

The PEG publishes legal summaries of the decisions of hearings of APEGA's Appeal Board and Discipline Committee.

Recommended Discipline Orders appear in their entirety.

If so ordered, names and other identifying information are not included. Otherwise, summaries and decisions are published almost verbatim; they are reproductions of official statutory records and therefore subject to minor editing only.

Legal Summaries

APEGA APPEAL BOARD DECISION SUMMARY

In the Matter of the Appeals by the APEGA Investigative Committee and MK Engineering Inc. from a decision of the APEGA Discipline Committee in the Matter of the conduct of Lawrence Bermel, P.Eng., and MK Engineering Inc., Permit Holder

Date: May 12, 2016 Case No.: 13-005-FH

This decision was an appeal to the Appeal Board from an Order issued by the Discipline Committee, sanctioning Mr. Lawrence Bermel and MK Engineering Inc. for their conduct in relation to the issuance of thirty-seven (37) Fire Alarm Verification Certificates (FASVs). Both the Investigative Committee and MK Engineering appealed the Discipline Committee decision to the Appeal Board.

In the underlying decision of the Discipline Committee, Mr. Bermel was found to have signed and stamped blank FASVs which MK Engineering then systematically copied and used in 37 projects. The result was that MK Engineering was issuing verifications without the supervision of a professional engineer, which Mr. Bermel confirmed as he was not aware of several of the Certificates. The Discipline Committee found the actions of Mr. Bermel and MK Engineering to have endangered public safety.

The Discipline Committee, in summary, sanctioned Mr. Bermel and MK Engineering by issuing a letter of reprimand, ordering periodic practice reviews, and ordering that Mr. Bermel pay \$2,500.00 of the costs of the hearing with MK Engineering paying \$71,073.98 of the costs. The Discipline Committee also directed MK Engineering to write to the current owners of the 37

projects and advise them by mail that the FASVs were improperly issued.

The Investigative Committee appealed claiming, among other things, that the Discipline Committee imposed unreasonably lenient sanctions against Mr. Bermel and MK Engineering, and ought to have cancelled the registration of Mr. Bermel and the Permit of MK Engineering.

MK Engineering also appealed against the Discipline Committee's direction requiring it to write to current owners of the 37 projects and stated that the Discipline Committee did not give due consideration to the consequences to third parties of such direction. MK Engineering also appealed on the basis that the costs assessed were excessive.

An appeal hearing was held before the Appeal Board following which the Appeal Board dismissed MK Engineering's appeal, and allowed the appeal of the Investigative Committee in part.

The Appeal Board agreed with the Discipline Committee findings that the conduct of Mr. Bermel and MK Engineering were serious matters, and that by allowing the improper certification system to exist Mr. Bermel permitted a false attestation to his involvement in the certification process which did not amount to conducting his affairs in accordance with professional ethics. Furthermore, MK Engineering actively encouraged and developed this system and therefore indirectly placed the safety of the public at risk.

The Appeal Board upheld the Discipline Committee decision to require MK to provide letters to the owners of the 37 projects, since the letters were meant to advise the recipients that the MK Engineering FASVs are not valid and the recipients ought to know about it. The Appeal Board varied the

method of delivery of the letters from mailing the letters to requiring MK Engineering to hire a process server to affix the letter to the buildings. This variation was made to ensure successful delivery of the letters to the affected properties.

The Appeal Board also agreed with the Investigative Committee that sanctions issued by the Discipline Committee were unreasonably lenient, although it did not consider cancellation appropriate in the circumstances. The maximum fine provided for the legislation is \$10,000. The Appeal Board assessed a fine of \$5,000.00 against Mr. Bermel, representing one-half of the maximum, and the maximum fine allowable of \$10,000.00 against MK Engineering.

The Appeal Board also varied the decision to address the jurisdictional issues raised by the Investigative Committee. The Appeal Board varied the Practice Review portion of the order such that any issues discovered during the practice reviews could be referred to the Investigative Committee for further investigation, which could result in additional disciplinary proceedings should that be warranted.

The Investigative Committee also argued that the Discipline Committee erred by ordering that if the costs assessed were not paid within a certain time frame the registrations of Mr. Bermel and MK Engineering would be cancelled. The Act only permits suspension in the event of non-payment of costs, and therefore the Appeal Board varied this aspect of the decision to coincide with the requirements of the Act. Therefore failure to pay costs as required will result in suspension until payment is made.

Following the issuance of the Appeal Board decision, the Investigative Committee sought a direction from the Appeal Board that MK Engineering and Mr. Bermel be

required to pay the full costs of the Appeal. The Investigative Committee argued that its appeal had been successful and MK Engineering's appeal was not. MK Engineering advanced the argument that the Investigative Committee's appeal was not successful because it had been seeking cancellation of MK Engineering's permit, and that costs should not constitute a punishment, but that if costs were to be assessed they should only be a small fraction of the total costs.

The Appeal Board considered the submissions and divided the costs into two parts — one for the Investigative Committee's appeal, and one for MK Engineering's appeal. The decision was that even though the fines were increased against MK Engineering and Mr. Bermel, the Appeal Board was not persuaded that the outcome of the Investigative Committee's appeal should result in a costs assessment. As Mr. Bermel did not appeal, there was no need for the Appeal Board to consider the costs issue further.

MK Engineering's appeal required the Investigative Committee to respond, and since its appeal was completely unsuccessful, the Appeal Board assessed costs against MK Engineering in the sum of \$22,500.00 representing 75% of the costs which the Appeal Board had allotted to the MK Engineering appeal. Failure to pay the costs within 30 days of the date of the decision will result in suspension until the costs are paid.

The full text of the Appeal Board decision is available at: <https://www.apega.ca/enforcement/discipline-decisions/>

VICTOR BENZ, P.ENG.
Chair, Appeal Board

DECISION OF THE APEGA DISCIPLINE COMMITTEE

*REGARDING M.A. STEEL FOUNDRY LTD.
AND OTHERS*

Date: August 11, 2016 Case No.: 16-003-FH

M.A. Steel Foundry Ltd. ("MA Steel") is an APEGA permit holder. Isidro Ang, P.Eng. and Carlos Ang, P.Eng. are professional members of APEGA who are some of the owners of MA Steel. Marc Poissant, P.Eng.

and Richard DeHaas, P.Eng. are professional members who are employees of MA Steel.

As a result of the investigation of a complaint from a former employee, a hearing was held on May 27, 2016 into charges against MA Steel and the four professional members. The charges alleged that between 2011 and 2013, Richard DeHaas, P.Eng., metallurgical engineer, intentionally altered material test results on certified material test reports issued to customers of M.A. Steel and that Marc R. Poissant, P.Eng., plant manager at MA Steel, intentionally altered material test results on certified material test reports for issuance to customers of MA Steel, and authorized or impliedly authorized the actions of Richard DeHaas.

The charges also alleged that each of MA Steel, Isidro Ang, P.Eng. and Carlos Ang, P.Eng., failed to ensure the integrity of MA Steel's quality assurance system for testing its steel casting products, by failing to institute appropriate controls and procedures to ensure that accurate tests were done and reported to clients and that the steel casting products sent to clients had all undergone and passed valid tests. The charges alleged that the conduct of MA Steel and the four professional members was for the purpose of meeting customer delivery schedules, saving on expense or avoiding extra work. It was alleged that this conduct constituted unprofessional conduct or unskilled practice by the Member, as set out in sections 44(1) of the *Engineering and Geoscience Professions Act*, and contravenes one or more of Rules of Conduct 3, 4, and 5 of APEGA's Code of Ethics.

This case proceeded by way of an Agreed Statement of Facts and Admission of Unprofessional Conduct. Each of the four professional members and the Permit Holder MA Steel admitted all of the allegations set out in the Notice of Hearing. The detailed Agreed Statement of Facts and Admissions set out the admissions that supported each allegation in the Notice of Hearing.

The Hearing Panel found that it was clear that under the ISO Standards under which MA Steel's steel alloy products are produced the products must meet the required qualities set by the American Society for Testing and Materials Standards ("ASTM Standards") unless the customer accepts variations from the ASTM Standards. In

each case there is a final inspection before the product is shipped.

The Agreed Statement of Facts and Admissions reviewed in detail 17 cases where test results were manipulated in various ways including:

- a. Changing test results to make it appear that the test bar conformed to required specifications;
- b. Creating test results when the independent test results were not available;
- c. Using test results from representative or stand-in test bars in place of actual test results from actual test bars from a specific casting or heat.

These test results were then sent to the customer without notifying the customer of what had been done or the potential issues in respect of the testing.

The admissions acknowledged that while these actions were done primarily by Mr. Richard DeHaas and one of his employees, these actions were taken with the knowledge and express or implicit authorization of the Plant Manager, Marc Poissant and the owners Isidro Ang and Carlos Ang. Based on this information, it was clear to the Hearing Panel that there was a systemic issue that went throughout MA Steel and that was condoned and participated in by all of the four professional members.

The Hearing Panel held that certifications of test results are professional documents relied upon by clients. A professional member cannot sign or permit to be signed any professional certification that the professional member knows is not accurate. The situation is made worse when the professional member takes deliberate actions to alter the test results or to create test results or to test the wrong materials in order to certify to a client that the required standards have been met.

The Hearing Panel also stated that the integrity of the profession depends upon the public being able to depend upon professional members to ensure that products they design and produce and certify are safe and function as designed. If the public cannot depend upon a professional member's integrity in this respect then the reputation and integrity of the profession is threatened.

Therefore, the Hearing Panel found that the admitted actions of each of the profes-