

## 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 SALVATORE A. DE ROSE, P.ENG., a member of the Association of Professional Engineers of Ontario, and a holder of a Certificate of Authorization.

The panel of the Discipline Committee met to hear this matter on June 25, 2013, at the hearing room at the premises of the Association of Professional Engineers of Ontario (association) in Toronto.

### THE ALLEGATIONS

The allegations against Salvatore A. De Rose, P.Eng., the member and holder (member), were set out in the Statement of Allegations dated October 3, 2012, and filed with the panel. They allege that the member is guilty of professional misconduct for:

1. signing and sealing drawings for Lot 3 Bunny Glen, St. Davids, Ontario, dated May 9, 2011, that did not accurately reflect the building's construction design, amounting to professional misconduct as defined by sections 72(2)(a) and (j) of Regulation 941;
  2. signing and sealing drawings for Lot 3 Bunny Glen, St. Davids, Ontario, dated May 9, 2011, and June 27, 2011, that he did not prepare, amounting to professional misconduct as defined by sections 72(2)(e) and (j) of Regulation 941; and
  3. reproducing the work of another professional engineer without permission, contrary to the *Copyright Act*, R.S.C., 1985, c. C-42, amounting to professional misconduct as defined by sections 72(2)(d) and (j) of Regulation 941.
1. The member is a professional engineer who has been licensed pursuant to the *Professional Engineers Act* (PEA) since 1977. He is also a holder of a Certificate of Authorization under the PEA.
  2. The member was previously convicted of professional misconduct. By a decision dated July 29, 2010, the Discipline Committee imposed the following penalty:
    - (a) the administration of an oral reprimand, with the fact of the reprimand being recorded on the register for an unlimited period;
    - (b) a suspension of the member's licence for a period of 60 days from the date of the hearing;
    - (c) the addition of a term and condition on the member's licence that he write and pass the professional practice examination, at his own expense, within 12 months from the date of the hearing; and
    - (d) within six months from the date of the hearing and to the satisfaction of the registrar, the member must submit an internal policy/procedure document governing his approach to the provision of general review of construction services and to the issuance of certifications arising from such services.
  3. The member wrote and passed the professional practice examination, albeit after the time limit set under paragraph 2(c) above, and he provided an internal policy/procedure document as required.
  4. The complainant in the current proceedings is Joseph Ha, P.Eng., a professional engineer practising in St. Catharines, Ontario.

### AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (ASF), which provides as follows:

5. On or prior to May 9, 2011, a builder named DRT Custom Homes and Renovations (DRT) retained the member to seal drawings that detailed the stability of a laterally unsupported foundation wall for a residential home at Lot 3 Bunny Glen, St. Davids, Ontario (Bunny Glen). DRT required an engineer's seal on the drawings to obtain a building permit for the property.
6. Rather than ask the member to create the drawings, DRT provided the member with drawings for a similar home it had built at Lot 24 Red Haven, St. Davids, Ontario (Red Haven). The Red Haven drawings, which detailed the stability of a similar foundation wall, were created by the complainant Ha's company, Joseph T.K. Ha Engineering Inc., and sealed on March 18, 2010.
7. On or about May 9, 2011, the member altered the Red Haven drawings without Ha's knowledge or consent by removing Ha's seal, his company's identifying information, the March 18, 2010 creation date, and the Red Haven address, and replaced these with his own seal, identifying information, a new creation date of May 9, 2011, and the Bunny Glen address (the Bunny Glen drawings).
8. On or about June 3, 2011, the member submitted the Bunny Glen drawings to the Town of Niagara-on-the-Lake in support of a building permit for Bunny Glen.
9. On or about June 6, 2011, Building Inspector Walter Klassen notified Ha's office that the Bunny Glen drawings were identical to those Ha had sealed for Red Haven and submitted to the town in 2010.
10. On or prior to June 27, 2011, Klassen advised the member that the Bunny Glen drawings did not match the construction design for Bunny Glen. Klassen asked the member to revise the drawings and resubmit them.
11. On or about June 27, 2011, the member submitted to Klassen a sealed letter that addressed Bunny Glen's laterally unsupported foundation walls and that enclosed a revision of the Bunny Glen drawings with an amendment of the lower floor plan, stamped and signed June 27, 2011. As before, this further submission was done without Ha's knowledge or consent.
12. On or about the same day, Klassen advised DRT that he had rejected the resubmitted Bunny Glen drawings because they appeared to be altered versions of those created by Ha for Red Haven.
13. Ha filed a complaint with PEO on August 17, 2011, regarding the unauthorized use of his drawings.
14. By a letter dated October 26, 2011, the member responded to the complaint as follows:

"I was called by DRT Custom homes to stamp a simple drawing for a laterally unsupported wall in a new house construction. I had done the same type of drawing many times for other contractors. They sent me drawings which they had from a previous and identical house construction which had been, previously prepared by another engineer. I asked them why they did not just get him to do the work. They indicated that he was on vacation and was not available. I asked if the other engineer had been paid for his work and they acknowledged that he had. I was not aware that the owner could not use the drawing on an identical house...

I submitted the drawings and sent my bill to the owner who paid for the work. The building inspector from Niagara on the Lake, Ontario called me later and requested that I submit original drawings. I told him that I knew the other engineer would be back the following week and I was quite busy and would rather just let the other engineer complete the work. He was in agreement with that and said he would discard my drawings and wait for the other engineer to return from vacation and resubmit them. I called DTR Custom homes and informed them of the conversation with the Building Inspector and I told them I would return the fee paid which I did soon after.

My sincerest apologies for my error in judgment. I now have a clearer understanding of copy write issues.  
[sic]"

15. By reason of the aforesaid, it is agreed that the member is guilty of professional misconduct as defined in subsection 28(2)(a) of the PEA:  
"The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."
16. The sections of Regulation 941 made under the PEA and relevant to the member's misconduct are:
  - (a) subsection 72(2)(a), in that the member was negligent in signing and sealing

drawings for Lot 3 Bunny Glen that did not accurately reflect the building's construction design;

- (b) subsection 72(2)(d), in that the member reproduced the work of another professional engineer without permission contrary to the *Copyright Act*, R.S.C. 1985, c. C-42;
- (c) subsection 72(2)(e), in that the member signed and sealed drawings that he did not actually prepare or check; and
- (d) subsection 72(2)(j), in that the member's conduct as aforesaid would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

### PLEA BY MEMBER AND HOLDER

The member admitted the allegations set out in the ASF. The panel conducted a plea inquiry and was satisfied that the member's admission was voluntary, informed and unequivocal.

### REASONS FOR DECISION

The panel was not persuaded that the facts set out in the ASF supported a finding of professional misconduct under subsection 72(2)(d) of Regulation 941, as set out in paragraph 16(b) of the ASF. Subsection 72(2)(d) of Regulation 941 provides that "Professional misconduct" means... "(d) failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner." The panel was concerned that the ASF did not make it clear as to the ownership of the copyright in question and that, thus, the conviction under subsection 72(2)(d) was not made out.

The panel was similarly not convinced that the facts established that the member's conduct was "disgraceful" or "dishonourable" for the purposes of subsection 72(2)(j) of Regulation 941, as set out in paragraphs 16(d) of the ASF.

The panel sought the advice of independent legal counsel (ILC) on its intention not to make findings of professional misconduct as set out in paragraph 16(b) of the ASF, nor to find that the actions of

the member and holder were "disgraceful" and "dishonourable" as set out in paragraph 16(d) of the ASF. In accordance with the advice it received from ILC, the panel invited the parties to make additional submissions regarding these paragraphs and its intention.

The parties thereafter both agreed to the deletion of the conviction under subsection 72(2)(d) of Regulation 941 and to the deletion of the conviction for disgraceful and dishonourable conduct.

The panel accepted the admitted facts in the ASF as proof of professional misconduct, and found the member guilty of professional misconduct pursuant to section 28(2)(b) of the PEA and subsections 72(2)(a), (e) and (j) of Regulation 941.

### DECISION

The panel, thus, considered the ASF and the submissions and agreement of the parties and found that the facts, as agreed, supported a finding of professional misconduct and, in particular, found that Salvatore A. De Rose, P.Eng., committed the following acts of professional misconduct as set out in paragraphs 16(a), (c) and (d) of the ASF under the legislation:

- (a) under subsection 72(2)(a) of Regulation 941, in that the member was negligent in signing and sealing drawings for Lot 3 Bunny Glen that did not accurately reflect the building's construction design;
- (c) under subsection 72(2)(e) of Regulation 941, in that the member signed and sealed drawings that he did not actually prepare or check; and
- (d) under subsection 72(2)(j) of Regulation 941, in that the member's conduct as aforesaid would reasonably be regarded by the engineering profession as unprofessional.

### PENALTY

Counsel for the association advised the panel that a Joint Submission as to Penalty (JSP) had been agreed upon. The parties filed the JSP. The JSP provides as follows:

- (a) pursuant to s. 28(4)(f) of the PEA, the member shall be reprimanded and the fact of the reprimand shall be recorded on the register for an unlimited period;
- (b) pursuant to s. 28(4)(b) of the PEA, the member's licence and Certificate of Authorization shall be suspended for a period of 30 days, commencing on July 25, 2013;
- (c) pursuant to s. 28(5) of the PEA, the order of the Discipline Committee, with the reasons therefor, shall be published in the official publication of the association, together with the name of the member; and

Please report any person or company you suspect is violating the act. Call the PEO enforcement hotline at 416-224-9528, ext. 1444 or 800-339-3716, ext. 1444. Or email your questions or concerns to [enforcement@peo.on.ca](mailto:enforcement@peo.on.ca).

(d) pursuant to s. 28(4)(j) of the PEA, the member shall pay costs in the amount of \$3,500, within 60 days of the hearing before the Discipline Committee.

Counsel for the parties provided submissions on the appropriateness and adequacy of the penalty agreed to.

Counsel for the association submitted that the suspension, reprimand, discipline publication and cost award served the objectives of specific and general deterrence in this matter. She also submitted that the agreed upon penalty protected the public and maintained the reputation of the association. Finally, counsel for the association submitted that the penalty accounted for the member's discipline history and the mitigating steps he took in the present matter, namely, his admission of the allegations of professional misconduct, his apology, and his co-operation with the association.

Counsel for the member submitted that the member made an error in judgment and took an unacceptable shortcut when he signed and sealed the documents in question. He stated that the member took immediate corrective action, including returning the fee he was paid, and showed remorse for his error. He further submitted that the member acknowledged his professional misconduct and agreed to the JSP, which sets out an appropriate penalty in the circumstances. Finally, counsel for the member stated that the member is acutely aware of his responsibilities as a professional engineer, having been one for 35 years.

### PENALTY DECISION

The panel concluded that paragraphs (a), (b) and (c) of the proposed penalty were within the reasonable range and in the public interest. The panel noted that the member readily acknowledged his misconduct and co-operated with the association. By agreeing to the facts and a proposed penalty, the

member accepted responsibility for his actions and avoided unnecessary expense to the association.

However, the panel was concerned that provision (d) of the JSP was unnecessary and unreasonable in light of the member's co-operation with the association and the corrective steps he took, and the variation in the convictions entered as agreed on by the parties. The panel sought the advice of ILC on varying the JSP. In accordance with the advice it received from ILC, which was provided to the parties, the panel invited the parties to make further submissions as to the soundness of the inclusion of provision (d) in the penalty.

After consideration, both parties submitted that they agreed that provision (d) be deleted.

Accordingly, the panel agreed to vary the JSP by removing provision (d).

The panel accepted the remaining provisions of the JSP and, accordingly, ordered:

- (a) pursuant to s. 28(4)(f) of the PEA, the member shall be reprimanded and the fact of the reprimand shall be recorded on the register for an unlimited period;
- (b) pursuant to s. 28(4)(b) of the PEA, the member's licence and Certificate of Authorization shall be suspended for a period of 30 days, commencing on July 25, 2013; and
- (c) pursuant to s. 28(5) of the PEA, the order of the Discipline Committee, with the reasons therefor, shall be published in the official publication of the PEO, together with the name of the member.

The member and holder waived his right to appeal, and the reprimand was administered at the conclusion of the hearing.

Henry Tang, P.Eng., signed the Decision and Reasons for the decision as chair of the discipline panel, and on behalf of the members of the discipline panel: Stella Ball, LLB, Ishwar Bhatia, P.Eng., Denis Carlos, P.Eng., and Patrick Quinn, P.Eng.

## FORMER PROVISIONAL LICENCE HOLDER BEHZAD VAGHEI ORDERED TO STOP OFFERING AND PROVIDING PROFESSIONAL ENGINEERING SERVICES

On May 26, 2015, Judge Grant R. Dow of the Superior Court of Justice ordered Behzad Vaghei of Toronto, Ontario, operating under the business name "P.Eng. Design & Drafting Services" (now known as Design & Drafting Services Inc.) to stop using terms, titles and descriptions restricted to professional engineers and authorized professional engineering firms.

Although Vaghei had held a PEO provisional licence from December 2013 to December 2014, he had never held an unrestricted licence and had never been authorized to provide professional engineering services to the

public. However, several individuals had come forward regarding Vaghei's advertisements on various classified ad websites, which prominently used the restricted abbreviation "P.Eng." and provided further evidence that Vaghei had held himself out as a professional engineer and had undertaken work that required a professional engineer's seal. He also maintained a website with the domain name "peng-services.com" which has since been taken down.

Jeffrey Haylock of Toronto law firm PolleyFaith LLP represented PEO in this matter.