

Case Study #2

Allegation – Unlicensed practice

Case summary: In March of 2002, DM, a building inspector, sent the Board of Registrations for Professional Engineers and Professional Land Surveyors, information regarding two sets of house plans submitted to the City of Flowers, bearing the stamp of a Jay G. Kay, PE, License No. 15XX. DM indicated in the complaint that the PE number, 15XXX, did not register to Jay G. Kay and asked the Board for clarification. DM included two sets of stamped plans and two letters addressed to him from Troy Small, President of Endstone Design. The letters were signed by Mr. Small, and bore the signed and sealed stamp of Jay G. Kay.

Focus of investigation: Prior to the complaint being sent to the Office of Investigations, the Program Administrator for the Board had attempted contact with Troy Small, to ascertain what he knew of Jay G. Kay so that the Board could send Mr. Kay a letter of notification regarding the complaint.

Mr. Small told the Program Administrator that he was trying to locate Mr. Kay, but only had a “cell phone” number that was disconnected. In conducting further research, the Program Administrator located a Jay Kay at an address in Aurora, CO through a white pages listing in the phone book. A letter of notification regarding the complaint was sent to Mr. Kay. In his letter response, Mr. Kay indicated that he was not the person who had sealed and/or signed any of the drawings in question; and, although he was a licensed engineer, he was licensed only in Texas. The letter was signed by Mr. Kay and bore his State of Texas Professional Engineering stamp.

Summary of investigation: Upon receipt of the case in investigations, an initial comparison of the signature of Jay G. Kay on the stamped house plans was compared against the signature of Jay Kay on the letter of response. The two signatures were noticeably different, even to the untrained eye.

The investigator initially ran a driver’s license check through the State of Colorado to determine if there were other Jay Kays in the State of Colorado. The only Jay Kay located in this search was the one previously contacted. The Colorado PE license number on the stamped and sealed drawings [15XXX] was run through the PE licensing database. It came up listing to a PE by the name of SF with a last known address in Iowa. The license also indicated it had lapsed in 1990. A search of Iowa’s PE licensing database revealed that SF held a current active PE license in that state. The Iowa PE Board was then contacted for a most recent address on SF. A search of Colorado’s driver’s license database for SF was conducted, showing no current or past driver’s licenses under that name in Colorado.

A check of Colorado’s Labor and Employment database revealed that the information supplied by Jay Kay in his letter of response, regarding his employment history in Colorado, matched with the agency’s database information. There was no indication Jay Kay had ever been employed by Endstone Design.

A check of Colorado's PE/PLS licensing database for any Kays licensed in Colorado revealed a Raymond Melvin Kay, who was listed with a date of birth of 1916, and showed a retirement status effective in 1989.

An interview was conducted with the complainant, DM. DM stated that Sumo Development had submitted three sets of unstamped/unsigned house plans for three model homes they were building in the Town of Flowers. According to DM, the plans submitted would have had the floor of one of the homes "caving in" and the other home would have "blown over." He noted that there was a lack of bracing on the vertical walls and too many windows for code. He stated that when he first saw this lack of attention to detail, he wondered what other items specific to code may have been missed. In looking further, it was noted that the second floor was not supported properly. He therefore returned the plans to Sumo Development and stated that the problems needed to be fixed and then stamped and signed by a licensed engineer before he would accept them.

DM said that approximately two weeks later, Sumo Development brought back two of the three plans that "still wouldn't work". These plans bore the stamp and signature of Jay G. Kay, License #15XXX. DM again refused to accept the plans. After noting the poor work, DM decided to run the name of Jay G. Kay through the Colorado PE/PLS licensing database. It was then he noted that the license number given listed to SF, not a Jay G. Kay.

DM also said that another problem he noted was that both sets of signed and stamped plans were copies, not originals. When he contacted Endstone, requesting the originals of the plans, what he received in return were the two letters signed by Troy Small and signed and stamped by Jay G. Kay, stating the letters should suffice as a "wet stamp [original]". When DM stated he would not accept the letters, only the original drawings, Mr. Small stated they would drop off the originals, which was never done.

A search of the Secretary of State's Office was conducted and the Articles of Incorporation were located for Endstone Design. The Board of Directors consisted of Misty Small and Troy D. Small. A search of the professional licensing database for Colorado revealed that neither possessed any type of professional license in the State of Colorado. The investigator next contacted Mr. Small by telephone.

Mr. Small informed the investigator that Jay G. Kay "had walked into" his office one day stating he was a "retired engineer" looking for extra work. Mr. Small stated he usually utilized the services of Midtown Engineering whenever he needed a professional engineer for a job. However, he utilized Mr. Kay for the Sumo Development homes and another small project when Midtown could not get to the projects in the needed time frame. According to Mr. Small, he only had a "pager number" to contact Jay G. Kay, but the "pager" number had since been disconnected.

Mr. Small was asked for Mr. Kay's identifying information, i.e., date of birth, address, etc. Mr. Small stated he did not have either one. When asked how he paid Mr. Kay, he said "by check." When asked why he didn't have Mr. Kay's SSN for tax purposes, Mr. Small stated he had paid Mr. Kay by check, made out to a corporation. When asked the name of the corporation, Mr.

Small stated, "Summit Engineering." When asked for the FIN number for Summit Engineering, Mr. Small stated he had not obtained one, but "would have gotten one by the end of the year." When asked to supply a physical description of Jay G. Kay, he gave a very generic description and had to be asked specific information such as hair color, facial hair, glasses, etc. Mr. Small stated he had never seen Mr. Kay's vehicle, as their office was located at the rear of the building and the parking lot was located in the front of the complex.

Mr. Small was asked to secure a copy of the cancelled check made payable to Summit Engineering, which he stated he would do.

A search of the Secretary of State's records for Summit Engineering was conducted, with a total of three companies located that contained some form of the name Summit Engineering. A thorough check of all people known to be associated with these three companies was done, but the name Jay G. Kay was not among them.

An interview was conducted with RS from Sumo Development. RS stated he had never met or talked with Jay G. Kay. When he returned the plans to Endstone Design for corrections and an engineering stamp and seal, Endstone returned them with the stamp and signature of Jay G. Kay. When the plans were rejected the second time by DM, and DM informed Sumo that he could not find any indication that Jay G. Kay was an licensed Colorado engineer, Sumo returned the plans to Endstone Design and demanded a set of stamped plans defined by the terms of their written contract. Endstone Design thereafter had another engineer from Midtown Engineering redo the plans that were thereafter accepted by DM.

An interview with Jay Kay, licensed PE from Texas was conducted. Mr. Kay stated that he has never had a middle name, so has never used a middle initial. When asked if he recognized any of the names that the investigator had associated so far to the investigation, Mr. Kay did not know any of them. The only coincidence he saw was that he had lived in New Jersey, the home state of Sumo Development, but he had never met anyone from that corporation, nor did he know of that corporation prior to a copy of the complaint being sent to him.

The investigator was able to speak with SF, the Colorado PE, whose license number was being used by Jay G. Kay. SF stated his only connection to Colorado was having graduated from the Air Force Academy and obtaining his first PE license there. He had been practicing in Iowa, his home state since 1979. He maintained his Colorado license until 1990 when he let it lapse. He knew of no one in Colorado that would use his lapsed number, and could think of no one he knew who matched the description of Jay G. Kay supplied by Mr. Small.

MR, the engineer from Midtown Engineering who finished the Sumo Development plans for Endstone Design was interviewed. MR stated he had never heard of Jay G. Kay, and was unaware that this person had "anything to do with the plans until the building inspector contacted me." The plans brought to him by Endstone Design for the Sumo Development were not stamped, "They came to me as if they were brand new plans." MR said he found several major flaws in the design of the homes, as presented on the plans supplied to him by Endstone Design. On one plan alone he had to change over 20 items.

MR stated he had worked with Troy Small and Endstone Design for approximately 3-4 years, but the work “goes in cycles.” MR knew that prior to working with him, Endstone Design utilized an engineer in their own building, Sporer Engineering, but was unsure why Mr. Small quit using them. A later check of Sporer Engineering did not reveal any known association with a Jay G. Kay.

At a loss to further identify Jay G. Kay, it was decided to have a face-to-face meeting with Mr. Troy Small as there were many inconsistencies in the information supplied by him regarding Mr. Kay, and he still had not furnished a copy of the cancelled check as promised.

The investigator made an unannounced visit to Mr. Small’s place of business. It was explained to him that there were concerns, since all the information gathered to date in this case kept leading back to Endstone Design, and he, in particular. At this point, Mr. Small stated, “What? Do you think I’m Jay Kay?” The investigator then bluntly stated that was exactly what appeared to be.

After several more denials, Mr. Small was again asked about the copy of the cancelled check, which had yet to be provided. Mr. Small stated he just had not had the time to go to the bank to secure the check. It was learned his bank was located directly across the street. Mr. Small was asked if he would be willing to accompany the investigator right then to obtain this copy, although it was stated to Mr. Small that the existence of the check was seriously in question by the investigator. Within a minute of that statement, Mr. Small admitted that it was he who had fashioned a PE stamp on his computer using the name of Jay G. Kay.

Mr. Small stated he had “pulled the name and number out of a hat.” He said he was under pressure by Sumo Development to produce signed and sealed stamps, and he couldn’t at that point get Midtown to look at the plans within the time frame imposed by Sumo.

He had originally counted on residential plans not having to be stamped and sealed; but ran into problems when the City Inspector refused to accept them. Mr. Small was then asked to hand write out a statement in his own words to explain his actions to the Board.

Questions:

1. Were the interviews conducted complete? Was there enough information from the Interviews to meet any of the three levels of proof? If so, where did the interviews fall...preponderance of evidence, clear and convincing, beyond a reasonable doubt?
2. Did what the witnesses state stand on their own, or were there questions? Did any of the statements need verified or corroborated?
3. What else could have been done to improve this case?