BEFORE THE STATE OF OHIO
BOARD OF LANDSCAPE ARCHITECT EXAMINERS

IN THE MATTER OF TIMOTHY J. SHEPPERD	:	DATE: October 20, 2004
	:	
Cert. No. 691	:	Certified Mail: 4349 052

STATE OF OHIO

BOARD of LANDSCAPE ARCHITECT EXAMINERS

77 S. HIGH STREET
SIXTEENTH FLOOR
COLUMBUS, OHIO
43215-6108

614.466.2316 *voice*
614.644.9048 *fax*

www.state.oh.us/arc/lae *website*
cmharch@aol.com *e-mail*

ADJUDICATION ORDER

Pursuant to a meeting of the Board of Landscape Architect Examiners, the following matter came before the Board on October 7, 2004. Members of the Board present were: Dennis J. Mersky, Walter H. Roch Von Rochsburg, Diann R. Johnson, Timothy J. Schmalenberger and Scott E. Sonnenberg.

An administrative hearing was held on the charges contained in the Board's letter of July 2, 2004. At this hearing, State's exhibits (A-F) were admitted as part of the evidentiary record.

The issue to be determined by the Board was whether or not it should take disciplinary action against Mr. Shepperd's certificate of qualification to practice landscape architecture for violations outlined in the Board's July 2, 2004 letter.

Specifically, the violations relate to Mr. Shepperd submitting a check for the renewal of his 2004-2005 certificate of qualification, which was returned due to insufficient funds. Despite multiple requests from the Board, Mr. Shepperd failed to submit certified funds to replace his returned check.

FINDINGS OF FACT

Mr. Shepperd was originally licensed as a landscape architect in Ohio on September 19, 1990. On or about November 1, 2003, Mr. Shepperd issued a company check to the Board of Landscape Architect Examiners in the amount of $156.25 for the renewal of his personal landscape architect license for 2004-2005.

On or about February 11, 2004, the Board received notification from the Office of the Treasurer, that it was returning Mr. Shepperd's check due to insufficient funds. The Board notified Mr. Shepperd via letter dated March 23, 2004 that his renewal check had been returned and he was asked to submit a cashier's check to replace his original returned check.

After receiving the Board's March 2004 letter, Mr. Shepperd contacted the Board via telephone on April 6, 2004 to discuss this matter. Despite his telephone call and assurances, a month had passed and the Board still had not received certified funds from Mr. Shepperd. Another letter from the Board dated May 19, 2004 was issued to Mr. Shepperd requesting that he provide the Board with certified funds.

On June 17, 2004, the Board received a letter dated June 10, 2004 from Mr. Shepperd stating that he was researching this matter with his financial institution. On June 18, 2004, the Board voted to issue Mr. Shepperd a charge letter for violations related to his refusal to provide the Board with certified funds for the renewal of his license.

On July 2, 2004, a charge letter was issued via mail certified to Mr. Shepperd notifying him that the Board proposed to take action against his certificate of qualification to practice landscape architecture.

The letter also outlined the specific allegations against him and offered him the opportunity to request an administrative hearing to show cause why the proposed action should not be imposed.

Mr. Shepperd received and signed for the certified letter from the Board as evidenced by the return of the signed certified mail receipt dated July 13, 2004. Despite his receipt of the Board's charge letter, Mr. Shepperd did not request an administrative hearing within the (30) thirty days allowed by law.

Due to Mr. Shepperd's failure to request an administrative hearing, he waived his right to dispute the charges, participate, speak or be represented at the hearing. The Board issued to Mr. Shepperd a certified letter dated August 17, 2004 advising him that an administrative hearing will go forward without his participation on October 7, 2004. Mr. Shepperd received and signed for the certified letter regarding the hearing as evidenced by the return of the signed certified mail receipt dated August 20, 2004.

The scheduled hearing went forward on October 7, 2004 without the participation of Mr. Shepperd. The Board conducted the administrative hearing and considered the evidence and testimony that was presented and made available.

CONCLUSIONS OF LAW

1. Because he is a landscape architect in Ohio and submitted a renewal application accompanied with a check for the renewal of his 2004-2005 license to practice as a landscape architect in Ohio, Timothy J. Shepperd is subject to the jurisdiction of the Board of Landscape Architect Examiners, and to the provisions of Chapter 4703 of the Ohio Revised Code and Chapter 4703 of the Ohio Administrative Code.

2. The preponderance of the evidence shows that the Mr. Shepperd submitted a check for $156.25 for the renewal of his 2004-2005 license and that the check was returned due to insufficient funds. Despite several requests and written notifications from the Board, Mr. Shepperd failed to replace his returned check with certified funds.

3. The State has met its burden where from the evidence and testimony presented, the State proves, at least by a preponderance, that due to the actions of Mr. Shepperd, that he has violated the following sections of the Ohio Revised Code and Administrative Code as it relates to the licensing laws and standards of conduct for landscape architects:

> (a) O.R.C. 4703.32 (A) No person shall engage in the practice of landscape architecture use the title of "landscape architect" or any title, sign, card, or device indicating, or tending to indicate, or represent in any manner that he is a landscape architect, unless the person is registered under sections 4703.30 to 4703.49 of the Revised Code.

(b) O.R.C. 4703.41 (A) Has obtained or attempted to obtain registration or a certificate of authorization under sections 4703.30 to 4703.49 of the Revised Code by fraud or material misrepresentation.

(c) O.R.C. 4703.41 (B) Is impersonating or has attempted to impersonate a landscape architect or a former landscape architect.

(d) O.R.C. 4703.41 (C) Is found by the board to have been guilty of fraud, deceit, or gross negligence in the practice of landscape architecture or in providing landscape architectural services.

(e) O.R.C. 4703.41 ((F) Is found by the board to have violated any rule governing the standards for education, experience, services, conduct, and practice or any rule adopted by the board under sections 4703.30 to 4703.49 of the Revised Code.

(f) O.R.C. 4703.45 (A) No person shall do the following: Obtain or attempt to obtain registration as a landscape architect or a certificate of authorization under division (F) of section 4703.331 of the Revised Code by fraud or material misrepresentation.

(g) O.A.C. 4703:1-1-04 (A) Each landscape architect registered under sections 4703.30 to 4703.49 of the Revised Code shall apply to the state board of landscape architect examiners each odd numbered year for the renewal of the landscape architect's registration which expires on the thirty-first day of October and shall be renewed according to the standard renewal procedure set forth in Chapter 4745. of the Revised Code.

(h) O.A.C. 4703:1-1-04 (B) A certificate of qualification which has expired may be renewed within one year of the expiration of date by completing the renewal application form and returning it to the board with the renewal fee and a penalty of twenty five per cent.

(i) O.A.C. 4703:1-3-04 (C) (4) A landscape architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for registration or renewal.

(j) O.A.C. 4703:1-3-04 (D) (1) A landscape architect shall not, in the conduct of his landscape architectural practice, knowingly violate any state or federal criminal law.

(k) O.A.C. 4703:1-3-04 (E) (3) A landscape architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

ORDER OF THE BOARD

After the hearing, the Board conducted deliberations, and based upon the foregoing findings and conclusions, and taking into consideration the mitigating and aggravating circumstances, including the nature and severity of the act under consideration, the actual or potential harm to any consumer, client, or the general public, the prior disciplinary record, the number and/or variety of current violations, rehabilitation evidence, time passed since the act occurred, cooperation with the investigation, and recognition of wrongdoing, the Board took the following action:

1. Timothy J. Shepperd's certificate of qualification to practice landscape architecture in Ohio is hereby *revoked*.

2. As provided in O.R.C. 4703.43, after the revocation of a license, Mr. Shepperd may file a new application for examination with the Board, and upon showing that all loss caused by his actions has been fully satisfied and that all conditions imposed by the decision of the revocation have been complied with, the Board may at its discretion issue a new license.

Timothy J. Shepperd is hereby officially informed that Ohio Revised Code sections 4703.32 (A), 4703.331 (A) and 4703.99 (B) make it a criminal violation to assume or use the title or designation of "Landscape Architect" or "Registered Landscape Architect", or to hold himself out to be any of the above, or to engage in the practice of landscape architecture unless properly licensed to do so by the Board.

The Board hereby orders you to immediately **cease and desist** any further use of any of the aforementioned designations, performing any of the aforementioned work, or to in any way hold yourself out to be qualified and permitted to practice as a "Landscape Architect" in the state of Ohio. The use of any advertisements, letterhead, business cards, signs, or other materials that in any way improperly portray you, as a practitioner within Ohio should be stopped.

CERTIFICATION

I hereby certify that the foregoing Adjudication Order of the Ohio State Board of LANDSCAPE ARCHITECTS is true and accurate as it appears in the journal of the Board at its proceedings on October 7, 2004.

This order may be appealed in accordance with Section 119.12 of the Ohio Revised Code by filing a Notice of Appeal with the Ohio State Board of LANDSCAPE Architects, 77 South High Street, 16th Floor, Columbus, Ohio 43215-6108, and also a copy of that Notice of Appeal with the Court of Common Pleas in the county of the respondent's place of business, or in the county in which the respondent is a resident, or with the Court of Common Pleas in Franklin County, Ohio if not a resident of Ohio. Such notice of Appeal shall contain the Order appealed from and the grounds of such an appeal. Such notice of Appeal and copy shall be filed and must be received within fifteen (15) days after the mailing of this Adjudication Order.

BY ORDER OF THE BOARD,

Dennis J. Mersky
President of the Board

I hereby certify that this document is a true and accurate copy of the Decision and Order of the Ohio State Board of LANDSCAPE ARCHITECTS entered on its record of proceedings on October 7, 2004.

Dennis J. Mersky
President of the Board

Date: OCT 20, 2004

cc: Barry D. McKew, Office of the Attorney General