

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF ARCHITECTURE
CASE NO. 719

In the matter of:

Timothy F. McMullen,
Respondent

)
)
)
)

CONSENT ORDER

THIS CAUSE, coming before the North Carolina Board of Architecture ("Board") at its offices at 127 W. Hargett St., Suite 304, Raleigh, Wake County, North Carolina, with a quorum present. The Board and Respondents stipulate and agree to entry of the following Findings of Fact, Conclusions of Law and Consent Order. The Respondents stipulate that, solely for the purposes recited herein and for settlement of this matter, the Respondents, while not admitting to the allegations, will not contest the allegations set forth in this Consent Order. In the event that the terms of this Consent Order are not fulfilled and the Board issues a new Notice of Hearing, the Respondents stipulate that the Findings of Fact may be introduced into evidence as admitted allegations.

FINDINGS OF FACT

1. Respondent Timothy McMullen ("McMullen") is licensed as an architect by this Board and at all times relevant was a principal in Respondent Millennium 3 Design Group, PLLC ("M3DG"), an architectural firm registered with the Board as a professional limited liability company. During the investigation of this matter, the Board was informed that Respondent has resigned from M3DG.
2. M3DG was selected by North Carolina State University ("NCSU") in December 2003 as the designer for the 2000 Capital Bond project known as the Harrelson Hall Replacement and subsequently renamed the Math and Statistics Building (the "project").
3. NCSU executed a Letter Agreement with M3DG in June 2004 to provide Programming and Site Assessment services for the project. Perkins & Eastman acted as the programming consultant and the programming was completed in early 2005.
4. NCSU entered into a design contract with M3DG for \$1,515,000 on April 22, 2005. The contract did not contain a breakdown of consultant fees.
5. During the construction documents phase of the project, M3DG missed several deadlines, submitted improperly coordinated and inaccurate documents to NCSU and state agencies for review, and submitted to NCSU requests for additional services without proper documentation.

6. Respondents' confusion over which version of the NC Building Code to apply caused delays in the development of the construction documents for bidding purposes beginning with the first submittal of the Early Site Package in the spring of 2006. In addition, improper coordination of the Early Site documents affected the subsequent delivery date of the construction documents in early September 2006.
7. On March 10, 2006, NCSU and M3DG executed Design Amendment # 1 for \$102,000. This design amendment was for the redesign of the schematic design package to reduce the size of the building from 125,000 square feet to 115,000 square feet and it contained no breakdown of consultant fees.
8. In September 2006, M3DG missed several construction document submittal deadlines before submitting the documents for review in October 2006.
9. The construction documents once submitted were inadequate. NCSU, state reviewing agencies, and the construction manager at risk (CMR), Clancy & Theys, noted a lack of document coordination and general document confusion as well as other errors and omissions in their design review comments. The deficiencies included missing sheets, incomplete details, mislabeled references, and inconsistent information between the specifications and the drawings.
10. M3DG had its consultants submit construction documents directly to NCSU and the reviewing agencies without properly reviewing and coordinating the documents and as a result, many of these documents were not consistent with NCSU's specifications.
11. During the pre-construction and bid periods, Clancy & Theys issued numerous Requests for Information ("RFIs") to M3DG in an attempt to get the construction documents coordinated with sufficient clarity to allow for proper bidding. M3DG forwarded the RFI's to its consultants for review who returned the RFIs directly to NCSU and Clancy & Theys without proper coordination and review by M3DG.
12. Due to the amount of time required to continually coordinate the documents, it took roughly two and a half months to complete the bid process.
13. NCSU issued an interim designer evaluation to M3DG on March 7, 2007. M3DG received an overall rating of 1.6 on a scale of 1 to 5 with 5 being the highest score.
14. As a result of its above stated low rating, M3DG requested a meeting with NCSU officials to review its performance on the project. The meeting with NCSU took place on May 7, 2007 and resulted in M3DG submitting a management plan to NCSU on May 14, 2007 detailing

how M3DG would successfully complete the project.

15. NCSU had to request clarification regarding several items in the management plan including staff members and their roles in addition to justification for M3DG claims of additional service fees.
16. During this time, NCSU also requested a financial report from M3DG because several consultants notified NCSU that M3DG had not paid them on a regular basis for professional services rendered.
17. M3DG submitted several requests for additional services without the required documentation from the consultants justifying an increase in fees. M3DG initially requested an additional fee of \$885,842 from NCSU on May 9, 2007 based on an itemized list of additional services but did not submit supporting documentation from its consultants with this request.
18. In response, NCSU offered M3DG a revised fee and asked M3DG for documentation in support of its second request for additional services due to changes in scope. As of October 5, 2007, M3DG had not fully complied with this request.
19. Stewart Engineering, a consultant on the project, contacted Carole Acquesta of NCSU on June 5, 2007 and informed her that M3DG had requested additional fees of approximately \$113,000 on behalf of Stewart Engineering although Stewart Engineering had not planned to submit a claim for any additional fees.
20. Another consultant, Stanford White, also expressed similar concerns to Sammy Sams of NCSU regarding fees for additional services.
21. Around the same time, Kenneth Wehner of Stanford White requested additional services from M3DG totaling \$25,300 and suggested Stanford White had lost \$43,500 on the project as of June 7, 2007. This additional services request was for work that had already been performed.
22. On July 3, 2007, the Director of Capital Project Design on behalf of NCSU filed a complaint against Anthony Hunt, Timothy F. McMullen (M3DG principals), and M3DG with the Board.
23. On July 9, 2007, Chistopher Herron of Stewart Engineering sent requests for additional services totaling \$25,800 to M3DG.
24. In an August 23, 2007 letter to the Board, the contracting officer for NCSU, acknowledged that M3DG submitted requests for additional services without consulting its subcontractors.

25. On August 24, 2007, Hunt, McMullen, and M3DG responded to the complaint through their attorney Russell Killen. They admitted that document delivery dates were missed during the project, that they had difficulty with the coordination of documents, that they initially failed to comply with the 2006 NC Building Code, and that their initial requests for additional services were not properly documented.
26. The NCSU Project Manager noted several deficiencies in M3DG's request for additional services dated September 4, 2007 including the failure to indicate the hours expended and the hourly rate for each task.
27. On September 21, 2007, Stanford White again sent additional services requests totaling \$25,300 to M3DG and claimed Stanford White had lost \$43,500 on the project, and the firm reiterated that the additional services requests were for work that had already been performed.
28. HadenStanziale, a consultant on the project, also sent additional services requests to M3DG totaling \$44,241 on September 26, 2007.
29. As of October 5, 2007, M3DG was still not meeting NCSU's contractual requirements regarding change orders and RFIs. In addition, M3DG consultants continued to voice concerns to NCSU regarding payment for their services and NCSU had not been able to obtain financial reports from M3DG regarding the project.
30. On October 31, 2007, NCSU and M3DG executed Design Amendment # 2 for \$505,340. This design amendment was for additional services due to budget and scope increases and additional services provided by the consultants.
31. M3DG owed Stanford White \$64,865 for services performed on the project as of February 18, 2008.
32. M3DG owed Stewart Engineering \$23,630 for services performed on the project as of March 28, 2008.
33. NCSU's records, as of June 2, 2008, showed a total design contract fee of \$2,122,340 for M3DG of which \$1,894,880.71 had been paid. The \$1,894,880.71 figure included \$173,190.00 paid to M3DG by NCSU for the owner requested additional services in Design Amendment # 2.
34. As of July 18, 2008, M3DG had not paid Stanford White Associates since November 2007

- and owed Stanford White about \$90,000 for additional design services although NCSU had paid M3DG for these additional services.
35. As of August 12, 2008, M3DG had worked out payment plans with Stewart Engineering and HadenStanziale. The plans called for 25% of the amount owed to be paid up front with the balance due within five months.
 36. M3DG had not been able to work out a payment plan with Stanford White but had paid Stanford White approximately 20-25% of the amount owed. M3DG still owed Stanford White about \$60,000.
 37. As of August 12, 2008, M3DG still owed all of its sub-consultants a total amount of approximately \$143,000.
 38. The facts summarized in paragraphs 5-6, 8-13, 25 and 29 lead to the conclusion that M3DG initially submitted construction documents to NCSU and the state regulatory agencies that failed to meet NCSU's specifications.
 39. The facts summarized in paragraphs 16, 21, 31 and 31-34 lead to the conclusion that M3DG went several months without paying its sub-consultants for their additional services after receiving payment from NCSU for those services.
 40. Respondent wishes to resolve this matter by Consent and agree that the Board staff and legal counsel may discuss this Order with the Board *ex parte* whether or not the Board accepts this Order as written.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter and over Respondent and Respondent is therefore subject to Chapter 83A of the General Statutes of North Carolina and Title 21, Chapter 2 of the North Carolina Administrative Code.
2. The conduct described in Paragraphs 5-6, 8-11, 13, 15-21, 25-27, 29, 31-34 and 38-39, if supported by substantial evidence, would constitute violations of N.C. Gen. Stat. § 83A-15(a)(2), N.C. Gen. Stat. § 83A-15(a)(3), and 21 NCAC 2 .0210.

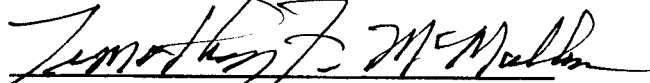
BASED on the foregoing and in lieu of further proceedings under 21 NCAC 2 .0600, the Board and Respondents stipulate and agree to the following:

1. Respondent is cautioned to comply with the above cited statutes and rules in future dealings.

In the matter of: Timothy McMullen
Consent Order
Page 6 of 6

2. This Consent Order shall be admissible in any subsequent disciplinary action.

CONSENTED TO:

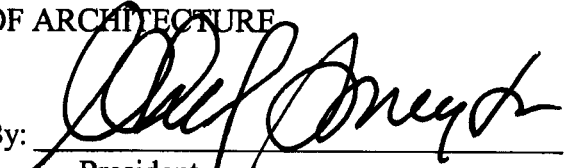


Timothy F. McMullen

Date: Nov. 24, 2008

APPROVED BY THE BOARD THIS THE 9 DAY OF January, 2009

THE NORTH CAROLINA BOARD
OF ARCHITECTURE

By: 

President