

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

PETITIONER,

CASE NO. 1905-16641

Agency Clerk No. B32266

v.

MARK A. JOHNSON, P.S.M.

RESPONDENT.

_____ /

FINAL ORDER

THIS CAUSE came before the Florida Board of Professional Surveyors and Mappers (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, at a duly noticed meeting on August 2, 2021, by videoconference, for consideration of the proposed Settlement Stipulation. The Respondent, Mark A. Johnson, was present at the hearing and represented by Jordana Goldstein, Esq. The Florida Department of Agriculture and Consumer Services (Petitioner) was represented by Funmi Ojetayo, Esq.

SUMMARY

1. On or about March 31, 2021, the Department issued an Administrative Complaint against the Respondent, attached hereto as "Exhibit A" and is incorporated herein.
2. On or about July 20, 2021, the Department received Respondent's executed Election of Rights form, indicating that he desired a Settlement Stipulation to resolve the instant case.
3. Respondent's Settlement Stipulation was submitted in lieu of the Board moving forward with further legal proceedings with respect to this case.
4. The Board has considered Respondent's Settlement Stipulation.

Upon consideration of the Administrative Complaint, the Settlement Stipulation, and being otherwise fully advised of the premises, **IT IS HEREBY ORDERED AND ADJUDGED:**

A. The Respondent's Settlement Stipulation is hereby approved and adopted. The Settlement Stipulation is attached as "Exhibit B" and is incorporated herein.

B. The Respondent's Settlement Stipulation is accepted in resolution of this case.

C. The parties shall adhere to and abide by all the terms and conditions of the Settlement Stipulation.

D. Failure to comply with the terms of the Settlement Stipulation shall cause the Respondent to be subjected to further discipline.

E. This Final Order shall be placed in and become a part of the Respondent's official records and shall take effect upon being filed with the Agency Clerk of the Department of Agriculture and Consumer Services.

DONE AND ORDERED this 26 day of August, 2021.

**Patricia E.
Compton**

Patricia Compton
Executive Director
Florida Board of Professional Surveyors
and Mappers
For Nick Campanile, Chair

Digitally signed by Patricia E. Compton
DN: cn=Patricia E. Compton, o=Florida
Department of Agriculture and Consumer
Services, ou=Consumer Services,
email=patricia.compton@fdacs.gov, c=US
Date: 2021.08.26 17:07:37 -04'00'

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Final Order is entitled to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and Rule 9.100, Florida Rules of Appellate Procedures. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, Suite 509, Tallahassee, Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.

Rendered this 27th day of August, 2021.



Agency Clerk

Copies by Certified U.S. Mail

Mr. Mark A. Johnson, PSM #LS6572
10706 Dalton Avenue
Tampa, Florida 33615

**STATE OF FLORIDA
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MARK A. JOHNSON, P.S.M.

Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

Petitioner Department of Agriculture and Consumer Services files this Administrative Complaint before the Board of Professional Surveyors and Mappers ("Board") against Mark Johnson (hereinafter 'Respondent') and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of land surveying and mapping pursuant to Chapter 472, Florida Statutes.
2. At all times material to this complaint, Respondent was licensed as a professional surveyor and mapper within the state of Florida, having been issued license number LS6572.
3. Address of record for Respondent is 10706 Dalton Avenue, Tampa, FL 33615.

4. Respondent's firm was retained by the realtors of Complainant, Crystal Noe of Plant City, Florida, to prepare a boundary survey for a property located at 727 Swilley Loop, Plant City, Florida, which was completed and signed by Respondent.

5. The survey conducted and certified by Respondent is alleged to be missing existing natural gas line easements as well as federally protected wetlands on the subject property. A complaint was subsequently submitted by Crystal Noe on or about February 27, 2019. Additional documents were provided by the Complainant on April 4, 2019.

6. On or about May 1, 2019, the complaint submitted by Crystal Noe was determined to be legally sufficient to open an investigation.

7. On or about May 6, 2019, the Department sent a Notice of Investigation, along with a copy of the initial complaint and a request for production of documents to Respondent.

8. On or about June 19, 2019, the Department received a response letter from Respondent's attorney disputing Complainant's claim that she did not receive a copy of the insurance policy of Respondent's firm. Respondent thereafter refused to provide the full complement of documents requested by the Department.

9. On or about September 24, 2019, the Department submitted all documents received during the course of its investigation into this matter, to Stephen Sharpe, P.S.M. LS4745, for expert review.

10. Stephen E. Sharpe, P.S.M., licensed professional surveyor and mapper, provided the Department his Consultant Report on or about October 22, 2019. Mr. Sharpe reviewed and identified the documentation provided by the Department related to the subject survey in this matter. He reviewed the survey using the Standards of Practice (SOP) pursuant to Chapter 5J-17, Florida Administrative Code (F.A.C.) (Amended 5-11-15), in effect on the date of the survey.

11. Mr. Sharpe's Consultant Report identified the following issues and possible violations in the boundary survey, issues which may significantly implicate substantive property rights:

- a. Respondent had constructive, if not actual, notice of the gas line easement on the property and failed to delineate the easement or note it in the survey, in violation of Rule 5J-17.052(2)(d)2, F.A.C.
- b. The survey and the Respondent's response to the Notice of Investigation failed to otherwise conform to the Board's rules in violation of Section 472.0351(1)(h), F.S. (2019).

COUNT I

12. Petitioner incorporates and restates the allegations in paragraphs 1

through 11.

13. Section 472.0351(1)(h), Florida Statutes (2019), subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

14. Rule 5J-17.052(2)(d)2., F.A.C., states: "Easements shown on applicable record plats or open and notorious evidence of easements or rights-of-way on or across the land being surveyed shall be located and shown upon the map."

15. Respondents violated Section 472.0351(1)(h), Florida Statutes, by failing to show or note on its survey the presence of a gas line easement, which is required by Rule 5J-17.052(2)(d)2., F.A.C. To wit, there was open and notorious evidence of an underground gas line including markers and painted fence posts on or near the parcel boundaries, all of which should have alerted Respondents as to the presence of an easement. Despite this evidence, and as required by the Rules, Respondent failed to show or note the existence of the gas line easement on the subject survey.

COUNT II

16. Petitioner incorporates and restates the allegations in paragraphs 1 through 11.

17. Section 472.0351(1)(h), Florida Statutes (2019), subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or

Department.

18. Rule 5J-17.052(2)(e)1., F.A.C., states: "Location of fixed improvements pertinent to the survey shall be graphically shown upon the map and their positions shall be dimensioned in reference to the boundaries, either directly or by offset lines."

19. Respondent violated Section 472.0351(1)(h), Florida Statutes, by failing to properly label a 10'x12' "wood shed on concrete," a fixed improvement near the south property line, as required by Rule 5J-17.052(2)(e)1., F.A.C.

COUNT III

20. Petitioner incorporates and restates the allegations in paragraphs 1 through 11.

21. Section 472.0351(1)(h), Florida Statutes (2020), subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

22. Rule 5J-17.053(5)(a), F.A.C., states: "For each survey produced, all licensees, except for those who do not have an ownership right to the work product, shall maintain for a minimum of six years from the date of creation at least one copy of all signed and sealed drawings, plans, specifications, plats, and reports as well as one copy of all related calculations and field notes. Additionally, the documented research of records and written notification regarding lack of insurance shall be

retained for a minimum of six years from the date of creation. These records may be kept in hard copy or electronic or digital format. Licensees shall provide these records to the Department and Board upon request. The failure to do so shall constitute cause for discipline.”

23. Respondents violated Section 472.0351(1)(h), Florida Statutes, by failing to provide records associated with the 727 Swilley Loop survey, as required by Rule 5J-17.053(5)(a), F.A.C., and despite repeated requests and entreaties from the Department.

WHEREFORE, Petitioner respectfully requests an order from the Board imposing one or more of the following penalties: imposition of an administrative fine not to exceed **One Thousand Dollars (\$1,000.00)** for each count or separate offense, suspension until compliance with legal obligation plus extended probation, which terms shall include survey review, assessment of costs associated with investigation and prosecution, imposition of any or all penalties delineated within Section 472.0351(2), Florida Statutes, and/or any other relief that the Board or the Department is authorized to impose pursuant to Chapter 472, Florida Statutes, and/or the rules promulgated thereunder.

Signed this 31st day of March 2021.

**DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES**



Olorunfunmi O. Ojetayo
Senior Attorney [FBN 118366]
Office of the General Counsel
funmi.ojetayo@fdacs.gov
Fax: (850) 245-1001

PCP Date: February 10, 2021

PCP Members: Steven Hyde (Chair)
Robin Petzold
Keith Fountain

Certified U.S. Mail, Return Receipt # 7011 1570 0001 8483 9270

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with §§120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested. Florida Administrative Code Rule 28-106.111 provides in part that if Respondent fails to request a hearing within twenty-one (21) days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to §472.0351(4)(a), Florida Statutes, the Board may assess costs and attorney's fees related to the investigation and prosecution of the case against the Respondent in addition to any other discipline imposed.

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
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DEPARTMENT OF AGRICULTURE AND
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v.

Case No. 1905-16641

MARK A. JOHNSON, P.S.M.

Respondent.

SETTLEMENT STIPULATION

Petitioner, the Department of Agriculture and Consumer Services ("Department"), and Respondent, Mark A. Johnson, P.S.M., pursuant to Section 120.57(4), Florida Statutes, stipulate and agree to the following Settlement Stipulation and entry of a Final Order of the Board of Professional Surveyors and Mappers ("Board"), incorporating the Stipulated Facts and Stipulated Disposition in this matter.

STIPULATED FACTS

1. Petitioner is the state agency charged with regulating licensed professional surveyors and mappers in the state of Florida pursuant to Chapter 472, Florida Statutes.

2. For all times pertinent hereto, Respondent was a licensed professional surveyor and mapper in the state of Florida having been issued license number LS6572. Respondent's address of record is 10706 Dalton Ave., Tampa, FL 33615.

3. On or about April 1, 2021, in Department Case No. 1905-16641, Petitioner issued an Administrative Complaint against Respondent alleging that Respondent violated Chapter 472, Florida Statutes, and/or other applicable statutes, and/or the rules

enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

4. For the purposes of these proceedings, Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, as a licensed professional surveyor and mapper, he is subject to the provisions of Chapter 472, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 472, Florida Statutes.

3. Respondent agrees that this Settlement Stipulation is a fair, appropriate and acceptable disposition of this case.

4. Respondent agrees the Board's acceptance of this Settlement Stipulation constitutes disciplinary action within the meaning of Sections 472.033 and 472.0351, Florida Statutes.

STIPULATED DISPOSITION

1. **REPRIMAND:** The Board shall issue a Reprimand against Respondent's license.

2. **FINE:** The Board shall impose an administrative fine of **One Thousand Dollars and Zero Cents (\$1,000.00)** against Respondent's license which Respondent shall pay to Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, Attention: Executive Director, 2005 Apalachee Parkway, Tallahassee, Florida 32399-6500, within ninety (90) days of the entry of the

Final Order accepting this Settlement Stipulation. All fines shall be paid by cashier's check or money order. Respondent's failure to pay the fine by the time due shall result in the immediate suspension of Respondent's license and the matter shall be referred to the Department for further prosecution and additional discipline.

3. **COSTS:** Pursuant to Rule 5J-17.06, Florida Administrative Code, Respondent agrees to pay the Department for the Department's costs incurred in the investigation and prosecution of this case. Respondent agrees that the amount of the Department costs to be paid in this case is **Six Hundred Fifty-Four Dollars and Sixty-Four Cents (\$654.64)**. Respondent shall pay such administrative costs to: Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, Attention: Executive Director, 2005 Apalachee Parkway, Tallahassee, Florida 32399-6500, within ninety (90) days of the entry of the Final Order accepting this Settlement Stipulation. All costs shall be paid by cashier's check or money order. Respondent's failure to pay the costs by the time due shall result in the immediate suspension of Respondent's license and the matter shall be referred to the Department for further prosecution and additional discipline.

4. **PROBATION:** Respondent is hereby placed on probation. Probation shall take effect **immediately** upon the date the Board's Final Order is rendered in this matter. The terms of probation shall be as follows:

- All documents required to be submitted by Respondent under this paragraph 12 shall be filed with the Executive Director of the Board, 2005 Apalachee Parkway, Tallahassee, Florida 32301 ("Board Office").

- Respondent may commence and complete performance of these terms of probation no earlier than ninety (90) days from the date on which the Board approved this Settlement Stipulation, which is listed below.

- Continuing Education: Respondent shall complete eighteen (18) credit hours of Board approved continuing education courses, of which six (6) credit hours are to be in **Standards of Practice (SOP)**. All credit hours are to be completed within one hundred and eighty (180) days from the date the Board's Final Order is rendered in this matter. If extenuating circumstances prevent Respondent from completing the courses within the aforementioned timeframe, Respondent shall notify the Board office within 30 days of the completion deadline, and an extension may be granted accordingly. Respondent shall submit proof of completion of the above-mentioned courses to the Board Office within the allotted time frame. Continuing education courses completed as part of this probation shall not be counted toward the continuing education requirement for renewal of the Respondent's license under Chapter 472, Florida Statutes.

- Failure to comply with any of the terms of probation outlined herein shall constitute a violation of section 472.0351(1)(h), F.S., and shall result in the immediate suspension of Respondent's license. The matter shall be referred to the Department for further prosecution and additional discipline, including fines, costs, and/or other appropriate discipline.

STANDARD PROVISIONS

1. From the date of entering this Settlement Stipulation, Respondent shall not violate Chapter 472, Florida Statutes, or the administrative rules promulgated pursuant

thereto.

2. Respondent understands a violation of any term of this Settlement Stipulation shall constitute a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapter 472, Florida Statutes.

3. It is expressly understood that this Settlement Stipulation is subject to the approval of the Board and the Department, and has no force and effect until the Board enters a Final Order incorporating the terms of this agreement.

4. Respondent executes this Settlement Stipulation to avoid further administrative action and avoid incurring expenses associated with further litigation with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Settlement stipulation. If this Settlement Stipulation is not approved by the Board, then neither party may use this Settlement Stipulation against the other and this Settlement Stipulation shall be deemed null and void. Furthermore, should this Settlement Stipulation not be accepted by the Board, it is agreed that presentation to and consideration of this Settlement Stipulation and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

5. Respondent understands that this Settlement Stipulation, and the subsequent Final Order incorporating the same, will not in any way preclude additional proceedings by the Board and/or Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint (Attached as Exhibit A).

6. Upon the Board's adoption of this Settlement Stipulation, Respondent waives

all further procedural steps, and waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Settlement Stipulation and the Final Order of the Board incorporating the terms of the Settlement Stipulation.

7. Respondent waives the right to seek any attorney's fees or costs from the Board or Department in connection with this disciplinary proceeding or any appeal thereafter.

8. Respondent enters into this Settlement Stipulation freely and voluntarily. Respondent acknowledges that no promises were made to the Respondent regarding the disposition of this case or any other case that may be pending now or in the future before this Board, except the terms of this Settlement Stipulation.

9. Respondent understands the Final Order entered in this case may be used in future cases to seek enhanced penalties if Respondent commits a violation after the filing date of this Settlement Stipulation and Final Order.

10. If Respondent holds any other professional or occupational license, Respondent understands and acknowledges that this Settlement Stipulation and Final Order may be used as grounds for discipline against any other license held by the Respondent.

11. Venue for any action arising out of this Settlement Stipulation and Final Order shall be in Leon County, Florida.

12. This Settlement Stipulation constitutes the entire agreement between the Department and Respondent, including anyone acting for, associated with, or employed by either party, concerning only those matters specified above and supersedes any prior discussions, agreements, or understandings. No modification or waiver of any provision

is valid unless the parties complete and properly executed a written amendment to the Settlement Stipulation.

13. This Settlement Stipulation is and shall be deemed jointly drafted and written by all parties to it and shall not be construed or interpreted against any party.

14. To the extent any portion of this Settlement Stipulation is prohibited by law for any reason, such prohibition shall not affect any other provision of this Settlement Stipulation.

WHEREFORE, the parties hereto request the Board of Professional Surveyors and Mappers to enter a Final Order accepting and implementing the terms contained herein.

SIGNED this 20 day of July, 2021.



Mark A. Johnson
LS6572

STATE OF FLORIDA

COUNTY OF Hillsborough

BEFORE ME personally appeared MARK A. Johnson, whose identity is known to me or who produced Florida O/C (type of identification) and who, under oath, acknowledges that his/her signature appears above.

SWORN TO and subscribed before me this 20th day of July, 2021.



NOTARY PUBLIC



My Commission Expires: 02/04/2022

APPROVED this 2nd day of August, 2021.

**DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES**



Olorunfunmi Ojetayo
Senior Attorney [FBN 118366]
Office of the General Counsel
407 S. Calhoun Street, Suite 520
Tallahassee, Florida 32399-0800
(850) 245-1000 (telephone)

(850) 410-3797 (facsimile)
funmi.ojetayo@fdacs.gov