

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS**  
**333 Guadalupe, II-350**  
**Austin, Texas 78701-3942**

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**In the Matter of James Ian Adams Powell**  
**Case No. 007-12A**

**ORDER OF THE BOARD**

The Board issues this its **ORDER** regarding James Ian Adams Powell.

The Board, sitting in a lawfully convened session on May 15, 2014, with a quorum present, has heard and considered the evidence presented, the findings of fact, the conclusions of law, and the administrative penalty recommended by the Executive Director.

A motion was made to approve the findings of fact, the conclusions of law, and the recommended administrative penalty as set forth in the Settlement Agreement dated February 20, 2014.<sup>1</sup>

The motion was seconded, deliberations were held, followed by a vote taken on the record of members present and all recommendations of the Executive Director were accepted and adopted by a majority vote of the Board Members. The Settlement Agreement is hereby approved and adopted pursuant to TEX. OCC. CODE ANN. § 1051.454 (b) and Board Rule 1.165(b).

IT IS SO ORDERED:

By:



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ALFRED VIDAURRI, JR., AIA, NCARB, AICP  
Chair  
TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Signed and issued this 15<sup>th</sup> day of May, 2014.

<sup>1</sup> The Settlement Agreement dated February 20, 2014, is attached and incorporated herein as Exhibit 1.

## SETTLEMENT AGREEMENT

On this day came to be considered by the Texas Board of Architectural Examiners (Board), the matter of James Ian Adams Powell, hereafter known as "Respondent," TBAE Registration No. 10396, considering whether disciplinary action should be taken against Respondent.

Respondent requested an informal conference pursuant to TBAE Rule 1.116. The informal conference was held at the Board's offices, located at 333 Guadalupe Street, Ste. 2-350, Austin, Texas, with Respondent accompanied by his attorney. The Board was represented by Executive Director Cathy Hendricks, RID, Managing Litigator Michael Shirk, Investigator Steve Franz, and Public Information Officer Katherine Crain. On February 20, 2014, Respondent met in mediation with representatives of the Board.

The Board and the Respondent have compromised and settled all claims and potential claims of the Board; they agree, pursuant to TEX. GOV'T. CODE ANN. §2001.056 and 22 TEX. ADMIN. CODE §1.165(a) and (b) to the entry of this settlement agreement for presentation to the Board for approval.

### JURISDICTION

The Board has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. §§ 1051.501, 751-752, AND 22 TEX. ADMIN. CODE §§ 1.121, 1.141, 1.146, 1.147, AND 1.164.

### FINDINGS OF FACT

The Board makes the following findings of fact:

1. Respondent is registered to engage in the practice of architecture in the State of Texas.
2. Respondent is a principal partner in the firm of PBK Architects (PBK).
3. On August 5, 2011, Registrant appeared before the Corpus Christi Independent School District (CCISD) Board of Trustees to provide information in support of his/her firm's selection to provide architecture services for the construction of a new CCISD middle school known as the Southside Middle School.
4. The presentation made on August 5, 2011, was the result of a collaborative effort between Gignac & Associates and PBK Architects. The collaboration and presentation were for the purpose of securing a contract to provide architectural services for the construction of the CCISD Southside Middle School. This collaboration will be referred to as the "Team" in this Settlement Agreement.
5. During the Team's presentation to the CCISD Board on August 5, 2011, Respondent and other members of the Team made comments about potential project savings and "economies of scale" that could arise from the Team's already-existing design activities

for a CCISD high school project. Included in this presentation was a Power Point slide that referred to possible cost savings in the procurement of materials and contractors' services, which does not constitute a violation of the Architect's Practice Act or the Board's Rules. The Team's presentation also included reference to "Design Team Savings" of "\$100,000-\$135,000," with a specific listing of this amount on one of the Power Point slides.

6. During its investigation of this case, it came to light that materials provided in answer to a question regarding the Team's litigation history were insufficiently detailed. It is important for architects to provide truthful, complete and candid responses in all communications with prospective clients. Respondent is reminded of the importance of providing complete and detailed answers to questions posed by prospective clients.

### CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. §§ 1051.501, 751-752, and 22 TEX. ADMIN. CODE §§ 1.121, 1.141, 1.146, 1.147, AND 1.164.
2. The Board has authority to resolve this matter informally as set forth herein under TEX. GOV'T. CODE ANN. §2001.056 and 22 TEX. ADMIN. CODE §1.165(a) and (b). Respondent has knowingly and voluntarily waived all procedural rules to which he might have been entitled regarding the entry of this Order.
3. Respondent did not violate the Professional Services Procurement Act, Texas Government Code, Chapter 2254.
4. By referencing the "design team savings," Respondent violated Board Rule 1.147. Because these savings arose out of work that the Respondent was already performing by the CCISD, and because these savings were not created merely to secure the contract for the new middle school, Respondent was not aware that his/her conduct violated Rule 1.147, nor did (s)he intend to violate Rule 1.147.
5. The sum of FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) is within the statutory and regulatory criteria by which penalty calculations are guided, and shall be remitted to the Board within (30) days of the Board's formal acceptance and approval of this Settlement Agreement. Respondent acknowledges any future violation of Rule 1.147 by engaging in conduct described in Conclusion of Law 4 could lead to the imposition of an administrative penalty of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), the suspension of his certificate of registration, or the revocation of his certificate of registration.
6. Respondent volunteers to attend 2 hours of professional ethics training acceptable to the Board within 12 months of the date of the entry of Board Order approving this Agreement.

7. Insufficient evidence exists to support a finding of wrongdoing of any statute, rule, or other authority other than TBAE Rule 1.147. The Board has concluded that the additional matters alleged in the Board's proposed Notice of Violation dated July 12, 2012, are not violations of the Board's Rules, the Texas Occupations Code, or the Texas Government Code.

The Board has never had an opportunity to clearly delineate the scope of Rule 1.147. The rule states, in relevant part, "an architect may submit information related to the monetary cost of a professional service only after the governmental entity has selected the architect on the basis of demonstrated competence and qualifications pursuant to the Professional Services Procurement Act." By specifically representing that the Team would be able to provide the Corpus Christi Independent School District with between \$100,000 and \$135,000 in design team savings, Respondent provided "information related to the monetary cost of a professional service" prior to the Team's selection "on the basis of demonstrated competence and qualifications pursuant to the Professional Services Procurement Act."

These savings resulted from the fact that design work that had already been performed for CCISD by the Team in developing a high school could be transferred to, and used for, the development of the Southside Middle School and would not, therefore, have to be developed as original work. In light of this, and recognizing the lack of prior Board interpretations of Rule 1.147, the Board has found that the Respondent did not intend to violate Rule 1.147.

Rule 1.147 prohibits an architect from submitting "information related to the monetary cost of a professional service" until such time as the architect has been notified that he or she has been selected for the work based exclusively on "demonstrated competence and qualifications." Based upon the language of Rule 1.147, and the highly specific amount of the design team savings, a commitment to provide "design team savings" prior to selection based exclusively upon "competency and qualifications" constitutes the provision of "information related to the monetary cost of a professional service."

This Settlement Agreement represents a full and final resolution of all complaints, investigations, or allegations of any kind involving Respondent and the CCISD's Southside Middle School project.

By his signature on this Settlement Agreement, Respondent hereby waives his right to a Notice of Hearing at the State Office of Administrative Hearings and/or the Texas Board of Architectural Examiners, and judicial review of this Settlement Agreement, all of which rights are granted to Respondent under the provisions of the Administrative Procedure Act, Sections 2001.001-2001.902, Texas Government Code, and/or Sections 2003.001-2003.046, Texas Government Code.

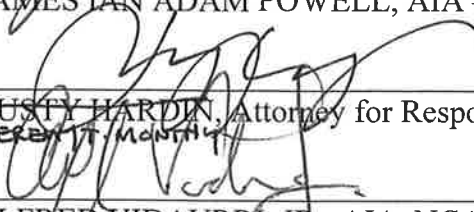
After discussion of the matters previously outlined in this Settlement Agreement relative to this inquiry, Respondent has agreed to an entry of a Board Order dispensing with the need for further administrative action in this matter.

AGREED and dated this 20<sup>th</sup> day of February, 2014.



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JAMES IAN ADAM POWELL, AIA – Respondent



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RUSTY HARDIN, Attorney for Respondent



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ALFRED VIDAURRI, JR., AIA, NCARB, AICP  
Chair  
TEXAS BOARD OF ARCHITECTURAL EXAMINERS



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SCOTT GIBSON, Attorney for  
TEXAS BOARD OF ARCHITECTURAL EXAMINERS