

DECISION AND REASONS ON PENALTY

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, c. P.28; and in the matter of a complaint regarding the conduct of HOUSTON T. ENGIO, P.ENG., a member of the Association of Professional Engineers of Ontario, and HOUSTON ENGINEERING & DRAFTING INC., a holder of a Certificate of Authorization.

1. After the Decision and Reasons were issued on July 1, 2015 (the decision), the panel decided to conduct the penalty hearing in writing, pursuant to Rule 7.1 of the Rules of Procedure of the Discipline Committee. A letter was sent to Mr. Houston T. Engio (Engio), Houston Engineering & Drafting Inc. (HEDI), and the Association of the Professional Engineers of Ontario (PEO) requesting written submissions on penalty.
 2. The Tribunal Office has made numerous unsuccessful efforts to locate Engio and HEDI (the defendants). The decision and the letter were sent through Canada Post to the address on file with the registrar, and were returned. The Tribunal Office then attempted to serve Engio personally through a process server at the registered address. The occupant advised the process server that Engio did not reside at that address. The registrar had never been advised of any change in address by the defendants. The Tribunal Office also emailed Engio at the email address on file with the registrar, but has received no response.
 3. Accordingly, the panel only has the written submissions on penalty filed by PEO.
- PEO'S PENALTY SUBMISSION**
4. PEO seeks the following penalties:
 - a) Pursuant to subsection 28(4)(a) of the *Professional Engineers Act* (the act), revoke Engio's licence and HEDI's Certificate of Authorization;
 - b) Pursuant to subsection 28(5) of the act, require that the panel's decision and reasons for decision to be published in PEO's official publication, with reference to names; and
 - c) Pursuant to subsection 28(4)(j) of the act, require the defendants to jointly and severally pay costs to PEO in the amount of \$20,000, within 30 days of the date of the penalty decision.
 5. PEO's penalty submissions referenced Engio's previous conviction of professional misconduct, under which he was found guilty of breach of sections 72(2)(a) of Regulation 941 (the prior conviction). The misconduct in that proceeding included, but not limited to, providing misleading information under oath, and falling below the standards of practice expected from a professional engineer in his communications with clients. In addition to being reprimanded and receiving a six-week licence suspension, Mr. Engio and HEDI were required to complete the professional practice examination (PPE) within 14 months of the date of hearing.
 6. After the suspension was completed, Mr. Engio made no attempt to complete the PPE as ordered. As a result, his licence was suspended on January 8, 2013.
 7. PEO listed the following eight factors to support its argument that the defendants are ungovernable and, therefore, deserve to have licences revoked:
 - (1) Serious misconduct of relatively lengthy duration;
 - (2) There is a prior discipline history;
 - (3) There is no character evidence;
 - (4) There is a complete lack of remorse;
 - (5) The defendants have exhibited complete unwillingness to be governed by PEO;
 - (6) Engio provided doctors' notes that were unrelated to the issues before the panel in his multiple attempts to adjourn and evade the hearing;
 - (7) The defendants have taken no remedial steps, with likelihood of re-offence; and
 - (8) The defendants have been unco-operative, and have not addressed the issues that gave rise to the charges in this proceeding.
 8. In the event that the panel does not find that the defendants are ungovernable, PEO argues that revocation is still the proper remedy because of Mr. Engio's misconduct

in the prior conviction and his misconduct giving rise to the charges in the current proceedings.

9. PEO seeks costs in the amount of \$20,000 on the basis that the defendants' behaviour in the current proceedings created unnecessary costs and delays.

PENALTY DECISION

10. After considering PEO's submissions, and for the following reasons, the panel rules as follows:
 - a) Revoke Engio's licence and HEDI's Certificate of Authorization;
 - b) The panel's Decision and Reasons be published in PEO's official publication, with reference to names; and
 - c) The defendants jointly and severally pay costs to PEO in the amount of \$15,000, within 30 days of the date of this order.

REASONS FOR THE PENALTY DECISION

11. As correctly stated by PEO, penalty serves five objectives:
 - (1) Protection of the public;
 - (2) General deterrence;
 - (3) Specific deterrence;
 - (4) Maintenance of the reputation of the profession in the eye of the public; and
 - (5) Rehabilitation.
12. The significance of each factor varies from case to case depending on many factors, such as the nature and seriousness of the misconduct, the defendants' blameworthiness, and risk to public safety.
13. In this case, the objectives of protection of the public and deterrence are of paramount importance.
14. The defendants engaged in misconduct that directly threatened the safety of others working on the project and the public. Even though Engio was told by the deputy building officer of the City of Toronto that his drawings were deficient and could not resist applied loads, he ignored the warning and allowed the shoring work and the construction to be continued

without a permit. In support of a permit application, he signed off on all disciplines in the General Review Commitment Certificate, despite the fact that no single engineer could cover all of these disciplines. Engio then did not respond to the stop-work order issued by the city.

15. Based on the expert evidence at the hearing, the numerous errors, omissions and deficiencies in Engio's designs would present a significant risk to public safety, encroach upon neighboring public property and result in catastrophic failure. Mr. Engio's designs were simply unworkable and dangerous.
16. In light of the serious and dangerous deficiencies in Engio's work, the first and foremost objective is to protect public safety. Given the prior conviction and Engio's failure to take the PPE as previously ordered, the panel accepts PEO's submission that Engio's licence and HEDI's Certificate of Authorization be revoked.
17. Because licence revocation is an appropriate remedy in this case, there is no need for the panel to decide whether Engio was governable.
18. Both general deterrence and specific deterrence are important and relevant objectives in this case. Members in the engineering profession should know that it is a privilege to practise engineering as a P.Eng., and that the privilege comes with responsibilities. No engineers should be permitted to engage in conduct or omission that disregards applicable codes and bylaws such that public safety is put at risk. To generally and specifically deter such dangerous behaviour, the panel accepts PEO's submission that the panel's Decision and Reasons be published in PEO's official publication, with reference to names.
19. Anytime a P.Eng. or licence holder engages in dangerous conduct, it has the potential to erode the public's confidence in the profession. By denouncing the defendants' misconduct and ordering the publication of the Decision and Reasons, the panel believes

that it will help maintain the reputation of the engineering profession as far as the defendants' misconduct is concerned.

20. The panel has also considered the objective of rehabilitation. The panel is concerned that Engio showed grave disrespect for not attending the entire hearing without valid reasons, and for not informing the registrar or the tribunal of his whereabouts after the hearing.
21. Although the panel is not convinced that rehabilitation could be achieved in this case, we note that section 37 of the act states that he may reapply for his licence after two years of revocation. If at that time he has completed the PPE as previously ordered and is able to convince a panel of the Discipline Committee that he is able to engage in the practice of professional engineering with competence and integrity, then the penalty of revocation will have served a rehabilitative purpose.
22. On the issue of costs, the panel agrees with PEO that the defendants' conduct during the hearing has caused multiple adjournments and significant delays. The defendants made the first adjournment request with a medical note presented by a friend. The note did not say that Engio could not attend hearings, but because it appeared to be a medical note, the panel accepted it on its face value and adjourned the hearing. The defendants made the second adjournment request suggesting that he had just retained counsel. When the hearing resumed the third time, he came without a legal representative. On May 9, 2015, the hearing had to be adjourned when Engio lay down on the ground in the middle of the hearing. No medical note was presented about his

medical condition (if any), even though such request was communicated to him through his friend who was at the hearing. He never came back to attend the rest of the hearing. In the circumstance of this case, the panel is concerned that Engio may have been trying to delay or evade the hearing. This is an appropriate case to order costs in favour of PEO. PEO asked for \$20,000. The panel considered this request and concluded that \$15,000 would be reasonable. Therefore, the panel rules that the defendants should, jointly and severally, pay PEO costs in the amount of \$15,000, within 30 days.

Michael Wesa, P.Eng., signed this Decision and Reasons on Penalty for the decision as chair of this discipline panel and on behalf of the members of the discipline panel: Ishwar Bhatia, P.Eng., Rebecca Huang, LLB, Virendra Sahni, P.Eng., and Henry Tang, P.Eng.

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