

## DECISION AND REASONS

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.

This matter was brought forward for a hearing before a panel of the Discipline Committee on August 3, 2011, and November 8, 2011, at the Association of Professional Engineers of Ontario at Toronto.

The allegations arose out of a complaint regarding the conduct of Houston T. Engio, P.Eng. (Engio or the member), and Houston Engineering & Drafting Inc., a holder of a Certificate of Authorization (Houston or holder), relating to provision of professional engineering services to Ontario Iron Railing Inc. (OIR) for a residential/commercial renovation project at 31 Dunlop Street, Barrie, Ontario. OIR was a subcontractor to Altrima Corporation (Altrima), the general contractor on the project. 1442968 Ontario Ltd. (owner) was the owner of the property.

At commencement of the hearing on August 3, 2011, the counsel for the member and the holder filed a motion with the panel requesting adjournment of the hearing due to, among other things, the death of the member's aunt on July 23, 2011, his attendance at her funeral out of the country, and his inability to meet with the counsel to prepare for the hearing upon his return to Canada.

Following submissions by both parties, the panel ordered that the hearing be adjourned to November 8 and 9, 2011.

When the hearing reconvened on November 8, 2011, counsel for the association and counsel for the member and the holder filed an Agreed Statement of Facts and a Joint Penalty Submission, both dated November 8, 2011. There were no witnesses called in the course of these proceedings.

### THE ALLEGATIONS

The Association of Professional Engineers of Ontario (PEO) alleged that Houston T. Engio and Houston Engineering & Drafting Inc. are guilty of professional misconduct and/or incompetence as defined in the *Professional Engineers Act* (the act).

### THE AGREED STATEMENT OF FACTS

The Agreed Statement of Facts (without attached documents) included the following:

1. At all material times Houston T. Engio, P.Eng. (Engio), also known as Thomas Engio, was licensed as a professional engineer pursuant to the *Professional Engineers Act*.
2. Houston Engineering & Drafting Inc. (Houston) was issued a Certificate of Authorization (C of A) on or about June 9, 2000. As of May 14, 2002, Engio was appointed the engineer responsible for the professional engineering services provided under the C of A.
3. In or about October 2004, Engio and Houston were retained by Ontario Iron Railing Inc. (OIR) to provide engineering services on a residential/commercial renovation project at 31 Dunlop Street, Ontario. Engio was requested to review structural steel works and provide welding and steel connection engineering design on the project. OIR was a subcontractor to Altrima Corporation (Altrima), the general contractor on the project. 1442968 Ontario Limited (owner) was the owner of the property.
4. In or about November 2004, Engio and Houston were retained by Altrima to carry out limited sprinkler, mechanical, electrical and plumbing review.
5. In or about January 2006, Engio and Houston were appointed by Altrima as the structural review engineer for the project pursuant to a Commitment for General Review filed with the city's building department.
6. During 2006, Engio and Houston filed the following reports with the city's building department:

- (i) Undated–Basement Steel Columns and Structural Size Report;
  - (ii) March 23, 2006–1st, 2nd, 3rd and 4th Floor Structural Steel Size Report;
  - (iii) May 5, 2006–Whole Building Basement to Roof Structural Steel Report;
  - (iv) July 14, 2006–Whole Building Basement to Roof Structural Steel Report.
7. In or about December 2006, MINA Design Group Inc. (Mina) was retained by Altrima as the structural review engineer for the project, and the city of Barrie was advised of this in a letter from Altrima dated December 11, 2006.
  8. The owner and Altrima terminated their contract in January 2007, after which Altrima was no longer general contractor for the project.
  9. On or about March 2007, the City of Barrie (city) issued a “Stop Work Order” on the subject project.
  10. The city inspected the subject project and found no deficiencies with the steel structure of the project. The city required Engio’s signature verifying that the steel work complied with the applicable bylaws and codes. Engio refused to provide the necessary verification. If Engio were to testify, he would state that he still had to make further inspections, and payment issues were not resolved. If the representatives of the owner would testify, they would state that Engio and Houston had been paid in full up to that date.
  11. On or about March 2007, Engio told one of the owner’s employees that he (Engio) would not sign off on the work until he received further payment. The owner refused to make any payment to Engio at that time.
  12. On March 14, 2007, Engio and Houston filed the following reports with the city’s building department:
    - (i) Electrical, Plumbing, Sprinkler, Emergency Alarm Progress Site Review 1;
    - (ii) Plumbing Progress Report 1;
    - (iii) Sprinkler and Emergency Progress Report 1; and
    - (iv) Electrical Progress Report 1.
  13. In August 2007, the owner sought an occupancy permit. Mina required a letter from Engio and Houston certifying that all as built steel connections (as inspected by Engio in 2006) were in general conformance with the design and shop drawings, and confirming that deficiencies in the steel erections had been rectified.
  14. Engio, Houston and OIR insisted on payments totalling \$16,000 before Engio would agree to provide the requested letter. The owner paid this amount in two cheques for \$8,000 to Houston Engineering and Drafting Inc. and VN Engineering and Facility Planners Inc., an Engio company.
  15. On August 30, 2007, Engio and Houston filed a Certificate of Substantial Completion Solely on Structural Steel and Miscellaneous Steel, which he signed and sealed, with the city’s building department.
  16. On August 31, 2007, Mina filed a General Review (Structural Certificate), attaching Engio’s certificate, with the city’s building department.
  17. On November 5, 2007, the owner commenced an action against Engio and Houston claiming damages in the sum of \$41,000 for costs allegedly incurred due to the delay in obtaining an occupancy permit. This action was never determined by the courts.
  18. On or about December 5, 2007, Houston filed a construction lien against the subject property. The claim for lien alleged that Houston supplied services or materials to Altrima between October 12, 2007 and November 30, 2007, pursuant to a contract in the amount of \$134,196, of which \$92,196.00 was allegedly owed.
  19. Houston alleged that it performed work on the project in connection with the construction of a fire escape staircase and as a subcontractor for Altrima. As a subcontractor, Houston alleged that it contracted directly with the owner to provide services for a commitment to generally review the structural steel work that was carried out on the site. In so doing, Houston was required under the Ontario Building Code (OBC) to review the construction of the building to determine whether the construction was in general conformity with the plans and other documents that formed the basis of the issuance of a building permit in accordance with the performance standards at the Ontario Association of Architects and/or Engineers. Houston alleged that it had received some direct payment from the owner.
  20. Houston further alleged that since June 2007, it had been on the project site on several occasions doing inspections as required with the

OBC and had performed work during the months of October and November 2007.

21. The owner brought a motion to vacate the lien. In his sworn affidavit on the motion, among other things, Engio stated that he had entered into a written contract with Altrima on March 8, 2006, and appended the alleged contract as an exhibit. He also enclosed an invoice based on the contract dated December 1, 2007, which he stated he had delivered to Altrima. A copy of the alleged contract and invoice which Engio filed is attached as Appendix A to this agreement. John Nycz, the president of Altrima, testified that he had never seen the document before, and that the signature on the contract was not his. Engio would dispute this if he gave evidence.
22. On or about April 7, 2008, the Ontario Superior Court of Justice (court), Judge J. Di Tomaso, heard motions regarding the construction lien matter between Houston and the owner, on the basis of affidavit and cross examination evidence from the parties.
23. On or about April 17, 2008, the court issued a written decision on the construction lien matter between Houston and the owner and found, in part, the following:
  - (i) Houston did not attend on the property after August 30, 2007, and if it did so, it was without any authorization or permission;
  - (ii) Houston's alleged work performed in October and November 2007 had already been completed and certified by Houston and approved by the City of Barrie on August 31, 2007, when an occupancy permit was issued;
  - (iii) The judge accepted Altrima's evidence that the contract dated March 8, 2006, that Houston claims to be owed money against, never existed;
  - (iv) The owner never retained Houston directly;
  - (v) The Commitment to General Review by Architects and Engineers dated March 9, 2007, on which Houston relied to say it was retained to do work by the owner directly, was admittedly altered by Houston after it was already signed by 144;
  - (vi) The work was not undertaken to fulfill Houston's obligation under the OBC or any other obligation that Houston had as a professional engineer. Such a position is untenable in the face of evidence to the contrary;
  - (vii) That the evidence is clear that Houston's claim for lien is without merit and fails to satisfy the *Construction Lien Act*. There are no triable issues warranting this matter to proceed to trial; and
  - (viii) Costs were awarded to the owner.
24. Houston T. Engio, P.Eng., and Houston Engineering and Drafting Inc. admit that they:
  - (i) Filed a meritless claim under the *Construction Lien Act*;
  - (ii) Provided misleading documentation and testimony under oath in the Ontario Superior Court of Justice;
  - (iii) Made meritless claims without the performance of the engineering services supporting the claim;
  - (iv) Failed to meet the standards of practice required of professional engineers in respect of communications with clients, colleagues and officials; and
  - (v) Acted in an unprofessional and dishonourable manner.
25. Houston T. Engio, P.Eng., is guilty of professional misconduct as defined in the *Professional Engineers Act*.
26. Houston Engineering & Drafting Inc. is guilty of professional misconduct as defined in the *Professional Engineers Act*.

#### **PLEA OF THE MEMBER AND HOLDER**

The member and holder pled guilty to the allegations set out in the Statement of Allegations. The panel acknowledged the plea and conducted a plea inquiry to ensure that the plea of the member was voluntary, informed, unequivocal and given without reservation. The member confirmed to the panel's satisfaction that he had made the guilty plea willingly, unequivocally and without reservation.

#### **DECISION**

The panel accepted the facts set out in the Agreed Statement of Facts as proven, and finds as follows:

Having considered the onus and standard of proof, the member's guilty plea, the joint submission of the parties and the panel's findings of fact as set out in the Agreed Statement of Facts dated November 8, 2011, the panel finds that the

member has committed an act of professional misconduct as alleged in the Statement of Allegations. In particular, Houston T. Engio, P.Eng., and Houston Engineering & Drafting Inc. are guilty of professional misconduct under section 28(2)(b) of the act as defined in section 72(2)(a) and (j) of Regulation 941.

### REASONS FOR DECISION

Paragraph 24 of the Agreed Statement of Facts includes admissions by the member and holder as follows:

- Providing misleading documentation and testimony under oath in the Ontario Superior Court of Justice.
- Making meritless claims without the performance of the engineering services supporting the claim.
- Acting in an unprofessional and dishonourable manner.

The panel finds that these are admissions of professional misconduct pursuant to section 72(2)(j) of Regulation 941 and, with respect to that section of the regulation, the panel finds that the conduct is unprofessional and dishonourable.

Paragraph 24 of the Agreed Statement of Facts also includes the admission that, with respect to communication with clients, colleagues and officials, the member and holder failed to meet the standards of practice required of professional engineers and, therefore, the panel finds that this constitutes an admission of professional misconduct under section 72(2)(a) of Regulation 941.

### PENALTY

The following Joint Penalty Submission was filed with the panel:

1. Engio shall be reprimanded and the fact of the reprimand will be recorded on the register.
2. Engio and Houston's licences shall be suspended for a period of six (6) weeks, commencing December 14, 2011, and running to January 24, 2012, inclusive.
3. It shall be a term and condition of the licence of Engio that he will successfully complete the PPE [Professional Practice Examination] within one (1) year of the date of the hearing.
4. The order of the Discipline Committee suspending Engio and Houston's licences shall

be published, together with the names of the member and holder, pursuant to s. 28(5) of the *Professional Engineers Act*; and

5. There shall be no order with respect to costs. (Parentheses added)

The Joint Penalty Submission was signed by the parties.

Counsel for the association submitted that the association was satisfied that the Joint Penalty Submission was fair, reasonable and appropriate considering the admitted facts. Counsel for the member and holder submitted that the proposed penalty in this case was similar to penalties imposed in similar cases.

Following consideration of the Joint Penalty Submissions by the parties, the panel issued the following decision orally to the parties at the hearing on November 8, 2011.

The panel is of the view that the proposed penalty is appropriate and within the range of penalties for the professional misconduct admitted to by the member and holder and orders as follows:

1. Engio shall be reprimanded and the fact of the reprimand shall be recorded for an unlimited period;
2. Engio and Houston's licences shall be suspended for a period of six (6) weeks, commencing December 14, 2011, and running to January 24, 2012, inclusive;
3. It shall be a term and condition of the member's licence that he shall write and pass the Professional Practice Examination, within one (1) year of the date of hearing;
4. The order and reasons of this Discipline Panel suspending Engio and Houston's licences shall be published, together with the names of the member and holder, pursuant to s. 28(5) of the *Professional Engineers Act*.
5. No costs are ordered.

Ishwar Bhatia, P.Eng., signed this Decision and Reasons for the decision as chair of this discipline panel and on behalf of the members of the discipline panel: Paul Ballantyne, P.Eng., Virendra Sahni, P.Eng., and R. Anthony Warner, P.Eng.