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The Discipline Committee of the Association of Professional Engineers
of Ontario

In the matter of a hearing under the *Professional Engineers Act*, R.S.O.
1990, Chapter P. 28

And in the matter of a complaint regarding the conduct of

Hamzey Ali, P.Eng.

a member of the Association of Professional Engineers of Ontario

BETWEEN

The Association of Professional Engineers of Ontario and
Hamzey Ali, P.Eng.

Summary of Decision and Reasons

A Panel of the Discipline Committee of the Association of Professional Engineers of Ontario (PEO) met in the offices of the association on March 26, 2002, to hear allegations of professional misconduct and incompetence against Hamzey Ali, P.Eng., a member of PEO.

Hamzey Ali did not attend the hearing. William Black, counsel for PEO, advised the panel that Mr. Ali had made a written request for an adjournment of the hearing. PEO introduced evidence that showed the member had received ample notice and reminders from PEO as to the date of this hearing, and that an original hearing date had been postponed prior to this hearing date due to submissions made to PEO by the member. Notwithstanding reasons provided by the member in a letter of March 22, 2002, requesting a postponement of these proceedings, the panel's decision was to proceed with the hearing as scheduled.

The allegations against Ali as stated in the Notice of Hearing dated September 7, 2001, are as follows:

It is alleged that Ali is guilty of professional misconduct and/or incompetence as defined in the *Professional Engineers Act* (the Act), the particulars of which are as follows:

1. Ali was first licensed as a professional engineer in the Province of Ontario on May 17, 1990.
2. At no material time relative to the events in issue did Ali hold a Certificate of Authorization under the Act either in his own name or under the trade name of his business Kamid Engineering.
3. In or about February 1999, the member, operating as Kamid Engineering, was retained by 1099042 Ontario Inc. (the owner) to design a replacement

- balcony/porch structure at 1010 Campbell Road in Windsor, Ontario.
4. The new porch structure was intended to replace an existing wooden structure that was in a deteriorated state.
 5. On March 4, 1999, the owner submitted a building permit application to the City of Windsor Building Department (the building department) for the new porch. Included with the application were two unsealed, unsigned and undated drawings by Kamid Engineering for the “demolition and re-construction” of the porch.
 6. On receiving the permit application, the building department established that the subject property was zoned “legal non-conforming use” and that therefore approval would be required from the Committee of Adjustment of the City of Windsor (the Committee of Adjustment) if the existing porch had to be removed. This fact was communicated to the owner.
 7. On March 10, 1999, Ali wrote a letter to the building department, as an addendum to the building permit application, setting out a revised scope of work. Ali described the revised scope of work as a “substantial renovation” to the existing porch but now indicated that “demolition of the structure will not be required.”
 8. By letter dated March 26, 1999, the building department advised the owner that the revised scope of work would still require the effective demolition of the existing porch (based on an inspection by a representative of the building department). The building department further advised that a minor variance would have to be obtained from the Committee of Adjustment.
 9. On June 8, 1999, the owner made an application to the Committee of Adjustment for the required variance. In a decision dated August 11, 1999, the Committee of Adjustment granted the application in part and approved the replacement of the second means of egress only. The Committee of Adjustment did not grant permission for a replacement of the porch.
 10. Some time following the Committee of Adjustment’s decision, in an undated letter to the building department, Ali advised that he had attended the committee’s hearing and interpreted its decision as limiting the length of the porch. Included with Ali’s undated letter were two unsealed, unsigned and undated design drawings reflecting Ali’s interpretation of the Committee of Adjustment’s decision.
 11. By letter dated August 16, 1999, the building department advised Ali that, after consultation with the Committee of Adjustment, the building department had determined that the intent of the Committee of Adjustment’s decision was not to grant a continuous porch as shown in Ali’s drawings.
 12. On August 25, 1999, the Committee of Adjustment amended its decision to include a requirement that the second means of egress be constructed of non-combustible materials and that it exit in an easterly direction only, all to the satisfaction of the building commissioner.
 13. On September 28, 1999, the owner submitted a further building permit application to the building department to “construct fire escape as per plans attached.” Included with the application were two drawings, one of which was sealed, signed and dated (September 6, 1999) by Ali. The sealed drawings included details as follows:
 - (a) The columns supporting the porch were specified as 3” O/D with minimum 3/16” steel;
 - (b) The plan view indicated 5’ x 12’ lengths of L5” x 3 1/2” x 3/8” fastened to steel posts every 12.0 inches; and
 - (c) The porch floor material was to be 2” grating for the full length of egress.
 14. On October 19, 1999, the building department faxed to Ali a request for 10 items of additional information not included in the drawings. The building department indicated that these 10 items were required as a precondition to approval of the building permit application.
 15. On October 25, 1999, Ali faxed the building department additional information intended to “answer the 10 questions” in the building department’s fax of October 19, 1999. The fax included four drawings or portions of drawings, none of which were sealed, signed or dated.
 16. By fax dated October 26, 1999, the building department informed Ali that his fax of October 25, 1999, did not address all of the requested items of information. The building department further advised Ali that the building permit could not be issued until all the questions were answered.
 17. On November 3, 1999, Ali faxed to the building department additional portions of drawings, all unsealed, unsigned and undated, providing additional information about the porch design. One of the drawings indicated that the posts supporting the porch were 4” O/D with minimum 3/16” steel columns, a detail which differed from the original drawings submitted with the building permit application.
 18. There was a telephone conversation between representatives of the building department and Ali on November 10, 1999, regarding the deficiencies set out in the department’s fax of October 26, 1999. On that same day, Ali faxed to the building department another unsealed, unsigned and undated portion of a drawing. This was a portion of the plan view and indicated the 5’ x 12’ lengths of L8” x 3 1/2” x 3/8” fastened to steel posts every 12 feet, different from the original drawings submitted with the building permit application.
 19. On November 17, 1999, Ali faxed to the building department another unsealed, unsigned and undated portion of a drawing showing “detail at door.” This drawing indicated that the

- porch floor material was to be check-plate, differing from the original drawings submitted with the building permit application.
20. On or about November 30, 1999, Ali attended at the offices of the building department, at which time staff of the building department explained to him the handrail requirements for the proposed new structure.
21. On December 14, 1999, the building department received four drawings from the owner, prepared by Ali, representing a complete revised set of drawings for the porch design and apparently intending to address all of the issues raised by the building department. None of the drawings were sealed, signed or dated. The drawings included details as follows:
- The columns supporting the porch were 4" O/D with minimum 1/4" steel;
 - The plan view indicated 12' lengths of L8" x 3 1/2" x 3/8" fastened to steel posts every 12'-0" C/C; and
 - The porch floor material was to be 1" x 1/4" steel grating.
22. By letter dated February 1, 2000, the building department advised the owner that the building department was unable to process the owner's building permit application because the plans submitted were inadequate and insufficient in detail.
23. During the period of time in which the events set out above occurred, Ali wrote to PEO on May 21, 1999, stating that because of a back injury he was experiencing severe pain that was preventing him from doing his work. Ali requested a fee remission from PEO. By letter dated May 31, 1999, PEO advised Ali that PEO has a policy to remit fees of members who are unable to work as a result of health problems. PEO granted Ali's request for a fee remission. As of December 18, 2000, in the absence of further information from Ali, Ali's fee remission was still in effect.
24. It appears that Ali:
- breached Section 12(2) of the *Professional Engineers Act* by offering and providing engineering services to the public without a Certificate of Authorization;
 - misled PEO as to the extent of his back problems when requesting a full fee remission for health reasons;
 - provided professional engineering services while under a fee remission from PEO for health reasons;
 - failed to advise PEO that he was once again able to work and had in fact resumed working and hence was no longer entitled to a fee remission for health reasons;
 - submitted drawings for a building permit application that were inadequate for permit approval;
 - demonstrated a lack of understanding of the engineering issues involved in the design of the porch by repeatedly failing to provide adequate design detail information requested by the building department; and
 - breached section 53 of Regulation 941 made under the *Professional Engineers Act* by failing to seal, sign and date numerous final drawings submitted in relation to the building permit application.
25. By reason of the facts set out above, it is alleged that Ali is guilty of professional misconduct as defined in section 28(2)(b) as follows: "28(2) A member of the association or holder of a Certificate of Authorization, temporary licence or a limited licence may be found guilty of professional misconduct by the Committee if,
- The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the Regulations."
26. By reason of the facts set out above, it is alleged that Ali is guilty of incompetence as defined in section 28(3)(a) as follows: "28(3) The Discipline Committee may find a member of the association or holder of a temporary licence or limited licence to be incompetent if in its opinion,
- The member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer."
- As Ali was not present, the panel proceeded on the basis that Ali denied the allegations set out in the Notice of Hearing.
- PEO presented evidence that Ali had been a member of PEO since 1990, and that he had received a fee remission based on his request for it. In particular, as alleged in paragraph 23 of the Notice of Hearing, Ali had received a fee remission.
- The fee remission was requested by Ali in writing to the registrar on May 21, 1999, citing health reasons for the request, and was granted by PEO on May 31, 1999, pursuant to Section 39(4) of *By-Law No. 1*. The fee remission has remained in effect since that time.
- The facts pertaining to the engineering work in question were confirmed by PEO's witness, William George Jean, P. Eng., who was then director of site development for the City of Windsor, and by means of various exhibits presented to the panel.
- The Panel received exhibits consisting of various correspondence, notes and drawings prepared by Ali. Many were unstamped, unsigned. The exhibits show that the city repeatedly requested Ali to explain the intent of the submitted drawings and designs and to provide further explanatory details. The panel noted several instances of conflicts in proposed structural member sizes and similar design inconsistencies in Ali's submissions, as stated in paragraphs 13, 17, 18, 19 and 21 of the Notice of Hearing.
- Having considered the evidence and the onus and standard of proof, the Panel finds that Ali is:**
- ◆ **guilty of a breach of section 12(2) of the *Professional Engineers Act* (the Act) by providing services to the public which were within the practice of professional engineering (consulting engineering), without a valid Certificate of Authorization;**

- ◆ **guilty of a breach of section 53 of Regulation 941 made under the Act by failing to seal, sign and date the final drawings submitted in respect of a building permit application;**
- ◆ **guilty of professional misconduct as defined in section 28(2)(b) of the Act and, in particular, committed the following acts of professional misconduct:**
 - (i) **negligence as defined in section 72(2)(a) of Regulation 941;**
 - (ii) **breach of section 72(2)(b) of Regulation 941 by a failure to make reasonable provision for the safeguarding of the property of a person who may be affected by the work;**
 - (iii) **breach of section 72(2)(d) of Regulation 941 by failure to make responsible provision for complying with applicable statutes, regulations; standards, codes, by-laws and rules in connection with work undertaken under the responsibility of Ali;**
 - (iv) **breach of section 72(2)(g) of Regulation 941 by breaching the regulations as set out herein;**
 - (v) **breach of section 72(2)(j) of Regulation 941 in that his conduct relevant to the practice of a professional engineer, having regard to all the circumstances, would reasonably be regarded by the engineering profession as dishonourable and unprofessional conduct ; and**
 - (vi) **breach of section 72(2)(k) of Regulation 941 by a failure to abide by the limitations on Ali's licence pursuant to the fee remission granted for health related matters.**

The panel found that Ali was not guilty of incompetence as defined in section 28(3) of the Act and not guilty of a breach of Section 72(2)(h) of Regulation 941, Having considered the evidence, the panel concluded that Ali:

- ◆ was practising engineering independently and/or as Kamid Engineering,
- ◆ had offered professional engineering services without benefit of a Certificate of Authorization, and while under a

fee remission from PEO that explicitly prohibited such employment, and

- ◆ had provided engineering services which were inadequate and contradictory to the city's building department and permitting authorities, requiring several revisions and much guidance from city officials.

On the basis of the evidence before it, the panel concluded that the allegations contained in the Notice of Hearing as to facts were substantially accurate. In particular, the panel finds:

1. At all times during the conduct of the work in question, Ali provided services which are within the practice of professional engineering.
2. Ali was not a holder of a valid Certificate of Authorization, pursuant to Section 12(2) of the Act, during the conduct of the work.
3. Ali provided services within the practice of professional engineering at times while benefiting from a fee remission.
4. Ali has a duty to understand the restriction placed on him with respect to gainful employment, whether in the practice of engineering or not, while under fee remission, notwithstanding that PEO could have provided more specific information to Ali regarding restrictions on gainful employment or practice of professional engineering while under fee remission.
5. Ali failed to provide adequate information to the City of Windsor Building Department for the issuance of a building permit, even after repeated requests for revisions and clarifications, as set out in paragraphs 14, 16, 18, 21 and 22 of the Notice of Hearing.
6. Ali displayed a lack of skill and judgment by failing to respond to the shortcomings in his designs, even when these shortcomings were identified to him by the City of Windsor Building Department on several occasions. The shortcomings were found to be those

contained in paragraphs 16, 18, 21 and 22 of the Notice of Hearing.

7. Ali breached section 53 of Regulation 941 by failing to seal, sign and date the final drawings and submissions with respect to the building permit application.

Counsel for PEO proposed a penalty in this case and the panel accepted most of the submissions of counsel for PEO. The panel makes the following order as to penalty:

1. Ali's licence is suspended for a period not less than 12 months or as long as it takes Ali to pass the examinations referred to in paragraph 2 herein, such period not to exceed 24 months from the date of this decision.
2. Ali shall, within the period of suspension, pass the following examinations:
 - (a) the Professional Practice Examination;
 - (b) Elementary Structural Analysis Course #98-CIV-A1;
 - (c) Advanced Structural Analysis Course #98-CIV-B1; and
 - (d) Urban and Regional Planning Course #98-CIV-B6.
3. If Ali fails to pass the examinations referred to in paragraph 2 herein, within 24 months of the date of this decision, Ali's licence shall be revoked.
4. Ali shall be reprimanded in writing and the fact of the reprimand shall be recorded on the register of PEO.
5. A summary of the Discipline Panel's Decision and Reasons shall be published in the *Gazette* with names.
6. Ali shall pay costs to PEO in the amount of \$3,000, less the cost of each successfully completed examination referred to in paragraph 2 herein, within 24 months of the date of this decision.

The panel considered the submissions of PEO counsel with respect to the penalties in this matter. The panel was of the view that Ali's knowledge of the principles of structural analysis and the requirements of municipal building codes and regula-

tions was lacking. Moreover, the panel was of the view that Ali should not practise as an engineer until he had demonstrated an understanding of these principles and standards. The panel concluded that Ali had shown a disregard for the standards of professional practice required of an engineer.

Ali's licence was suspended to eliminate the opportunity for him to conduct further work of this nature. The prescribed structural analysis courses were selected to ensure that Ali's knowledge of these topics would meet the standards of practice. The panel considered that the period of suspension of Ali's licence could be applied to the completion of these courses

of study. The panel further considered that failure of Ali to complete and pass the prescribed courses should result in revocation of Ali's licence. This measure was prescribed to ensure that Ali would not practise as a P.Eng. if he were unable to meet the knowledge standards of the profession in these topics.

The panel imposed a penalty of a written reprimand on Ali to be recorded on the PEO register to ensure that these findings against Ali are known among the profession.

Ali was assessed costs of \$3,000 as a result of the delays to these proceedings occasioned by Ali. The panel was of the view that a credit of the cost of each suc-

cessfully completed course should be afforded Ali to encourage him to pursue these studies forthwith.

Finally, the panel directed that this Decision and Reasons should be published using the names of the parties to provide an example for the profession of the consequences of this member's actions.

The written Decision and Reasons in this matter were dated October 1, 2002, and were signed by the Chair of the Panel, Bruce Clarida, P.Eng., for and on behalf of the other members of the Discipline Panel: Cameran Mirza, P.Eng., Nick Monsour, P.Eng., Anne Poschmann, P.Eng., Don Turner, P.Eng.

Note from the Regulatory Compliance department

The written Decision and Reasons were served on Mr. Ali on October 8, 2002. Mr. Ali filed a Notice of Appeal with the Divisional Court on November 7, 2003. Because Mr. Ali failed to take further action within the timeframe established under the rules of the Divisional Court, PEO filed a motion on October 7, 2003 to have the appeal dismissed for delay. On October 27, 2003, the Divisional Court heard submissions from PEO and Mr. Ali and ordered that the appeal be dismissed. The suspension of Mr. Ali's licence therefore took effect as of October 27, 2003.

Summary of Scheduled Discipline Hearings

This schedule is subject to change. For further information contact PEO at 416-224-1100; toll free 1-800-339-3716.

Any person wishing to attend a hearing should contact the complaints & discipline coordinator at extension 496.

All hearings commence at 9:30 a.m.

NOTE: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference regarding the status, qualifications or character of the member or C of A holder should be made based on the allegations listed herein.

Further details regarding the allegations against the members and Certificate of Authorization holders listed below can be found on PEO's website at www.peo.on.ca.

January 26 to 28, 2004 William Tessler, P.Eng., and Sonterlan Corporation

It is alleged that Tessler is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*.

It is alleged that Tessler and Sonterlan are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

February 3 to 4, 2004 John Kadlec, P.Eng.

It is alleged that Kadlec is guilty of professional

misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

February 5 to 6, 2004 Daniel Brouwer, P.Eng., and Dan Brouwer Associates Ltd. (DBA)

It is alleged that Brouwer is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Brouwer and DBA are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

February 17 to 20, 2004 Jeffrey A. White, P.Eng., and Delta Engineering

It is alleged that White and Delta are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

March 22 to 25, 2004 Victor F. Wilcox, P.Eng., and Barrie Inspection & Engineering Limited (BIEL)

It is alleged that Wilcox is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*.

It is alleged that Wilcox and BIEL are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

April 5 to 6, 2004 Derk Meyer, P.Eng. and Philips Engineering Ltd. (PEL)

It is alleged that Meyer is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Meyer and PEL are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.