

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

**DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,**
Petitioner,

vs.

DOACS Case No. 2007-047442
DOAH Case No. 09-3540PL
Agency Clerk #A64835

DANIEL DAVID GARNER,
Respondent,

FINAL ORDER APPROVING SETTLEMENT STIPULATION

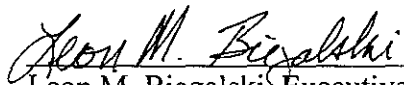
THIS CAUSE came before the Board of Professional Surveyors and Mappers (“Board”) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, at a meeting held on October 15, 2009, in Tallahassee, Leon County, State of Florida, for determination of whether to accept the proposed Settlement Stipulation (“Stipulation”) entered into by the parties in the above styled cause. Respondent was present at the hearing. Petitioner was represented by Mr. Eric R. Hurst, Esquire.

Upon consideration of the Administrative Complaint, the proposed Stipulation, and the presentation of the parties, and being otherwise fully advised of the premises, **IT IS HEREBY ORDERED AND ADJUDGED:**

1. The proposed Stipulation is hereby approved and adopted. A copy of the Stipulation is attached hereto as Exhibit “A” and incorporated herein.
2. The parties shall adhere to and abide by all the terms and conditions of the Stipulation.

3. Failure to comply with the terms of the Stipulation, including timely payment of any fines and/or costs assessed, shall cause the Respondent to be subjected to further discipline.
4. This Final Order shall be placed in and become a part of the Respondent's official records and shall take effect upon being filed with the Agency Clerk of the Department of Agriculture and Consumer Services, whose seal is affixed hereon.

DONE AND ORDERED this 7th day of November, 2009.


Leon M. Biegalski, Executive Director,
Board of Professional Surveyors and Mappers
For JEFFERY COONER, Chair

NOTICE OF RIGHT JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Agency Clerk of the Department of Agriculture and Consumer Services and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the Order to be reviewed.

Filed with the Clerk, this 10th day of November, 2009.


Agency Clerk

Copies by Certified U.S. Mail, RRR# 7006 0100 0003 1115 8683
Daniel David Garner, 3716 N. Wickham Rd. Suite 3, Melbourne, FL 32935
By hand delivery:
Bennett M. Miller, Board Counsel
Eric H. Miller, Prosecuting Attorney

09-3-40

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	6/9/2009
File #	

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2007-07442

DANIEL DAVID GARNER,

Respondent.

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DIVISION OF
ADMINISTRATIVE
HEARINGS

CORRECTED AMENDED ADMINISTRATIVE COMPLAINT

Petitioner, Department Of Business And Professional Regulation, ("Petitioner"), files this Administrative Complaint before the Board of Professional Surveyors and Mappers, against Daniel David Garner, ("Respondent"), and alleges:

1. Petitioner is the state agency charged with regulating the practice of land surveying and mapping, pursuant to Section 20.165, Florida Statutes, and Chapters 455 and 472, Florida Statutes.
2. Respondent is and has been, at all times material hereto, a licensed surveyor and mapper in the State of Florida, having been issued license number LS 6189.
3. Respondent's last known address of record was 3716 North Wickham Road, Melbourne, Florida 32935.

- b. 61G17-6.003(b)4: The verbiage on the map face regarding the validity is not the same as required by this rule. The rule requires a signature and seal to be a valid survey, Respondent's verbiage only requires a seal
- c. 61G17-6.003(3)(b)11b: Respondent failed to define the abbreviations Sec., Rge., SDMH and ERCP.
- d. 61G17-6.003(3)(b)15a: Respondent failed to show the vertical error of closure in field notes, in computations, or on the survey drawing.
- e. 61G17-6.004(2)(a)3: Respondent failed to show the discrepancies between the survey map and the real property description in relation to Parcels B and C.

COUNT ONE

8. Petitioner re-alleges and incorporates the allegations set forth in paragraphs one (1) through seven (7) as though set forth herein.

9. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of Rule 61G17-6.003(2)(b)3, Florida Administrative Code, by failing to date field notes.

COUNT TWO

10. Petitioner re-alleges and incorporates the allegations set forth in paragraphs one (1) through seven (7) as though set forth herein.

11. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of Rule 61G17-6.003(b)4, Florida Administrative Code, by failing to provide correct verbiage on the map face of the survey.

COUNT THREE

12. Petitioner re-alleges and incorporates the allegations set forth in paragraphs one (1) through seven (7) as though set forth herein.

13. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of Rule 61G17-6.003(3)(b)11b, Florida Administrative Code, by failing to define the abbreviations Sec., Rge., SDMH and ERCP.

COUNT FOUR

14. Petitioner re-alleges and incorporates the allegations set forth in paragraphs one (1) through seven (7) as though set forth herein.

15. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of Rule 61G17-6.003(3)(b)15a, Florida Administrative Code, by to

show the vertical error of closure in field notes, in computations, or on the survey drawing.

COUNT FIVE

16. Petitioner re-alleges and incorporates the allegations set forth in paragraphs one (1) through seven (7) as though set forth herein.

17. Based on the foregoing, Respondent has violated Section 472.033(1)(h), Florida Statutes, through a violation of Rule 61G17-6.004(2)(a)3, Florida Administrative Code, by failing to show the discrepancies between the survey map and the real property description relating to Parcels B and C.

WHEREFORE, Petitioner respectfully requests an order from the Board imposing one or more of the following penalties: imposition of an administrative fine not to exceed one thousand dollars (\$1,000.00) for each count or separate offense, issuance of a reprimand, assessment of costs associated with investigation and prosecution, imposition of any or all penalties delineated within Section 455.227(2), Florida Statutes, and/or any other relief that the Board or the Department is authorized to impose pursuant to Chapters 455 and/or 472, Florida Statutes, and/or the rules promulgated thereunder.

Signed this 2nd day of June, 2009.

CHARLES W. DRAGO, Secretary
Department of Business and
Professional Regulation

By: 

Eric R. Hurst
Assistant General Counsel
Florida Bar No. 0879673
Department of Business and
Professional Regulation
Office of the General Counsel
1940 N. Monroe Street, Ste. 42
Tallahassee, FL 32399-2202
(850) 921-8656 Telephone
(850) 414-6749 Facsimile

PCP Date: 4-7-09
PCP Members: Mastronicola, Echerakal & Poppell

ERH/kem

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS

DEPARTMENT OF BUSINESS AND
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DBPR Case No. 2007-047442

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DANIEL DAVID GARNER,

Respondent.

SETTLEMENT STIPULATION

DANIEL DAVID GARNER, hereinafter referred to as "Respondent," and the Department of Business and Professional Regulation, hereinafter referred to as "Department," hereby stipulate and agree to the following joint Stipulation and Final Order of the Board of Professional Surveyors and Mappers, hereinafter referred to as "Board," incorporating this Stipulation and agreement in the above-styled matter.

STIPULATED FACTS

1. For all times pertinent hereto, Respondent was a licensed Surveyor and Mapper in the State of Florida, license number LS 6189. Respondent's address of record is 3716 North Wickham Road, Melbourne, Florida 32935.

2. Respondent is charged by a Corrected Amended Administrative Complaint with five (5) violations of chapter 472,

Florida Statutes, and/or the rules enacted pursuant thereto. A true and correct copy of the Corrected Amended Administrative Complaint is attached hereto and incorporated by reference as Exhibit "A."

3. Respondent neither admits nor denies the matters of fact alleged in the Corrected Amended Administrative Complaint attached hereto as Exhibit "A."

STIPULATED CONCLUSIONS OF LAW

4. Respondent in his capacity as a licensed Surveyor and Mapper admits that in such capacity he is subject to the provisions of chapters 455 and 472, Florida Statutes, and the jurisdiction of the Department and the Board.

5. Respondent admits that the facts set forth in the foregoing stipulated facts, if proven, would constitute a violation of chapter 472, Florida Statutes, as alleged in the Corrected Amended Administrative Complaint.

6. Respondent agrees that the Board's acceptance of the Stipulation constitutes disciplinary action within the meaning of sections 472.033(1) and 455.227(1)(f), Florida Statutes.

STIPULATED DISPOSITION

7. Respondent shall not, in the future, violate chapters 455 and 472, Florida Statutes, or the rules promulgated pursuant thereto.

8. FINE & COSTS: Pursuant to Rule 61G17-9.0025(3) and
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(18), Florida Administrative Code, the Board shall impose an administrative fine in the amount of one thousand two hundred fifty dollars (\$1,250.00). Additionally, Respondent shall pay administrative costs, excluding attorney's fees, of three thousand forty four dollars and sixty eight cents (\$3,044.68) for a total of four thousand two hundred ninety four dollars and sixty eight cents (\$4,294.68). Said fine and costs shall be paid by the Respondent to the Executive Director of the Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0750, in twenty four (24) equal monthly installments of one hundred seventy eight dollars and ninety five cents (\$178.95), the first payment of which shall be due within thirty (30) days of the entry of the Final Order by the Board of Professional Surveyors and Mappers, which Final Order incorporates this Stipulation. Respondent's failure to pay the fine by the time due may result in further disciplinary action by the Board.

9. Respondent's license to practice surveying and mapping is hereby suspended. However, the suspension shall be stayed as long as the Respondent complies with the terms of probation. If the Respondent fails to comply with any term of probation, the stay shall be lifted and the matter shall be deferred to the Department of Business and Professional Regulation for further disciplinary action.

Terms of probation shall be as follows:

A. Respondent shall submit proof of professional liability insurance pursuant to section 472.015(5), Florida Statutes, to the Executive Director of the Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0750, within thirty (30) days of the entry of the Final Order by the Board of Professional Surveyors and Mappers, which Final Order incorporates this Stipulation.

B. Respondent shall provide the Board with a list of all signed and sealed surveys within 120 days of the entry of the Final Order by the Board of Professional Surveyors and Mappers, which Final Order incorporates this Stipulation. The Board's Probation Committee Chair will randomly select six (6) of the Respondent's surveys for review from the list. Within five (5) calendar days of being notified by the Board which surveys have been selected, Respondent shall have posted and submit to the Board office the selected signed sealed surveys, along with copies of the relevant field notes, the relevant full size records plats, all measurement and computation records, and all other documents necessary for a full and complete review of the surveys, in accordance with Rules 61G17-9.006 and 61G17-9.007, Florida Administrative Code. If such

surveys fail to meet minimum levels of competency, the matter shall be referred to the Department of Business and Professional Regulation for further disciplinary action.

C. Respondent shall attend and complete a Minimum Technical Standards (MTS) continuing education course within ninety (90) days from the date of entry of the Final Order by the Board of Professional Surveyors and Mappers, which Final Order incorporates this Stipulation. Respondent shall submit proof of completion of the above-mentioned course to the Board office at 1940 North Monroe Street, Tallahassee, Florida 32399-0750, within the allotted time frame.

D. Respondent shall successfully complete a boundary control course within ninety (90) days from the date of entry of this final order. Respondent shall submit proof of completion of the above-mentioned course to the Board office within the allotted time frame.

E. Failure to comply with any of the terms of the stipulated agreement shall be considered a violation of probation.

10. It is expressly understood that a violation of the terms of this Stipulation shall be considered a violation of chapter 472, Florida Statutes, for which disciplinary actions may be taken.

11. It is expressly understood that this Stipulation is subject to the approval of the Board and has no force and effect until the Board enters a Final Order adopting same.

12. This Stipulation is executed by Respondent for the purpose of avoiding further administrative action in this matter. In the event that the Stipulation is not approved by the Board, then neither party may use this Stipulation against the other, and the Stipulation shall be deemed null and void.

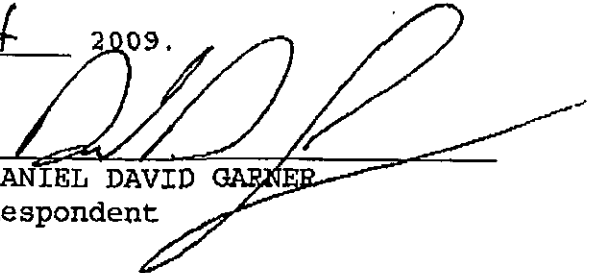
13. Respondent and the Department fully understand that this Stipulation, and the subsequent Final Order incorporating same, will not in any way preclude additional proceedings by the Board and/or Department against the Respondent for acts or omissions on surveys not specifically referenced in the investigative findings of probable cause.

14. Respondent and the Department expressly waive all further procedural steps, and Respondent expressly waives all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Stipulation and the Final Order of the Board, if said Stipulation is accepted by the Board and incorporated in the Final Order.

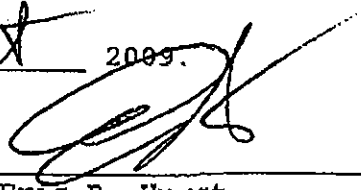
15. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this disciplinary proceeding.

WHEREFORE, the parties hereto request the Board of Professional Surveyors and Mappers to enter a Final Order accepting and implementing the terms contained herein.

Signed this 6th day of August 2009.


DANIEL DAVID GARNER
Respondent

Approved this 14th day of August 2009.


Eric R. Hurst
Chief Professions Attorney

Counsel for the Department:

Eric R. Hurst
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