

STATE OF MINNESOTA
BOARD OF ARCHITECTURE, ENGINEERING, LAND SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE AND INTERIOR DESIGN

In the Matter of Virginia Marie Carlson,
Unlicensed

**FINAL CIVIL
PENALTY ORDER**

On September 13, 2018, the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design issued its Order Granting Summary Disposition against Respondent Virginia Marie Carlson. The order assessed a \$10,000 civil penalty and imposed the fees (reported by the Complaint Committee to be \$5,682.50) to reimburse the Board for all the costs charged by the Office of Administrative Hearings for the underlying contested case proceeding. Pursuant to Minn. Stat. § 16D.17 (2016), the order notified Carlson that it would become a final civil penalty order unless she requested a hearing from the Board on the civil penalty within 30 days. On September 18, among other requests, Carlson requested a hearing on the penalties.

The Board notified the parties that the civil penalty hearing would be conducted at its next meeting on October 9. The hearing notice specified that the sole purpose for the hearing would be to determine whether the Board should adjust the penalties it imposed against Carlson. The Board indicated that it would not consider new evidence or entertain argument related to whether Carlson committed the misconduct adjudicated by the order. Finally, the Board notified Carlson that to the extent she wished to argue that the Board incorrectly ordered summary disposition or committed any other error, she may wish to withdraw her hearing request on the penalty and seek judicial review pursuant to Minn. Stat. §§ 14.63-.69 (2016).

Despite notifying the parties of the limited hearing parameters, on September 27 and October 5, Carlson submitted materials to the Board disputing that she committed the underlying violations; alleging that the Board committed numerous procedural errors and violated her

constitutional rights; and demanding a damages award “in an amount over \$50,000 for defamation of character, libel, slander – and for ruining Ms. Carlson’s name, reputation, and career.”

ORDER

Based on the evidentiary record established at the Office of Administrative Hearings, the Order Granting Summary Disposition, and the arguments presented at the civil penalty hearing, the Board affirms the \$10,000 civil penalty and the fee assessed to reimburse the Board for all the costs charged for the underlying contested case proceeding. Carlson is further notified that simple interest computed in accordance with Minn. Stat. § 16D.13 (2016), shall begin to accrue on the civil penalty 30 days after the date of this order.

Dated: 10-9-2018

BOARD OF ARCHITECTURE,
ENGINEERING, LAND
SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN



Nirma Jain, Chair


Danika E. MURPHY

MEMORANDUM

A penalty hearing under Minn. Stat. § 16D.17 is only required if an agency intends to enforce its final penalty order in the same manner as a civil judgment. But this type of hearing serves a limited purpose, is not tantamount to a motion for reconsideration or rehearing, and does not afford the parties an opportunity to introduce new evidence or dispute the merits of the underlying order. Instead, the hearing typically consists of legal argument regarding the penalty imposed in relation to the evidentiary record established by the Administrative Law Judge (“ALJ”). To hold otherwise would frustrate the purpose of conducting evidentiary proceedings at the Office of Administrative Hearings. See *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 274 (Minn. 2001) (noting that the agency must make the final decision based on the record as transmitted by the ALJ); see also Minn. Stat. § 14.60, subd. 2 (2016) (stating “[n]o factual information or evidence shall be considered in the determination of the case unless it is part of the record”); Minn. R. 1400.8100, subp. 1 (providing that no information outside the record shall be considered by the ALJ or by the agency).

The Legislature established six facts that must be taken into account in determining the amount of civil penalties:

- (1) the willfulness of the violation;
- (2) the gravity of the violation, including damage to humans, animals, and the natural resources of the state;
- (3) the history of past violations;
- (4) the number of violations;
- (5) the economic benefit gained by the person by allowing or committing the violation; and
- (6) other factors that justice may require.

Minn. Stat. 14.045, subd. 6 (2016). The Board considered these factors when it initially imposed the penalties. Carlson has not presented any valid or compelling arguments why the Board should deviate from its initial determination.

While the Board determined that Carlson's misconduct constituted a single violation, it imposed the maximum \$10,000 civil penalty based on considerations that her misconduct was willful and in violation of the Board's 1999 cease and desist order. Carlson also gained significant economic benefit at the expense of her clients, B.C. and K.C., and caused them additional economic harm and inconvenience by unsuccessfully suing them in a mechanic's lien action in district court. Moreover, and notwithstanding her previous admissions against interest and numerous court determinations adjudicating her misconduct, Carlson inexplicably refused to accept any responsibility for her actions and continued to insist to the Board that she had done nothing wrong. Based on this record, the imposition of the maximum civil penalty and the assessment of the fees related to the underlying proceeding are necessary to deter future misconduct and to protect the public interest.

AFFIDAVIT OF SERVICE BY MAIL

RE: In the Matter of Virginia Marie Carlson OAH 5-1006-34618

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Kathryn Weiss, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on this the 9th day of October, 2018, she served the attached FINAL CIVIL PENALTY ORDER by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class and certified postage prepaid, and addressed to:

Ms. Virginia Marie Carlson
1161 E. Wayzata Blvd Apt 154
Wayzata, MN 55391

Kathryn Weiss
Kathryn Weiss

Subscribed and sworn to before me on
this the 9 day of October, 2018.

Allison Rose Desmond
(Notary Public)

