

**STATE OF VERMONT
BOARD OF ARCHITECTS**

In re: Dennis T. Mitchell
License No. 003-0002238

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Docket No. AR 01-0407

**Decision on
UNPROFESSIONAL CONDUCT CHARGE**

Board Members Participating:

Rebecca Arnold
Janet Stackpole
Edward Wolfstein
Frank M. Guillot
Heidi Passalacqua

Appearances:

for Petitioner, State of Vermont: Robert H. Backus
for Respondent: did not appear

Presiding Officer: Larry S. Novins

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Board of Architects held a hearing in the above matter on February 20, 2008 at the Office of Professional Regulation conference room at the National Life Building in Montpelier, Vermont.

The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence.

Background

The prosecution alleges in its Specification of Charges that Mr. Mitchell was the subject of a disciplinary action in the State of Nevada where he was placed on probation for one year and assessed an administrative penalty of \$8,000.00 after charges were brought against him for "affixing his seal and signature to drawings that were not in his control, and for aiding and abetting the unlicensed practice of architecture, and for making misleading and/or false statements."

Findings of Fact

Based upon the evidence presented, the Board finds as follows:

1. This respondent is licensed by and subject to the disciplinary authority of this Board. 26

- V.S.A. §§ 210, 211, 3 V.S.A. §§ 129, 129(a).
2. Mr. Mitchell did not appear at the hearing. His attorney in Texas could not be reached at the time of the hearing, or after it began. He did have notice of the hearing.
 3. Mr. Mitchell admitted in his answer that he did enter into a settlement agreement with the State of Nevada. He denied the specific wrongdoing charged herein.
 4. The Agreement in December 2006 was one made "without contest." Mr. Mitchell elected to enter his agreement with Nevada rather than "face the possibility of a Formal Disciplinary Hearing before the Board."
 5. Mr. Mitchell's Nevada license was assessed \$8,000 and put on probation for one year. The settlement agreement said, "Upon satisfactory submission of the amount of this fine and costs set forth below to the staff of the BOARD, the BOARD may execute the order attached to this settlement which will result in the dismissal, with prejudice of the complaint."
 6. The Nevada action was based on conduct which, if true, constituted a violation of NRS 623.270.1(d)(e)(f). The Nevada settlement agreement makes no specific findings of fact or wrongdoing. The conduct alleged would be unprofessional conduct if it occurred in Vermont.
 7. Mr. Mitchell's agreement with the State of Nevada includes a provision which states, "The RESPONDENT acknowledges that once adopted by the BOARD, this settlement agreement and all associated documentation become a matter of public record."
 8. Mr. Mitchell submitted with his answer a photo copy of a September 2006 email from the NCARB Educational and International services which said that, "If you neither admit nor deny the allegations, this will not affect your NCARB certification, nor should it have any adverse effect on other registrations. A copy of the action will be sent to us by Nevada and placed in your NCARB file."

Conclusions of Law

1. Mr. Mitchell's agreement shows that his license was "revoked, suspended, limited, conditioned, or otherwise disciplined by a licensing agency in another jurisdiction for conduct which would constitute unprofessional conduct in this state, or has surrendered a license while under investigation for unprofessional conduct." 3 V.S.A. § 129(a)(5). Mr. Mitchell is therefore subject to discipline by this Board.
2. We do not reach an independent conclusion that Mr. Mitchell failed to practice competently. 3 V.S.A. § 129a(b)(2)
3. We do not conclude that Mr. Mitchell failed to comply with provisions of federal or state (Nevada) statutes or rules governing the profession. 3 V.S.A. § 129a(a)(3) permits us to take action. This statute is not an independent basis for discipline.

Order

Based on the disciplinary action by the State of Nevada, Mr. Mitchell's license is hereby **WARNED**. This action is all that is required.

APPEAL RIGHTS


This is a final administrative determination by the Vermont Board of Architects.

A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, Office of Professional Regulation National Life Bldg., North, FL2 Montpelier, VT 05620-3402 within 30 days of the entry of this order.

If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a. To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Architects

By: _____


Edward Wolfstein, Chair

Dated: February 20, 2008

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2/26/08