ORIGINAL

BEFORE THE BOARD OF ARCHITECTURAL EXAMINERS

STATE OF IDAHO

In the Matter of the Application for License of: **JASON W. TOMLINSON,** Applicant.	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REGARDING ADMISSION**

THIS MATTER came before the Idaho State Board of Architectural Examiners at a regularly scheduled meeting, held on the 1st day of May, 2009. Having reviewed all documents of record in this matter, and having heard the testimony of Mr. Tomlinson on May 1, 2009, the Board hereby enters the following Findings of Fact, Conclusions of Law, and Order Regarding Admission.

FINDINGS OF FACT

1. The Idaho State Board of Architectural Examiners (the "Board") is empowered by Idaho Code § 54- 312 to administer the Idaho Architect Act codified at chapter 52, title 54, Idaho Code. The Board has jurisdiction to consider whether an applicant has violated the Architect Act or rules when deciding whether to license an applicant. *See* Idaho Code Sections 54-305(1), and 54-305(4).

2. Applicant, Jason W. Tomlinson is an individual living in Boise, Idaho, doing business as or formerly doing business as Tomlinson Design. Mr. Tomlinson's right (if any) to engage in the practice of architecture in the State of Idaho is subject to Respondent's compliance with the Idaho Architect Act and the Rules of the Architectural Examiners, promulgated at IDAPA 24.01.01, *et seq.*

3. On September 5, 2008, Michael S. Gilmore, Deputy Attorney General ("Deputy Attorney General Gilmore") presented the Board with a memorandum ("Gilmore Memorandum") dated September 2, 2008, entitled, Recommended Action on Disciplinary Complaints; specifically referring to Case Nos. ARC-2008-6 and ARC-2008-7. The memorandum was presented to the Board without identifying the persons involved. The memorandum provided a synopsis of the Idaho Bureau of Occupational Licenses' ("IBOL") investigation of two complaints alleging that a licensed architect had stamped plans for a draftsman. The memorandum explains that "Respondent and the draftsman acknowledged that the contract was between the draftsman and the owner of the property." *Gilmore Memorandum*, dated September 2, 2008.

4. In a letter dated September 10, 2008, Deputy Attorney General Gilmore informed Mr. Tomlinson that the IBOL had completed its investigation of Case No. ARC-2008-6; a case number associated with a complaint filed against Mr. Tomlinson. According to the letter, IBOL's "investigation revealed that in 2007 David Rudeen worked with you on the Lochsa Falls Commercial, Phase Two, Development . . . the investigation also revealed that the contractual agreement for the project was between Tomlinson Designs and Dean & Carter, PLLC, with a verbal acknowledgment that Mr. Rudeen would be the architect of record. Mr. Rudeen then had a separate agreement with Tomlinson Designs.." *Gilmore Letter*, dated September 10, 2008.

5. In a letter dated March 12, 2009, Roger J. Hales, the Board's attorney, informed Mr. Tomlinson that while reviewing Mr. Tomlinson's application for an architect license at its March 9, 2009 Board meeting, the Board became aware of allegations potentially involving Mr. Tomlinson's unlicensed practice of architecture. Specifically, Mr. Hales explained that the

allegations stemmed from a disciplinary action against the licensed architect, David C. Rudeen in case No. ARC-2008-7. Attached to Mr. Hales' letter was a copy of the Stipulation and Consent Order for Case No. ARC-2008-7, which was presented to the Board at its March 9, 2009, Board meeting. On behalf of the Board, Mr. Hales invited Mr. Tomlinson to attend its May 1, 2009, Board meeting to discuss the Board's concerns. *Hales Letter*, dated March 12, 2009.

6. In a letter dated April 9, 2009, Mr. Tomlinson responded to Mr. Hales' March 12, 2009 letter, by stating that "the memorandum from Michael Gilmore dated September 2, 2008 indicates that the investigation revealed I had done nothing wrong. At this point, I would like to be well prepared for the Board meeting on May 1, 2009. I would like to have copies of all public records regarding accusations against me in this case, and would like to know specifically what grounds the board has to withhold my license application . . . ." *Tomlinson Letter*, dated April 9, 2009.

7. In a letter addressed to Mr. Tomlinson's attorney, Jay M. Gustavsen, dated April 20, 2009, Mr. Hales responded to Mr. Tomlinson's letter dated April 9, 2009. Mr. Hales explained that "on the day your client's application was reviewed by the Board, the Board also considered a stipulation concerning David C. Rudeen regarding potential illegal plan stamping by a licensed architect. The stipulation involving Mr. Rudeen also identified Tomlinson Designs as being involved in the factual scenario. The Board therefore possessed concerns that your client's actions in the matter may also have violated the Architect Act or the Board's rules." Hales' April 20, 2009 letter. Mr. Hales additionally stated that "the Board possesses clear authority to consider whether an applicant has violated the Architect Act or rules when deciding whether to license an

applicant" citing Idaho Code § 54-305(4). *Id.* Further, Mr. Hales acknowledged that he had "forwarded the one document the Board has considered in this matter. To the extent that your client desires to make a public records request upon the Board, please direct your written request to the Idaho Bureau of Occupational Licenses . . . ." *Id.* *Second Hales Letter*, dated April 20, 2009.

8. In an email addressed to Mr. Gustavsen dated April 27, 2009, Mr. Hales attached copies of Deputy Attorney General Gilmore's Memorandum dated September 2, 2008 (See Exhibit "A"), and Mr. Gilmore's September 10, 2008 letter addressed to Mr. Tomlinson. Mr. Gustavsen was informed that "said documentation have also been provided to the Board for its consideration." Hales' April 27, 2009 email. *Hales E-mail*, dated April 27, 2009.

9. On May 1, 2009, Mr. Tomlinson appeared before the Board with his attorneys to answer the Board's questions regarding his application for an architect license, as well as questions regarding alleged unlicensed practice of architecture. In response to questioning from the Board, Mr. Tomlinson explained that in 2006 his company, Tomlinson Design, entered into a contract with a developer to provide drafting services for the Lochsa Falls Commercial, Phase Two, development. Mr. Tomlinson admitted that Mr. Rudeen, the architect of record, was not a party to the primary contract for the Lochsa Falls Commercial, Phase Two, development. Instead, Mr. Tomlinson explained that Tomlinson Design entered into a separate agreement in with David Rudeen in 2007; the agreement provided that Mr. Rudeen would be the architect of record with regard to the Lochsa Falls Commercial, Phase Two, development.

10. The Architecture Act defines the practice of architecture as consisting of "rendering or offering those services hereinafter described, in connection with the design,

construction, enlargement, or alteration of a building or a group of buildings. The services covered within this definition include architectural planning, advise and consultation; providing preliminary studies; architectural designs, drawings and specifications; technical submissions; and, administration of construction contracts. Idaho Code § 54-309(1)(c). There is an exemption from licensing under the Act for the rendering of architectural services for certain residential structures, but no such exemption exists for commercial structures. Idaho Code § 54-309(2)(c).

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code §§ 54-305(1), and 54-305(4), Mr. Tomlinson, as an applicant for licensure as an Architect is subject to the jurisdiction of the Board and to the provisions of title 54, chapter 52, Idaho Code.

2. Pursuant to Idaho Code § 54-305(2), Mr. Tomlinson was given at least twenty (20) days' notice in writing of the nature of the charge against him and of the time and place of the hearing before the board for purposes of hearing and determining such charge. *Hales Letter*, dated March 12, 2009.

3. Mr. Tomlinson has committed acts which constitute grounds for discipline of any person seeking a license under the law and rules governing the practice of architecture in the State of Idaho; Idaho Code § 54-305(1)(g) (it is unlawful for any person to practice architecture contrary to the provisions and requirements of this chapter); Idaho Code § 54-305(1)(h) (it is unlawful for any person to violate the rules of conduct for architects which as adopted by the Board); Idaho Code § 54-305(1)(i) (it is unlawful for any person to engage in the practice of architecture in

Idaho without first being licensed by the Board); and IDAPA 24.01.01.550.04 (The primary contract or agreement for the project must be between the architect of record and the entity for which architectural services are provided, not between the person being supervised and the entity for which the services are provided).

The Board, having conducted an independent review of the record and having considered the testimony of Mr. Tomlinson on May 1, 2009, the Board finds that there exists sufficient grounds for discipline against Mr. Tomlinson, a person seeking a license to practice architecture in the State of Idaho. Good cause appearing therefor, the Board unanimously adopted the following Order:

IT IS HEREBY ORDERED as follows:

1. Mr. Tomlinson's has violated Idaho Code Sections 54-305(1)(g), 54-305(1)(h), 54-305(1)(i), and IDAPA 24.01.01.550.04, as more fully set forth in above findings of fact, conclusions of law. Pursuant to Idaho Code § 54-305(4), Mr. Tomlinson's license shall be granted subject to the following penalties:

a. Mr. Tomlinson shall pay a fine in the amount of Two Thousand Dollars ($2000.00). Mr. Tomlinson shall pay this fine within ninety (90) days from the date of this Order.

b. Mr. Tomlinson's shall be placed on probation for the period of two (2) years.

c. Mr. Tomlinson must address the Board in person one (1) time for each of the two years he is on probation.

d. Mr. Tomlinson must complete four (4) additional continuing education units for each of the two years he is on probation. The additional continuing education units must address the topic of professional practice with a focus on ethics.

2. This is the Final Order of the Board.

a. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of the service date of this Final Order. The Board will dispose of the Petition for Reconsideration within twenty-one (21) days of its receipt, or the Petition will be considered denied by the operation of law. (*See*, Idaho Code § 67-5247(4).)

b. Pursuant to Idaho Code §§ 67-5270 and 57-5272, any party aggrieved by this Final Order, or orders previously issued in this case, may appeal this Final Order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (i) a hearing was held; (ii) the final agency action was taken; or (iii) the party seeking review of this Final Order resides.

c. An appeal must be taken within twenty-eight (28) days: (i) of the service date of this Final Order; (ii) of any order denying petition for reconsideration; or (iii) of the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. (*See*, Idaho Code § 67-5273.) The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

d. The Bureau Chief of the Bureau of Occupational Licenses shall cause a true and correct copy of this Final Order to be served upon Respondent and the State's attorney by mailing a copy to them at their addresses as provided.

DATED this 19th day of May, 2009.

IDAHO STATE BOARD OF ARCHITECTURAL EXAMINERS

By _____
Steve Turney, Vice-Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of May, 2009, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Jason W. Tomlinson 3257 S. Shortleaf Avenue Boise, ID 83716	✓ __ __ ✓	U.S. Mail Hand Delivered Federal Express Certified Mail
Jay M. Gustavsen Davidson, Copple, Copple & Cox 199 N. Capital Blvd., Ste. 600 P.O. Box 1583 Boise, ID 83701	✓ __ __ __	U.S. Mail Hand Delivered Federal Express Fax Transmission

Tana Cory

Tana Cory, Bureau Chief

M:\IBOL\Architect\Documents\4773 Tomlinson Final Order DRAFT.wpd