (1).

THEREFORE, IT IS ORDERED, pursuant to RSA 310-A:70, III (a) (b) and (e) the Board imposes the following sanctions:

A. The Respondent is hereby reprimanded.

B. The Respondent is assessed an administrative fine in the amount of \$1,000.00.

The Respondent shall pay this fine in full within thirty (30) days of the effective date of this Order, 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, NH 03301.

C. The Respondent shall provide the information requested in the Board's April 18, 2013 and June 11, 2013 letters. Specifically, whether he set the twelve pins on Jerome and Catherine Riesenbergs property. If so, when were the pins set and where are they located? If the requested information is not received within 60 days of this Final Decision and Order the Respondent's license to practice land surveying in New Hampshire will be suspended for one year pursuant to RSA 310-A:70, III (b).

- D. The Respondent's breach or any terms or conditions of this Order shall constitute unprofessional conduct pursuant to RSA chapter 310-A:70 and a separate sufficient basis for further disciplinary action by the Board. Additionally, the Board may consider the fact that discipline was imposed by this Final Decision and Order as a factor in determining appropriate discipline should any further misconduct be proven against the Respondent in the future.
- E. This order shall become a permanent document in the Respondent's file which is maintained by the Board as a public document.
- F. This Order shall take effect on the date it is signed by an authorized representative of the Board.
- G. IT IS FURTHER ORDERED that a motion for rehearing, reconsideration, or clarification shall be filed within 30 days of the effective date of this Final Decision and 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 Final Decision and Order.

Dated: November 7, 2013

BY ORDER OF THE BOARD



Louise Lavertu
Executive Director