



The Association of Professional
Engineers and Geoscientists of Alberta

APEGA DISCIPLINE COMMITTEE DECISION ON SANCTIONS

Date of Sanction Decision: December 13, 2017
APEGA Discipline Case Number: 16-011-FH

**IN THE MATTER OF A HEARING OF THE DISCIPLINE
COMMITTEE OF THE ASSOCIATION OF PROFESSIONAL
ENGINEERS AND GEOSCIENTISTS OF ALBERTA**
Pursuant to the *Engineering and Geoscience Professions Act*,
being Chapter E-11 of the Revised Statutes of Alberta 2000

Regarding the Conduct of AKINKUNLE O. BABALOLA, P.ENG.

DECISION ON SANCTIONS

INTRODUCTION

On July 12, 2017 the Hearing Panel of the Discipline Committee (“the Hearing Panel”) issued a written decision that found that the Investigative Committee had proven Allegations 1 and 2 contained in the Notice of Hearing. The Hearing Panel determined that all of the particulars of Allegation 1 had been proven and that two of the four particulars of Allegation 2 had been proven and found that the proven allegations were serious enough to constitute unprofessional conduct.

The Hearing Panel has now considered the Written Submissions of the Investigative Committee on Sanctions dated August 28, 2017, the Written Submissions on Sanction of Mr. Babalola dated September 18, 2017 and the Reply Submissions of the Investigative Committee dated September 22, 2017.

Sanctions Proposed by the Investigative Committee

1. The Investigative Committee proposed the following sanctions for Mr. Babalola:

- a. Mr. Babalola shall receive a formal reprimand, and the Discipline Committee's written decision on sanctions will serve as the formal reprimand;
- b. Mr. Babalola shall provide evidence to the Director of Enforcement and Permits within one year of being served with a copy of the Discipline Committee's decision that he has successfully completed the National Professional Practice Exam which will be undertaken at his own cost;
- c. Mr. Babalola shall pay a fine in the amount of \$7500.00;
- d. Mr. Babalola shall pay 75% of the costs of the hearing to a maximum amount of \$66,750.00;
- e. The fine and costs shall be payable as follows:
 - i. The fine and costs shall be paid in equal monthly installments over a period of 36 months;
 - ii. The first installment shall be due within 60 days of the date that the Discipline Committee's decision is served on Mr. Babalola; and
 - iii. When submitting his first payment, Mr. Babalola shall submit post-dated cheques for the remainder of the installments to the Director of Enforcement and Permits.
- f. Should Mr. Babalola require an extension to the deadline for the payments referred to above at paragraph e, or should he wish to vary the payment schedule, he may apply to the Director of Enforcement and Permits for an extension or variation. If such an application is made, Mr. Babalola shall provide the Director of Enforcement and Permits with the reason for his request, his proposal to vary the payment schedule, and any other documentation requested by the Director of Enforcement and Permits.
- g. The fine and costs ordered are a debt owing to APEGA.
- h. If Mr. Babalola fails to comply with the orders made in paragraphs b, c, d, or e, his registration shall be suspended until he complies.
- i. The Discipline Committee's Decision shall be published or circulated as follows:
 - i. A written summary of the decision shall be published in the PEG, in a manner that identifies Mr. Babalola; and
 - ii. If any member of the public inquires with APEGA as to whether Mr. Babalola was the subject of a discipline hearing or was found guilty of any charges under the *Engineering and Geosciences Professions Act*, APEGA shall be at liberty to provide a complete copy of the Discipline Committee's decision.

Sanctions Proposed by Mr. Babalola

2. Mr. Babalola proposed the following sanctions:
 - a. The Member shall receive a formal reprimand for his conduct that will remain on his file at APEGA indefinitely;
 - b. The Member is required to attend and complete the National Professional Practice Exam within one year and provide a certificate of completion or applicable proof of completion to the Discipline Committee Case Manager;
 - c. The Member is required to attend and complete an anger management seminar or course within one year and provide a certificate of completion or applicable proof of completion to the Discipline Committee Case Manager;
 - d. The Member is required to attend and complete a business communication seminar or course within one year and provide a certificate of completion or applicable proof of completion to the Discipline Committee Case Manager;
 - e. The Member shall pay a fine in the amount of \$1000 within six months of this decision;
 - f. If the Member requires an extension or variation to any of the deadlines or payments referred to above, the Manager may apply to the Discipline Committee Case Manager for an extension or variation;
 - g. If the Member fails to comply with any of the above orders, his registration with APEGA shall be suspended until he complies; and
 - h. The Hearing Panel's decision shall be published as follows:
 - i. A written summary of the decision shall be published in The Peg, without names; and
 - ii. If any member of the public inquires with APEGA as to whether the Member was subject of a discipline hearing, APEGA shall be at liberty to provide a written summary of the decision.

Decision of the Hearing Panel on Sanctions

3. After considering the written submissions of both parties and the facts of this matter, the Hearing Panel has decided to make the following sanction orders:
 - a. Mr. Babalola shall receive a formal reprimand, and the Discipline Committee's written decision including the sanction decision will serve as the formal reprimand;

- b. Mr. Babalola shall provide evidence to the Director of Enforcement and Permits within one year of being served with a copy of this decision that he has successfully completed the National Professional Practice Exam which will be undertaken at his own cost;
- c. Mr. Babalola shall pay a fine in the amount of \$2,500 payable within 6 months of being served with a copy of this decision;
- d. Mr. Babalola shall pay 20% of the costs of the hearing to a maximum of \$18,000 payable in equal monthly installments over a period of 36 months with the first payment to be made 6 months after being served with a copy of this decision;
- e. Should Mr. Babalola require an extension to the deadline for the payments referred to above at paragraph d, or should he wish to vary the payment schedule, he may apply to the Director of Enforcement and Permits for an extension or variation. If such an application is made, Mr. Babalola shall provide the Director of Enforcement and Permits with the reason for his request, his proposal to vary the payment schedule, and any other documentation requested by the Director of Enforcement and Permits;
- f. The fine and costs ordered are a debt owing to APEGA;
- g. If Mr. Babalola fails to comply with the orders made in paragraphs b, c, or d, his registration with APEGA shall be suspended until he complies;
- h. The Discipline Committee's decision including the sanction decision shall be published or circulated as follows:
 - i. A written summary of the decision including the sanction decision shall be published in the PEG, in a manner that identifies Mr. Babalola;
 - ii. A full copy of the decision including the sanction decision will be placed on the APEGA website; and
 - iii. If any member of the public inquires with APEGA as to whether Mr. Babalola was the subject of a discipline hearing or was found guilty of any charges under the *Engineering and Geosciences Professions Act*, APEGA shall be at liberty to provide a complete copy of the Discipline Committee's decision including the sanction decision.

Reasons of the Hearing Panel

4. Both parties referred to the list of factors to be considered in determining appropriate sanctions that are set out in the case of *Jaswal v Newfoundland (Medical Board)* in their written submissions on sanctions. The Hearing Panel has also considered and applied these factors in its decision.

The Jaswal Factors

(a) Nature and gravity of the proven allegations

5. The Hearing Panel agrees with the submissions of the Investigative Committee that the proven allegations were serious. The Hearing Panel found serious breaches by Mr. Babalola of the Rules of Conduct regarding the need to conduct himself with integrity, honesty, fairness, and objectivity in his activities" (Rule 3) and "to uphold and enhance the honour, dignity and reputation of the profession" (Rule 5). However, these breaches while serious and unprofessional were not of a serious enough nature to warrant a suspension of Mr. Babalola's registration. Both parties recognized this fact, and proposed sanctions that included a reprimand rather than some form of suspension.

6. The Hearing Panel agrees that a suspension was not warranted in the circumstances of this case.

(b) Age and Experience of the member

7. Both parties recognized that Mr. Babalola was not a new and inexperienced member. They also noted that the proven allegations in this matter did not relate directly to the practice of engineering. The Hearing Panel agrees with this analysis and has placed little weight on this factor.

(c) The previous character of the member and in particular the presence or absence of any prior complaints or convictions

8. Both parties agreed that the absence of any prior complaints or convictions was a mitigating factor in Mr. Babalola's favour. The Hearing Panel considered this point in reaching its decision.

(d) The age, mental condition and vulnerability of the complainant

9. The parties disagreed on this point. The Investigative Committee suggested that [REDACTED] was in a vulnerable position in investing in the proposed transaction and was therefore depending upon Mr. Babalola as an engineer and expert. Mr. Babalola suggested that [REDACTED] was an experienced businessman who was not particularly vulnerable and who benefited from the presence of a lawyer who drafted the agreement.

10. The Hearing Panel found that [REDACTED] did rely upon Mr. Babalola's representation of himself as a professional engineer experienced in this type of oil transaction. Although this factor was considered by the Hearing Panel in relation to the findings of unprofessional conduct the Hearing Panel notes that in terms of enforcing his legal interests, [REDACTED] did not display any signs of vulnerability.

(e) The number of times the offence was proven to have occurred

11. Both parties agreed that the unprofessional conduct in this matter arose out of a single business transaction. However, the Investigative Committee pointed out that the conduct in question extended for a period of several years after the initial transaction. In contrast Mr. Babalola suggested that there was a single lapse of judgment involving one business transaction and one complainant.

12. The Hearing Panel agrees that all of the conduct arose out of the single business transaction. However, the proven particulars in Allegation 2 arose from the aftermath of the failed transaction and involved additional conduct that was found to be unprofessional. Some of this additional conduct, particularly involving the affidavit to the court and the suggestion of making a payment conditional on withdrawing the complaint were serious ethical breaches.

(f) The role of the member in acknowledging what occurred

13. The Hearing Panel has placed little weight on this factor. While Mr. Babalola has produced evidence of discussions regarding a consent resolution of the matter, this eventually did not proceed because Mr. Babalola would not accept publication on a named basis. However, the Hearing Panel recognizes that Mr. Babalola had the right to defend himself at the hearing against the allegations that were made and the Hearing Panel does not draw any negative conclusions based on the fact that the hearing was contested.

(g) Any serious financial or other penalties as a result of the allegations of unprofessional conduct

14. The Investigative Committee submitted that there was no evidence of financial or other penalties that had been imposed on Mr. Babalola as a result of the investigation and Notice of Hearing. Mr. Babalola did not specifically address this point in his submissions. The Hearing Panel does not see any evidence of direct financial or other penalties and has not placed any weight on this factor.

(h) Impact of the incident on the affected person

15. The Investigative Committee points out that as a result of Mr. Babalola's conduct, ██████████ lost his \$10,000 investment and incurred costs of trying to collect this amount. The Hearing Panel agrees that this occurred but finds that a loss of this amount, while important to ██████████, was not so large as to have a serious ongoing impact on his financial position. The Hearing Panel has placed limited weight on this factor.

(i) Other mitigating circumstances

16. Mr. Babalola submitted that the serious stress he was under as a result of his difficult financial circumstances resulted in difficulties in anger management and business communication. The Investigative Committee did not respond in detail to this point. The Hearing Panel has placed limited weight on this factor. While Mr. Babalola may have been under considerable stress, it did not justify or mitigate his unprofessional conduct.

17. Mr. Babalola also emphasized his very difficult financial circumstances. This factor will be discussed below when the issue of costs of the hearing is discussed.

(j) Specific and general deterrence

18. The Investigative Committee placed strong emphasis on this factor. It suggested that significant sanctions are necessary for specific deterrence to prevent Mr. Babalola from behaving in this way again in the future and to address his disregard of his professional obligations and his lack of insight into his behaviour. The Investigative Committee also emphasized the importance of deterring any future false affidavits or offering to pay to obtain withdrawal of a complaint. The Investigative Committee submitted that significant sanctions are necessary for general deterrence to prevent other members of the profession from acting in a similar manner.

19. Mr. Babalola suggested that the sanctions he has proposed will address both specific and general deterrence.

20. The Hearing Panel accepts that the factors of specific and general deterrence are very important and that any sanctions imposed must address these factors.

(k) The need to maintain the public's confidence in the integrity of the profession

21. The Investigative Committee submitted that this is an important factor and that the type of conduct engaged in by Mr. Babalola has the potential to seriously undermine the public's confidence in the integrity of the profession and the high standards expected of professional members. Mr. Babalola submitted that the sanctions he proposed would show the public that he has been held responsible and that steps have been put in place to both deter the conduct and minimize any future risk.

22. The Hearing Panel considers this to be an important factor in assessing the appropriate sanctions as maintaining public confidence in the integrity of the profession is one of the duties of the Discipline Committee.

(l) The degree to which the proven allegations fall outside the range of permitted conduct

23. The Investigative Committee submitted that Mr. Babalola's conduct was unacceptable and a serious deviation from the range of permitted conduct. Mr. Babalola acknowledged that his conduct was unacceptable but suggested that it was not as serious as suggested by the Investigative Committee. The Hearing Panel is of the view that this case involved conduct that is well outside the range of permitted conduct.

(m) The range of sentences in similar cases

24. The Investigative Committee submitted that it is difficult to locate cases that are sufficiently similar to be useful. Mr. Babalola cited a number of cases and submitted that the

orders sought by the Investigative Committee fall far outside the range of sentences in other similar discipline cases.

25. The Hearing Panel has reviewed the cases cited by the parties and agrees that it is difficult to compare the unprofessional conduct found in this case with the cases cited by the parties. However, the Hearing Panel does agree with Mr. Babalola that most of the previous APEGA cases cited involve fines that are lower than the \$7500 requested by the Hearing Panel.

Reasons for the Specific Orders made by the Hearing Panel

The Reprimand

26. Both parties agreed that a reprimand was appropriate. The Hearing Panel agrees with the parties. A reprimand is necessary to make clear that the conduct of Mr. Babalola was unprofessional and unacceptable. However, the Hearing Panel agrees with the submissions of the parties that in the circumstances of this case, a suspension is not required or appropriate.

The National Professional Practice Exam

27. Both parties agreed that it was appropriate to order Mr. Babalola to successfully complete the National Professional Practice Exam within 12 months. The Hearing Panel agrees that this is an important order. Mr. Babalola showed serious deficiencies in his understanding of his ethical obligations as a professional member of APEGA. There is strong ethical component in the National Professional Practice Exam and by successfully completing the Exam, Mr. Babalola can demonstrate a renewed understanding of his professional ethical obligations.

The Fine of \$2,500

28. Both parties recognized that a fine was appropriate. The Investigative Committee requested a fine of \$7,500 while Mr. Babalola requested that the fine be set at \$1000. In considering this matter, the Hearing Panel agrees that a fine is necessary to make clear to both Mr. Babalola and the public that the unprofessional conduct of Mr. Babalola was a serious breach of his ethical duties. However, the Hearing Panel finds that the fine of \$7,500 is higher than fines in previous cases and is too high in that it represents 75% of the maximum fine for a finding of unprofessional conduct.

29. On the other hand, the Hearing Panel finds that a fine of \$1000 as proposed by Mr. Babalola is too low to properly reflect the serious ethical breaches that occurred particularly in filing a false affidavit with the Court and in offering a payment to have a complaint withdrawn. The Hearing Panel has therefore set the fine at \$2,500.

The Costs Order

30. The parties strongly disagree on this issue of an order directing that Mr. Babalola pay some or all of the costs of the investigation and hearing. The Investigative Committee requested an order that Mr. Babalola pay 75% of the costs to a maximum of \$66,750. Mr. Babalola

submitted that this costs request was exorbitant and would deliver a crushing financial blow that would deprive him of the ability to provide for his wife and three children. Mr. Babalola submitted that no costs order should be made.

31. Both parties again cited the *Jaswal* decision and suggested that the Hearing Panel should consider the factors listed in relation to whether or not to order costs. They then proceeded to review the following factors:

- a. The degree of success, if any, at the hearing;
- b. The necessity of calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing;
- c. Whether the persons presenting the case against the member could reasonably have anticipated the result based on what they knew prior to the hearing;
- d. Whether the member cooperated with respect to the investigation and offered to facilitate proof by admissions; and
- e. The financial circumstances of the member and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

32. Mr. Babalola also made reference to previous decisions in APEGA discipline cases to suggest that the percentage and the amount of costs requested were much higher than ordered in previous cases. The Investigative Committee disagreed with this submission and referred to other cases where full costs were awarded or where the amount of the costs order was as high or higher than its request in this case.

33. Both parties also referred to the portion of the decision of the Alberta Court of Appeal in *K.C. v College of Physical Therapists of Alberta* in which the Court of Appeal stated that when the magnitude of a costs award may deliver “a crushing financial blow” it deserves careful scrutiny.

34. Mr. Babalola submitted that he had not been able to find employment as a professional engineer since he was laid off by [REDACTED] in 2014. He indicated that since then he had worked menial jobs to make ends meet and that he had very little income. He suggested that his gross income in 2015 was \$11,676 and that in the past few months he had been receiving employment insurance. He noted that his house is currently being foreclosed and he will be obliged in the near future to relocate with his wife and three children.

35. As a result of this information, Mr. Babalola suggested that a costs award of \$66,750 would deliver a crushing financial blow. He submitted that it would be impossible for him to repay this amount and that this costs award would impair him from being able to provide a meaningful quality of life for his family.

36. The Investigative Committee noted that Mr. Babalola did not provide a tax return in respect to his alleged gross income of \$11,676 in 2015 and submitted that it was incumbent on him to produce such evidence. However, the Investigative Committee acknowledged that it was open to the Hearing Panel to consider Mr. Babalola's financial circumstances, based on the information he had provided to determine whether to order costs against him and in what amount. The Investigative Committee also agreed that it was appropriate for the Hearing Panel to carefully consider the amount of costs ordered against Mr. Babalola and the impact that the costs order will have on him.

37. The Hearing Panel has carefully considered the submissions made in respect to costs. It agrees with the Investigative Committee that it was successful in proving both allegations of unprofessional conduct and most of the particulars set out in those allegations. The Hearing Panel also agrees that all of the witnesses called by the Investigative Committee were necessary witnesses and that there was no conduct on the part of the Investigative Committee or Mr. Babalola that delayed or prolonged the hearing. The Hearing Panel is also satisfied that the costs claimed by the Investigative Committee were properly incurred.

38. Based on these factors, the Hearing Panel does not believe that a request for 75% of the costs of the hearing is unreasonable or exorbitant. However, based on the evidence presented at the hearing, the Hearing Panel finds the submissions made by Mr. Babalola regarding his very difficult financial circumstances are credible. The Hearing Panel noted that part of Mr. Babalola's problems after the transaction was terminated arose because he did not have \$10,000 to repay [REDACTED].

39. Therefore, based on the specific circumstances of this case and, in particular, the difficult financial circumstances of Mr. Babalola, the Hearing Panel finds that Mr. Babalola has established that a costs award of \$66,750 would deliver a crushing financial blow. At the present time there is no realistic possibility that Mr. Babalola could repay such a large costs order. Given the terms of the orders requested, any default in the payment schedule proposed would result in a suspension of Mr. Babalola's registration. As a result, the Hearing Panel finds that a substantially lower costs order is appropriate in this unique case.

40. However, despite the difficult financial circumstances faced by Mr. Babalola, the Hearing Panel does not believe it would be appropriate to make no order of costs at all. The hearing was necessary and conducted properly and it resulted in findings of serious unprofessional conduct. In these circumstances, it is appropriate that Mr. Babalola should pay a portion of the costs of the hearing.

41. After considering these factors the Hearing Panel has determined that an order requiring Mr. Babalola to pay 20% of the costs to a maximum of \$18,000 is appropriate. In making this order, the Hearing Panel recognizes that the actual costs incurred will have increased from the amount on which the requested \$66,750 was based as a result of the sanction submissions process. However, the Hearing Panel has determined that \$18,000 is the appropriate amount for the costs order. In recognition of Mr. Babalola's difficult financial circumstances, the \$18,000

can be repaid in monthly installments over a 36 month period and the first payment is not required until six months after this written decision is provided to Mr. Babalola.

The Order for Publication

42. The Investigative Committee has requested publication of the decision identifying Mr. Babalola. Mr. Babalola has requested that the publication be made without including his name. Neither party provided substantial submissions on this point.

43. The Hearing Panel believes that the publication of discipline decisions including the name of the member is an important part of ensuring the transparency of the discipline process to members of the public and the profession. This is the approach followed in most APEGA discipline cases and Mr. Babalola has not shown any compelling reason why this normal approach of identifying the member should not be followed in this case.

The Implementation Orders

44. Both parties included in their submissions a provision that failure to comply with any order would result in suspension of the practice permit until there was compliance with the order. The Hearing Panel finds that these orders are appropriate for the implementation of the orders made in this matter.

Conclusion


45. For the reasons set out in this decision, the Hearing Panel hereby makes the following orders:


- a. Mr. Babalola shall receive a formal reprimand, and the Discipline Committee's written decision on sanctions will serve as the formal reprimand;
- b. Mr. Babalola shall provide evidence to the Director of Enforcement and Permits within one year of being served with a copy of the Discipline Committee's decision that he has successfully completed the National Professional Practice Exam which will be undertaken at his own cost;
- c. Mr. Babalola shall pay a fine in the amount of \$2,500 payable within 6 months of being served with a copy of the Discipline Committee's decision;
- d. Mr. Babalola shall pay 20% of the costs of the hearing to a maximum of \$18,000 payable in equal monthly installments over a period of 36 months with the first payment to be made 6 months after being served with a copy of the Discipline Committee's decision;

- e. Should Mr. Babalola require an extension to the deadline for the payments referred to above at paragraph d, or should he wish to vary the payment schedule, he may apply to the Director of Enforcement and Permits for an extension or variation. If such an application is made, Mr. Babalola shall provide the Director of Enforcement and Permits with the reason for his request, his proposal to vary the payment schedule, and any other documentation requested by the Director of Enforcement and Permits;
- f. The fine and costs ordered are a debt owing to APEGA;
- g. If Mr. Babalola fails to comply with the orders made in paragraphs b, c, or d, his registration with APEGA shall be suspended until he complies;
- h. The Discipline Committee's decision shall be published or circulated as follows:
 - i. A written summary of the decision shall be published in the PEG, in a manner that identifies Mr. Babalola;
 - ii. A full copy of the decision will be placed on the APEGA website; and
 - iii. If any member of the public inquires with APEGA as to whether Mr. Babalola was the subject of a discipline hearing or was found guilty of any charges under the *Engineering and Geosciences Professions Act*, APEGA shall be at liberty to provide a complete copy of the Discipline Committee's decision.


Dated this 13 day of December, 2017

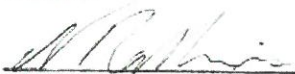
On behalf of the Hearing Panel of the APEGA Discipline Committee


 David Evans, P.Geol., Discipline
 Panel Chair


 Alex Bolton, P.Geo., Discipline
 Panel Member


 Muriel Dunnigan, Public Member


 Joe Kostler, P.Eng., Discipline Panel
 Member


 Naser Rabbani, P.Eng., Discipline
 Panel Member