

BEFORE THE STATE OF NEW MEXICO
BOARD OF EXAMINERS FOR ARCHITECTS

IN THE MATTER OF:)
MICHAEL REYNOLDS)
REGISTRANT NO. 810)

CASE NO. #98009
(Consolidated)

RESPONDENT.

ORDER

1. The **BOARD OF EXAMINERS FOR ARCHITECTS** adopts the attached Stipulated Agreement as the terms of its Order in this matter.



BOARD OF EXAMINERS FOR ARCHITECTS

3.14.00

Date

**BEFORE THE STATE OF NEW MEXICO
BOARD OF ARCHITECTS EXAMINERS**

In the matter of:

**The State of New Mexico,
Board of Architects Examiners,
Plaintiff,**

vs.

**CASE NO. 98009
(Consolidated)**

**Michael Reynolds,
Board Registration No. 810,
Respondent.**

STIPULATED AGREEMENT OF SETTLEMENT

COMES NOW the State of New Mexico, Board of Architect Examiners (hereinafter "State"), by and through its counsel of record, Assistant Attorneys General Shawna Maloy and David Thomson, together with the Respondent, Mr. Michaels Reynolds, and hereby agree to the following terms of settlement in the above captioned matter:

BACKGROUND

1. Respondent, Michael Reynolds, is a registered Architect in the State of New Mexico. Respondent's Board Registration No. is 810.

2. Respondent, as a registered Architect in the State of New Mexico, is subject to the jurisdiction of the State of New Mexico Board of Architects Examiners, the Architectural

Act (61-15-1 through 61-15-13, NMSA 1978), and the rules, regulations, codes and/or standards promulgated and adopted by the Board.


3. On January 31, 2000, the Board filed a Notice of Contemplated Action against the Respondent/Licensee. A copy of this Notice of Contemplated Action is attached hereto, and incorporated into this agreement as ATTACHMENT #1.


4. Respondent understands that many of the alleged violations contained in this Notice of Contemplated Action are violations of not only the statutes, rules, regulations, codes and standards governing Architecture in the State of New Mexico, but also of the statutes, rules, regulations, codes, standards and local ordinances governing construction in the State of New Mexico. Respondent understands that the Attorney General's Office, upon completing its prosecution before the Architects Examiner's Board, would proceed with a similar prosecution before the Construction Industries Commission against Respondent's GB-98 Contractors license.


5. The Board of Architects Examiners, while embracing and encouraging alternative design and construction methods, found it appropriate and necessary to pursue the administrative action underlying this Stipulated Agreement of Settlement because of the numerous complaints filed before the Board of Architects Examiners and the Construction Industries Commission, and in the Consumer Protection Division (of the Attorney General's Office) and the courts.


6. The Respondent, while accepting responsibility for non-compliance with the laws, codes and standards governing his work with Earthships, believes it is important to note, for the purposes of this agreement, that "the alternative building techniques involved in Earthships inherently give rise to difficulties with regard to conventional building practices."

TERMS OF SETTLEMENT

 1. In an effort to work with the Board of Architects Examiners in an amicable manner, and with the intent to avoid the time and cost of a hearing regarding the allegations set forth in ATTACHMENT #1, Respondent hereby acknowledges responsibility for the conduct at issue and, as such, VOLUNTARILY surrenders his license to work as a Registered Architect in the State of New Mexico, effective March 7, 2000. Respondent further agrees this surrender of his license shall be permanent. Respondent agrees that he shall not make application for another such license in the future.

 2. Respondent agrees that he shall compensate the Board of Architects Examiners for the time and expense of investigating the underlying allegations, and having structures at issue assessed by an expert. As such, Respondent agrees to pay an administrative fine to the Board in the amount of \$500. This fine shall be paid in full within 30 days of execution of this agreement.

 3. Respondent agrees that immediately following execution of this agreement before Board of Architects Examiners, Respondent shall execute a similar such agreement with the Construction Industries Commission/Division in which his GB-98 contractor's license is VOLUNTARILY surrendered. As with his Architects license, this surrender shall be permanent.

 4. Respondent understands that following execution of this agreement, and the agreement with the Construction Industries Commission/Division, he shall no longer represent to others that he is a licensed architect and/or contractor in the State of New Mexico. Further, he shall not hold himself out to have qualifications and/or certifications and/or expertise in these fields, as recognized by the State of New Mexico. As such, Respondent shall return all current licenses and/or registrations to the appropriate Board or

Commission. Further, Respondent shall not post any expired licenses and/or registrations for others to view.

MR 5. Respondent has entered this agreement freely, fully understanding the ramifications of execution of this agreement. Respondent has not been coerced into execution of this agreement, and understands that, in so settling the allegations set forth in the underlying Notice of Contemplated Action, Respondent is foregoing the right to hearing as set forth in the Uniform Licensing Act, NMSA 1978.

MR 6. Respondent understands that he has the right to counsel, either with an attorney or a licensed member of his profession, prior to execution of this agreement.

MR 7. Execution of this agreement will result in dismissal, without prejudice, of the charges set forth in ATTACHMENT #1, pending compliance with the terms of this agreement.

AGREED TO THIS 7th DAY OF MARCH, 2000.

MR

Mr. Michael Reynolds

Sworn to and signed this 7th day of March, 2000 in my presence.

Carolyn M. Gallegos

Notary Public

My Commission Expires: 06-03-00

SEAL

ACCEPTED AND APPROVED THIS 14th DAY OF March, 2000.

Beverly B. Spain - BOARD MEMBER
for Chairman *Ray Nims*
State of New Mexico
Board of Architect Examiners

BEFORE THE BOARD OF EXAMINERS FOR ARCHITECTS
OF THE STATE OF NEW MEXICO

IN THE MATTER OF:

The Board of Examiners for Architects)	
of the State of New Mexico,)	
Plaintiff,)	
)	
vs.)	CASE NO. 98009 Consolidated
)	
Michael Reynolds,)	
Board Registration No. 810,)	
)	
Respondent.)	

AMENDED NOTICE OF CONTEMPLATED ACTION

COMES NOW the State of New Mexico, by and through its counsel of record, and hereby notifies the Respondent, Mr. Michael Reynolds, Registered Architect in the State of New Mexico (Registration no. 810), (hereinafter "Respondent") that the Board of Examiners for Architects for the State of New Mexico (hereinafter "Board") is contemplating disciplinary action against Respondent, which may include suspension or revocation of Respondent's Registration as an Architect in the State of New Mexico, and/or the assessment of administrative fines and penalties.

This Disciplinary Action is contemplated pursuant to the authority vested to the Board under the following provisions of the Architectural Act, NMSA 1978 and provisions of the Rules, Regulations or Standards adopted by the Board pursuant to that Act:

Section 61-15-1, NMSA 1978, wherein it provides that the Board is created with the intent that the Registration of Architects promote and safeguard the life, health, property, and welfare of the people of New Mexico.

ATTACHMENT # 1 to the
Board of Architect Examiners' Settlement

Section 61-15-12, NMSA 1978. Refusal, suspension or revocation of certificate of registration.

(A) In accordance with the Uniform Licensing Act [61-1-1 to 61-1-31, NMSA 1978], the Board may refuse to issue, may suspend or may revoke any certificate of registration as an architect upon the grounds that the licensee or applicant is:

- (2) guilty of gross negligence, incompetence or misconduct in the practice of architecture;
- (3) guilty of stamping with his official seal any plans, specifications, plats or reports in violation of the Architectural Act ...
- (6) guilty of dishonorable or unprofessional conduct as defined by regulation of the board; or

16 NMAC 30.1.7

7.5 Gross Negligence: As referred to in Section 61-15-12(A)(2) NMSA 1978, means:

- A. Being habitually guilty of neglect; or
- B. Being found extremely careless and lacking in ordinary care and concern in the practice of Architecture.

7.6 Competence:

- A. In the practice of architecture, an architect shall act with reasonable care and competence and shall apply the technical knowledge and skill that is ordinary applied by architects of good standing practicing in the State of New Mexico;
- B. An architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, is qualified by education, training and experience or ability in the specific technical areas involved; and
- C. An architect shall take into account all applicable state and municipal building codes, laws and regulations...

7.7 Misconduct: As referred to in Section 61-15-12(A)(2), NMSA 1978, means:

- A. Knowingly preparing or stamping construction documents in violation of the codes, laws or regulations;

- B. Obtaining or attempting to obtain compensation by fraud or deceit;
- C. Engaging in any conduct involving fraud or deceit which is related to the business or practice of architecture;
- G. Violating federal or state statute or rule that directly relates to the practice of architecture;
- I. Making a substantial misrepresentation in the course of practice, including false, misleading or deceptive advertising or statements to clients or potential clients; or
- J. Engaging in conduct that the architect knows or should know through professional knowledge or experience is not within the acceptable standard for professional conduct that is ordinarily applied by architects of good standing practicing in the state of New Mexico.

7.8 Incompetency:

- B. Engaging in conduct which evidences a lack of knowledge, ability, or fitness to discharge the duty and responsibility owed by the architect to a client and to the public in order to safeguard life, health, and property and promote public welfare.

7.9 Dishonorable or Unprofessional Conduct: As referred to in Section 61-15-12(A)(6), NMSA 1978, shall include, but not be limited to,:

- E. Making a fraudulent or misleading claim;
- G. Obtaining or attempting to obtain compensation by fraud, deceit or misrepresentation;
- H. Engaging in any conduct in conflict with the Code of Conduct for Architects as specified by Regulation;
- I. Repeatedly (more than three times) violating the Architectural Act... the Rules and Regulations of the Board, or the architectural laws of any state or jurisdiction.

16 NMAC 30.4.8

8.2 Conflict of Interest:

B. If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his or her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his or her client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect will wither terminate such association or interest or offer to give up the commission or employment.

8.3 Full Disclosure:

C. An architect shall accurately represent to a prospective or existing client or employer his or her qualifications and the scope of his or her responsibility in connection with work for which he or she is claiming credit.

D. If, in the course of his or her work on a project, an architect becomes aware of a decision taken by his or her employer or client, against the architect's advice, which violates applicable state or municipal building laws, codes and regulations and which will, in the architect's judgment, materially affect adversely the safety to the public of the finished project, the architect shall,

(1) Report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws, codes and regulations;

(2) Refuse to consent to the decision; or

(3) In circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his objection, terminate his services with reference to the project.

In the case of a termination in accordance with clause 3 above, the architect shall have no liability to his or her client or employer on account of such termination.

8.4 Compliance with the Law

C. An architect shall comply with the registration laws and regulations governing his or her professional practice in any jurisdiction.

As a Registered Architect in the State of New Mexico, Respondent is subject to the jurisdiction of the Board under the Architectural Act, NMSA 1978.

The Board has before it sufficient evidence, which if not rebutted or satisfactorily explained, will justify the Board suspending or revoking Respondent's Registration, or taking other action against the Respondent's Registration in accordance with Section 61-15-12, NMSA 1978.

The general nature of the State's case, and what the evidence will show, is as follows:

The evidence is drawn from Respondent's contracting for, administration of, design of, work on, involvement in, management of, oversight of, supervision of, AND/OR consulting on, the following Earthship construction/ housing projects among others:

1. The Val Goldenbrook Project in Abiquiu;
2. The Joan P. ("Joey") Townsend Project in the Reach Community;
3. The Mary Reimer Project in Santa Fe County;
4. The Patricia Rogers Project in the Greater World Community; and
5. The Suzanne Martin Project in the Star Community.

Respondent has engaged in unprofessional and dishonorable conduct, (both as a registered architect and a licensed contractor holding the most comprehensive general construction license [GB-98]), by continually attempting to avoid responsibility for the projects at issue.

Respondent has made false and/or misleading and/or confusing representations (verbal and written), and/or employed deceptive practices, when advising potential clients, actual clients, local and State building officials, and the Board.

Respondent has sited a project inappropriately on a slope and has failed to the design to account for subsurface water accumulation to prevent water incursion into the residence, to prevent soil erosion, and has failed to provide for waste water disposal given the slope and soil conditions.

Respondent has failed to provide competent construction administration, and/or has failed to provide acceptable "construction observation of a construction contract".

Respondent has failed to notify local building officials of client decisions that violate state or municipal building laws, codes, or regulations.

Respondent has violated the Architectural Act and Board rules by violating the building codes and standards for the State of New Mexico. Specifically, Respondent has violated the Construction Industries Licensing Act (60-13-1 et seq., NMSA 1978), the New Mexico Building Code (1991 Edition), the 1991 Uniform Building Code, the National Electrical Code, the Construction Industries Division Rules and Regulations, and local building ordinances for Taos County. These violations include, but are not limited to:

1. The creation of code violations; and/or
2. Failure to properly permit; and/or
3. Illegal and/or abusive permitting practices; and/or
4. Fraudulent submission of plans to obtain a building permit; and/or
5. Failure to obtain required CID, or local jurisdiction, inspections; and/or
6. Failure to obtain final approvals, and Certificates of Occupancy; and/or

7. Allowing structures to be occupied without a Certificate of Occupancy; and/or
8. Creating conditions that result in life-safety hazards for the people of New Mexico; and/or
9. Aiding and Abetting Unlicensed Contracting (as a GB-98 contractor); and/or deviations from plans and specification, and the failure to submit changes to the local building department for review.

In addition to Respondent's substandard, incompetent, careless, illegal and grossly negligent architectural and construction practices, Respondent engaged in deceitful, fraudulent, and unprofessional practices with regard to cash funds received for the design and construction of the projects at issue

Respondent has failed to identify possible conflicts of interest, in writing, to his clients.

In addition to the above specified violations of the Architectural Act, and those additional bodies of law incorporated into that Act for which Registered Architects are responsible, the Respondent has engaged in an egregious violation of the Uniform Licensing Act. Specifically, Respondent, and/or agents of Respondent, have violated 61-1-7(G) of the Uniform Licensing Act, which provides in pertinent part:

A licensee who directly, or through an agent, intimidates, threatens, injures, or takes any adverse action against a person for providing information to a board shall be subject to disciplinary action.

Respondent has violated this provision as follows:

The filing of a liable and/or slander suit against Joan P. Townsend for \$2 million dollars in response to her filing a complaint with the Board of Examiners for Architects. Ms. Townsend was so concerned that the Respondent would harass her in a similar way for the filing of a complaint with the Construction Industries Division that she instructed the Division to withdraw her complaint. Such a suit chills the voice of the public when they desire to address

unprofessional and substandard work. Such a suit is frivolous and extremely costly for a person, such as Ms. Townsend, to defend.

Additionally, members of the Reach Community have "discouraged" (in a manner considered threatening and harassing) complainants from pursuing their claims with the appropriate regulatory boards. Further, members of the Reach Community have attended other disciplinary hearings against the Respondent, and at such hearings have conducted themselves in such a manner as to make the witnesses and/or complainants uncomfortable. This behavior included, but is not limited to, "hissing", imposing physical barriers and making inappropriate physical overtures in response to testimony, mocking and the like.

NOTE: The State of New Mexico intends to add an additional charge of violating Section 61-1-7(G) for each such instance reported to the State post issuance of this NCA, and each such incident observed at the hearing of this matter (whether the result of the Respondent's behavior, or the behavior of an agent of the Respondent.)

Unless the Respondent, within 20 days of service of this notice, deposits in the mail a certified, return receipt requested letter, addressed to the Board at the address below, containing a request for hearing, the Board will take the contemplated action.

The formal hearing, if requested, will be conducted pursuant to the New Mexico Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33 (Repl. Pamp. 1996). Pursuant to Section 61-1-8, the licensee is specifically advised as follows:

A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to §61-1-4 NMSA 1978 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

1. Obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

2. Inspect and copy any documents or items which the other party will or may introduce evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

Signed this 31 day of January, 2000.

THE BOARD OF EXAMINERS FOR THE ARCHITECTS
FOR THE STATE OF NEW MEXICO

Ron Nims the David J. Lumaner for
Board Chairperson
Board of Examiners for Architects for
the State of New Mexico
P.O. Box 509
Santa Fe, New Mexico 87504

Return Receipt Requested No. 7191 938 787

A true copy of this Notice was served on Respondent by certified mail, return receipt requested, directed to Respondent at the last known address shown by the records of the Board on this 31st day of January, 2000.

Ed Paterson
Signature

Ed Paterson, Information Officer
Printed Name and Title



State of New Mexico
BOARD OF EXAMINERS FOR ARCHITECTS
P.O. Box 509
Santa Fe, New Mexico 87504
(505) 827-6375
Fax: (505) 827-6373

January 31, 2000

I, *E.J. Paterson*, Information Officer of the New Mexico Board of Examiners for Architects, as a custodian of this record, certify that it is a copy accurately recorded, maintained and reproduced by this agency.

NO. NMBEA – 98009 Consolidated

MICHAEL E. REYNOLDS

AMENDED NOTICE OF CONTEMPLATED ACTION

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of the New Mexico Board of Examiners for Architects to be affixed, the day and year first above written.

SEAL

A handwritten signature in cursive script, appearing to read "E.J. Paterson", written over a horizontal line.

E.J. Paterson
Information Officer