

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

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

PETITIONER,

CASE NO. 1802-09678

Agency Clerk No. B31920

v.

EFRAIN LOPEZ, 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, Efrain Lopez, was present at the hearing and represented by D. Ty Jackson, Esq. The Florida Department of Agriculture and Consumer Services (Petitioner) was represented by Funmi Ojetayo, Esq.

SUMMARY

1. On or about December 2, 2020, the Department issued an Administrative Complaint against the Respondent, attached hereto as "Exhibit A" and is incorporated herein.
2. On or about June 29, 2021, the Department and Respondent reached an agreement to resolve the instant case via Settlement Stipulation.
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**

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 17:17:35 -04'00'

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

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. Efrain Lopez, PSM #LS6792
10665 SW 190th
Ste. 3110
Cutler Bay, Florida 33157

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

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

PETITIONER,

v.

CASE NO. 1802-09678

CASE NO. 1802-09656

**EFRAIN LOPEZ, P.S.M.
M.E. LAND SURVEYING, INC.**

RESPONDENTS.

_____ /

ADMINISTRATIVE COMPLAINT

Petitioner Department of Agriculture and Consumer Services files this Administrative Complaint before the Board of Professional Surveyors and Mappers ("Board") against Efrain Lopez and M.E. Land Surveying, Inc., (collectively '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, Respondents were licensed as a professional surveyor and mapper within the state of Florida, having been issued license number LS6792 to Efrain Lopez, PSM, and license number LB7989 to M.E. Land Surveying, Inc.

3. Respondent's address of record is 10665 SW 190th, Ste. 3110, Cutler Bay, FL 33157.

4. Respondent was retained by Brokers Title of Tampa, LLC to prepare a boundary survey of two parcels in Hillsborough County, Florida, which was completed and certified to Robert E. Thornton and Bank of America, NA and another copy certified to Richard M. Lee and Margaret B. Lee and Wells Fargo NA on or about May 23, 2017. The survey is signed by Efrain Lopez, PSM.

5. The survey conducted and certified by Respondents was later provided to Richard Lee (Complainant) and used for his closing on or about October 31, 2017. Complainant filed a complaint with the Department on January 21, 2018, alleging that the survey prepared by Respondents and provided to him, was originally prepared for another buyer of his property, was revised but not updated for his closing in October 2017.

6. On March 5, 2018, the Petitioner sent Respondent a Notice of Investigation, a request for documents, and a copy of the complaint.

7. On or about March 19, 2018, the Department received a response email from Respondent which included a two-page signed letter, and email correspondence between Respondent and Brokers Title of Tampa, LLC. Additional email correspondence between Petitioner and Respondent occurred on October 24, 2018. No other documents or material were provided by Respondents.

8. In response to the complaint, Respondent M.E. Land Surveying Inc., by and through its President, Geoffrey Harris, indicated that the survey was never represented to be an update of the May 23, 2017 survey.

9. On or about February 27, 2020, Petitioner submitted all available documents received during the investigation of this matter to Stephen E. Sharpe, P.S.M., for an Expert Review.

10. Stephen E. Sharpe, P.S.M., licensed professional surveyor and mapper, provided the Department his Consultant Report on or about March 24, 2020. Mr. Sharpe reviewed and identified the documentation provided by the Department related to Respondent's May 23, 2017 survey. 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. The record boundaries in the survey do not correspond with the description in the plat, and at various points the information within the survey conflicts with the recorded real property description, in violation of Rule 5J-17.052(2), F.A.C.

- b. At various points the survey failed to include detailed description to support accuracy, methodology or otherwise substantiate the survey and mapping products for the survey as required by Rule 5J-17.051(3), F.A.C.
- c. The survey 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)(a)1., F.A.C., states: "The surveyor and mapper shall make a determination of the position of the boundary of real property in complete accord with the real property description shown on or attached to the survey map or report."

15. Respondent violated Section 472.0351(1)(h), Florida Statutes, by failing to locate and position the boundary in complete accord with the legal description of the property, which is required by Rule 5J-17.052(2)(a)1., F.A.C. To wit, Parcel A "Ace Lane" is not shown on Respondent's survey map.

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)(a)7.d., F.A.C., states in relevant part: “Surveys of all or part of a lot(s) which is part of a recorded subdivision shall show [...] the dimensioned remaining portion of a lot(s) when part of a lot is included within the description.”

19. Respondent violated Section 472.0351(1)(h), Florida Statutes, by failing to properly dimension the remaining portion of Lot 5 of West Acres Subdivision, as required by Rule 5J-17.052(2)(a)7.d., 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 (2019), subjects a licensed professional surveyor and mapper to discipline for violating a rule of the Board or Department.

22. Rule 5J-17.052(2)(a)8.b., F.A.C., states in relevant part: “Surveys of parcels described by metes and bounds shall show [...] all information called for in the property description, such as point of commencement, course bearings and distances, and point of beginning.”

23. Respondent violated Section 472.0351(1)(h), Florida Statutes, by failing to show on the survey map all the information called for in the legal description of the property, as required by Rule 5J-17.052(2)(a)8.b., F.A.C.

COUNT IV

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

26. 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.

27. Rule 5J-17.052(2)(a)8.c., F.A.C., states in relevant part: “Surveys of parcels described by metes and bounds shall show [...] a comparison between recorded directions and distances and field measured directions and distances on the boundary when they vary.”

28. Respondent violated Section 472.0351(1)(h), Florida Statutes, by not accurately showing the comparison between recorded and field measured distances on the survey, in violation of Rule 5J-17.052(2)(a)8.c., F.A.C.

COUNT V

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

30. 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.

31. Rule 5J-17.052(2)(c)1.a., F.A.C., states in relevant part: “Potential boundary inconsistencies that the survey process did not attempt to detect shall be clearly indicated and explained on the survey map or in the report. Where evidence of inconsistency is found, the nature of the inconsistency shall be shown upon the survey map, such as: Overlapping descriptions or hiatuses.”

32. Respondent violated Section 472.0351(1)(h), Florida Statutes, by failing to show on the survey map the boundary inconsistency of the hiatus between Ace Lane and the included portion of Lot 5, as required by Rule 5J-17.052(2)(c)1.a., F.A.C.

COUNT VI

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

30. 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.

31. Rule 5J-17.052(2)(c)3., F.A.C., states: "All apparent physical use onto or from adjoining property must be indicated, with the extent of such use shown or noted upon the map."

32. Respondent violated Section 472.0351(1)(h), Florida Statutes, by failing to show or note the extents of the driveway across adjoining land on the survey map, as required by Rule 5J-17.052(2)(c)3., F.A.C.

COUNT VII

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

30. 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.

31. Rule 5J-17.052(2)(d)1., F.A.C., states: "All recorded public and private right-of-way shown on applicable recorded plats adjoining or across the land being surveyed shall be located and shown upon the map."

32. Respondent violated Section 472.0351(1)(h), Florida Statutes, by failing to note or even show the right of way of Thonotosassa Road on the survey map, as required by Rule 5J-17.052(2)(d)1., F.A.C.

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 **Five Hundred Dollars** (\$500.00) for each count or separate offense, issuance of a reprimand, 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 2nd day of December, 2020.

**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: October 28, 2020

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

Certified U.S. Mail, Return Receipt # 9590 9402 3794 8032 3384 06

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
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

Petitioner,

v.

**DOAH Case No. 21-0142
PSAM Case No. 1802-09678**

EFRAIN LOPEZ, P.S.M.

Respondent.

SETTLEMENT STIPULATION

Petitioner, the Department of Agriculture and Consumer Services ("Department"), and Respondent, Efrain Lopez, 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 LS6792. Respondent's address of record is 13801 SW 10th Ter., Miami, FL 33184.
3. On or about December 2, 2020, in Department Case No. 1802-09678, 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

5. 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.

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

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

8. 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

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

10. **FINE:** The Board shall impose an administrative fine of **Three Thousand Dollars Four Hundred Fifty (\$3,450.00)** 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 it is due may result in further disciplinary action by the Board.

11. **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 **Five Hundred Twenty-Seven Dollars and Eighty-Seven Cents (\$527.87)**. 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 may result in further disciplinary action by the Board.

12. **PROBATION:** Probation shall take effect **immediately** upon the date the Board's Final Order is rendered in this matter. If Respondent fails to comply with any terms of probation, Respondent's license shall be immediately suspended until he has complied with all of his legal obligations outlined herein and in the Final Order, and the matter shall be referred to the Department for further prosecution and additional discipline, including additional fines and costs, and/or other appropriate discipline. Terms of probation shall be as follows:

a. 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").

b. Respondent may 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 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.

c. Continuing Education: Respondent shall complete twelve (12) credit hours of Board approved continuing education courses in **Standards of Practice (SOP)**, six (6) of which shall be in-person, 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 in-person 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 course 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.

d. 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

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

14. 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.

15. 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.

16. 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.

17. 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).

18. Upon the Board's adoption of this Settlement Stipulation, Respondent expressly waives all further procedural steps, and expressly 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.

19. Upon the Board's adoption of this Settlement Stipulation, Respondent expressly withdraws his request for a formal hearing and petition before the Division of Administrative Hearing, Case No. 21-0142.

20. 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.

21. 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.

22. 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.

23. 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.

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

25. 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.

26. 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.

27. 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 26 day of JUNE, 2021.



Efrain Lopez, P.S.M.
LS 6792

STATE OF FLORIDA

COUNTY OF Miami Dade

BEFORE ME personally appeared Efrain Lopez, whose identity is known to me or who produced _____ (type of identification) and who, under oath, acknowledges that his/her signature appears above.

SWORN TO and subscribed before me this 29th day of June, 2021.



NOTARY PUBLIC

My Commission Expires:



APPROVED this 2nd day of August, 2021.

**DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES**



Olorunfunmi O. Ojetayo
Senior Attorney [FBN 118366]
Office of the General Counsel