

**BEFORE THE ARKANSAS BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

IN THE MATTER OF FRED P. DUNN, PLS #1289 (REVOKED)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On January 12, 2005, the Arkansas Board of Registration for Professional Engineers and Land Surveyors (hereinafter "the Board") held a hearing on the Order and Notice of Hearing charging Fred P. Dunn, PLS # 1289 (Revoked) (hereinafter "Respondent") with a violation of the following laws governing the practice of professional surveying in the state of Arkansas: Ark. Code Ann. §17-48-101 *et. seq.* Respondent was directed to appear and show cause why he failed to comply with the provisions and why disciplinary measures should not be prescribed by the Board and why the matter should not be referred to Circuit Court to seek an order prohibiting Respondent from practicing the profession of Land Surveyor without a license. The Respondent did not appear in person, though he received proper service of the Order and Notice of Hearing. Based upon the evidence presented, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These Orders are based upon the following findings of facts:

1. Respondent formerly held a license as Professional Land Surveyor #1289 (REVOKED) in the State of Arkansas.
2. Ark. Code Ann § 17-48-103 declares that the practice of land surveying in subject to regulation in order to safeguard the life, health or property of the public.

3. On February 17, 2004, the Arkansas Board of Registration for Professional Engineers and Land Surveyors (hereinafter "the Board") held a hearing pursuant to an Order and Notice of Hearing charging Fred P. Dunn, PLS #1289 (hereinafter "Respondent") with failing to comply with the provisions of his Consent Agreement signed and dated February 28, 2002. Respondent was directed to appear and show cause why he failed to comply with the terms and conditions of said Consent Agreement and the subsequent Orders of the Board. The Respondent appeared in person after receiving proper service of the Order and Notice of Hearing and acknowledged waiving his right to counsel. Based upon the evidence presented, the Board made the Findings of Fact, Conclusions of Law and issued an Order dated April 1, 2004, revoking PLS License # 1289 of the Respondent (Attachment 1). The Respondent acknowledged receipt of the Order by certified mail on April 4, 2004 (Attachment 2) and the Board has not been notified of any appeal of this order.
4. On May 27, 2004, Respondent agreed to conduct a survey for a fee of \$500.00 on land located in Stone County, Arkansas for Linda C. Hogan and acknowledged a partial payment of \$200.00 on invoice number 6816 (Attachment 3). On June 27, 2004, the Respondent met with Ms. Hogan and agreed to complete the survey upon the payment of the \$300.00 balance of the fee. Ms. Hogan paid the balance by check #3340 (Attachment 4). The Respondent acknowledged the \$300.00 payment on Invoice #6817.

5. Ark. Code Ann. §17-48-201 provides, in part:

(a)(1) It shall be unlawful for any person who is not a registered land surveyor but holds himself or herself out as a registered land surveyor...

(2) The State Board of Registration for Professional Engineers and Land Surveyors shall have the power to discipline nonregistrants that violate provisions of this chapter by the levy of a fine in an amount not to exceed two thousand dollars (\$2,000) for each offense.

6. Ark. Code Ann. §17-48-101 provides, in part:

(2)(A) "Land surveying" means any service comprising the determination of the location of land boundaries and land boundary corners; the preparation of plats showing the shape and areas of tracts of land and their subdivision into smaller tracts; the preparation of plats showing the location of streets, roads, and rights-of-way of tracts to give access to smaller tracts; and the preparation of official plats, or maps, of land thereof in this state....

(3) "Land surveyor" means any person engaged in the practice of land surveying as defined in this section.

(b) A person shall be construed to practice or offer to practice land surveying who engages in land surveying for others or who by verbal claim, sign, letterhead, card, telephone listing, or in any other way represents himself or herself to be a land surveyor or who represents himself or herself as able to perform land surveying in this state.

(c) The provisions of this chapter shall not apply to the constitutional office of county surveyor when acting in his or her official capacity in the county in which he or she was elected.

7. Respondent was acting outside the scope of his duties as County Surveyor when he contracted to perform a private survey for Ms. Hogan, as noted above.

8. Respondent's actions constitute a violation of Ark. Code Ann. §17-48-201 (a)(1). It also constitutes a violation of Ark. Code Ann. §17-48-201 (a)(2), which gives the Board the authority to assess a fine not to exceed \$2,000 against any person who is not registered as a land surveyor who is found guilty of holding himself or herself out as a registered land surveyor.

9. Ark. Code Ann. §17-48-104 provides, in part, that the powers of the board include:


... (c) In carrying into effect the provisions of this chapter, ... [U]pon failure or refusal to comply with any such order of the board, ... the board may apply to a court of any jurisdiction to enforce compliance with them.

(d) The board is authorized in the name of the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this chapter or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable under this procedure.

ORDER

IT IS THEREFORE ORDERED that Respondent is guilty of holding himself out as a land surveyor without being licensed, his license having been revoked by previous order of the Board. It is further ordered that Respondent pay a civil penalty of \$2,000 to the Board immediately. The Executive Director for the Board is directed to proceed under Ark. Code Ann. §17-48-104 to seek relief in the appropriate circuit court(s) to reduce all outstanding penalties owed by Respondent to judgment and to seek an injunction ordering Respondent to cease the practice of land surveying until such time as he is licensed.

This Order may be appealed within thirty (30) days of service upon the Respondent as specified in the Arkansas Administrative Procedures Act, Ark. Code Ann. §25-15-201, *et seq.*



Ken Cotter, President
Arkansas Board of Registration for Professional
Engineers and Land Surveyors

Date 1/28/05