

Final Order  
FILED  
DATE: November 10, 2020  
New Jersey State Board of  
Professional Planners

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF PROFESSIONAL  
PLANNERS

IN THE MATTER OF THE LICENSE OF : Administrative Action  
: :  
JAMES K. JOHNSTON, P.E., P.P. :  
License No. 33LI00501700 : **FINAL ORDER**  
: :  
TO PRACTICE AS A PROFESSIONAL :  
PLANNER IN THE STATE OF NEW JERSEY :  
: :

**OVERVIEW**

**THIS MATTER** was opened to the New Jersey State Board of Professional Planners ("Board") on July 14, 2020, upon the filing of a one-count Verified Complaint ("Complaint") against James K. Johnston, P.E., P.P. ("Respondent"). The Complaint sought the revocation or suspension of Respondent's license to practice as a

professional planner in the State of New Jersey based on his criminal conviction for making illegal campaign contributions.<sup>1</sup>

Following a hearing on October 15, 2020, the Board finds that Respondent's criminal conviction, and even more fundamentally the actions upon which that conviction was predicated, are antithetical to the standards we expect of all professional planners, and at their core are fundamentally adverse to the practice of professional planning. We unanimously conclude that there is cause to revoke Respondent's license to practice as a professional planner in the State of New Jersey, with no right to reapply for five years, and to assess the attorneys' fees and investigation costs which were incurred in bringing this action against Respondent.

Below is a summary of the history of this matter, a summation of the arguments made and evidence presented at the hearing held before this Board on October 15, 2020, and the legal analysis and rationale for the determinations that were made.

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<sup>1</sup> This complaint was filed concurrently with the Board and New Jersey State Board of Professional Engineers and Land Surveyors ("PELS Board"). At the request of the Attorney General, and with Respondent's consent, the matter was heard jointly by the two Boards. Each Board, however, deliberated separately following the liability and penalty phases, and made its own determinations.

### **PROCEDURAL HISTORY**

On or about July 14, 2020, the Attorney General of New Jersey filed a one-count Complaint seeking, among other things, the suspension or revocation of Respondent's license to practice as a professional planner in the State of New Jersey.

Specifically, the complaint alleged that on or about April 12, 2017, Respondent pled guilty to a violation of N.J.S.A. 19:44A-20.1, Corporations and Labor Organizations Prohibited from Making Contribution through Employees, a crime of the fourth degree, for making campaign contributions to persons running for public office in the State of New Jersey or a county or municipality of the State with bonus money he received from Birdsall Services Group ("Birdsall"), in which he served as an officer, for that express purpose.

The Complaint further alleged that during his plea hearing, Respondent testified that he served Birdsall as an officer between 2008 and 2011. Birdsall provided Respondent with bonuses as part of his pay package, which were to be used to make contributions to political campaigns for individuals seeking election to a public office in the State of New Jersey or in a county or municipality of the state. Respondent admitted to using some of his bonus money

to make contributions to political campaigns as intended by Birdsall.

Thereafter, on June 2, 2017, Judge James Den Uyl, J.S.C. sentenced Respondent to two years' probation with 270 days incarceration in the Ocean County jail as a condition thereof. Respondent was also required to forfeit \$93,720.00 and pay other assessed fines and fees. Thereafter, on or about June 7, 2017 the Superior Court of New Jersey, Ocean County, entered a Judgment of Conviction of one count of illegal campaign contributions by a corporation through an employee.

As a result, the Attorney General alleges in the complaint that Respondent's conduct constitutes a crime of moral turpitude or relating adversely to the practice of professional planning in violation of N.J.S.A. 45:1-21(f).

Donald R. Belsole, Esq., appearing on behalf of Respondent, filed a Verified Answer on August 21, 2020, wherein Respondent admitted to the allegations set forth in the complaint with certain exceptions. The exceptions dealt with the clarification that all the counts of the indictment were dismissed except for Count 8 charging a 4<sup>th</sup> degree crime: illegal campaign contributions by a corporation through an employee in violation of N.J.S.A. 19:44A-

20.1. Further, Respondent stated that he relied upon the entire sentencing transcript, not just parts of it. Respondent also stated that his two-year probation period was terminated after less than one year because it was found to be unnecessary. In paragraph 13 of the Answer, Respondent admitted that his guilty plea related to some degree adversely to the practice of professional planning and denied the rest of paragraph 13.

In his Answer, Respondent raised the affirmative defense of laches, and provided a timeline of events commencing with the guilty plea entered on April 12, 2017. Respondent stated that three years have elapsed since then-Executive Director Leone reached out to him seeking a surrender of his license, an offer which Respondent rejected, and the hearing date of October 15, 2020. Based thereupon, Respondent requested a dismissal of this matter for undue delay in filing a timely complaint or, in the alternative, that the Board give consideration to the asserted undue delay in filing of the Complaint when making any penalty assessment.

By letter dated July 31, 2020, and with Respondent's consent, the Attorney General requested that the Board consolidate the

hearing in this matter with the PELS Board. At its public meeting on October 15, 2020, the Board voted to approve this request.

On that same date, the hearing on the Attorney General's application was held remotely before the full Board. Deputy Attorney General Daniel E. Hewitt presented the case on behalf of the Attorney General. Mr. Belsole appeared on behalf of Respondent.

The Board began the hearing by considering the Attorney General's motion to proceed summarily pursuant to R. 4:67-2(b), which was unopposed. The Board was satisfied that the matter could be completely disposed of in less than one day, and therefore granted the motion.

**MOTION TO DISMISS THE CHARGES BASED ON THE AFFIRMATIVE  
DEFENSE OF LACHES<sup>2</sup>**

At the outset of the hearing, Mr. Belsole requested that the Board consider the equitable defense of laches. He argued that there had been a delay that was undue, inexcusable and prejudicial because of inaction by the Board between the criminal proceedings and this hearing, specifically approximately seven years from

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<sup>2</sup> Additionally, prior to the liability phase, the parties presented oral argument before the PELS Board on Respondent's motion to delay the hearing due to lack of quorum. No such motion was brought before this Board.

indictment to this hearing and/or three years from the date of conviction until this hearing.

Mr. Belsole also argued that Respondent had been able to renew his license to practice as a professional planner and that he had moved on with his life and career over the past three years. He asserted there has only been silence as to why there was a delay for three years. As a result, Respondent was lulled into a false sense of security that everything was concluded and behind him.

DAG Hewitt argued in response that there has been no undue delay in bringing this action. He stated that laches is an equitable defense that would bar a claim if there was an unexplainable or inexcusable delay in exercising a right which results in prejudice to the other party. Accordingly, DAG Hewitt argued that this defense should be asserted as to liability, not mitigation of a penalty. In that regard, he noted that Respondent has already conceded liability, namely, that his acts related adversely to the practice of the profession, and recognized the Board's right to impose a penalty. Therefore, the defense of laches did not apply.

DAG Hewitt further argued that there has been no prejudice to Respondent, articulated or otherwise, due to any alleged delay.

Rather, the Board waited until there was a criminal conviction before moving forward, which is common practice. As to the three years from the conviction until filing of the complaint, Respondent was aware since 2017 of the Board's intention to take action against his license. During this time, Respondent participated in settlement negotiations, which were ultimately unsuccessful, leading to the filing of the Complaint against his license.

Finally, DAG Hewitt argued that Respondent's assertion that he was lulled into a false sense of security because he was able to renew his professional license was without merit. Rather, the Board is not in a position to summarily revoke Respondent's license, but rather must hold a hearing. Accordingly, there was no undue delay or prejudice.

Upon review of the arguments and submissions, the Board voted to deny Respondent's motion to dismiss the charges based on a laches argument. The Board finds that the three-year timeframe between Respondent's criminal conviction until the filing of the Complaint in no way prejudiced Respondent and, accordingly, does not constitute an undue delay upon which dismissal of charges should be granted.

The Board further finds any delay during this time was in part due to Respondent's participation in settlement negotiations. In 2017 the Respondent received notice of the Board's investigation and intent to take action, and was never advised that the matter was concluded. Thus, Respondent's arguments that there was undue delay or that he was lulled into a false sense of security because he was able to renew his license are without merit.

Finally, Respondent has been not been prejudiced nor deprived of the testimony of crucial witnesses who are unavailable or who have substantially faded memories. Thus, for all the foregoing reasons, the Board denied Respondent's request to dismiss the charges based on laches.

#### **HEARING AND DISCUSSION ON LIABILITY**

During the liability phase, DAG Hewitt supported his case with the documents from the criminal action, including transcripts and sentencing order, P-1 to P-4, which were entered into evidence without objection. He asserted that Respondent committed an offense involving moral turpitude and relating adversely to the activity regulated by the Board in violation of N.J.S.A. 45:1-21(f). DAG Hewitt noted that both parties have already agreed that the criminal conviction constitutes a crime relating adversely to

the practice of professional planning. He, however, also argued that Respondent's offense is a crime of moral turpitude.

In support of his argument that Respondent committed a crime of moral turpitude, DAG Hewitt stated that Respondent engaged in acts of dishonesty and deception over a period of years, which clearly implicated moral turpitude. Specifically, Respondent knowingly donated money to candidates running for public office to hide those political contributions made by Birdsall, and the resulting influence, from the public.

In response, Mr. Belsole conceded that Respondent's criminal conviction was a crime that related adversely to the practice of the profession. However, he argued that his offense was not a crime of moral turpitude and presented Respondent as a witness. Mr. Belsole stated that Respondent's crime in the 4<sup>th</sup> degree does not meet the definition of moral turpitude requiring baseless, vile conduct and depravity.

Mr. Belsole further argued that Respondent was convicted under a strict liability statute. He stated that this was not a crime of conspiracy, and "intent" was not a material element in Respondent's criminal conviction, which is required to make a finding of moral turpitude. Thus, in this regard, he argued that

Respondent's crime was different from the crimes other officers of Birdsall were convicted of, all of which required a showing of intent. As a result, Mr. Belsole argued that Respondent's criminal conviction was not a crime of moral turpitude.

The Board finds that evidence and testimony reveal that on or about June 7, 2017, a "Judgment of Conviction and Order for Commitment" (P-3) was entered in the Superior Court of New Jersey, Ocean County, in connection with Respondent's criminal conviction for a violation of N.J.S.A. 19:44A-20.1. He was sentenced to 270 days in the Ocean County Jail and thereafter to serve two years on probation. He was to forfeit \$93,720.00 and pay fines and penalties.

During his plea hearing, Respondent testified that he served Birdsall Services Group as an officer between 2008 and 2011. Birdsall provided Respondent with bonuses as part of his pay package, which were to be used to make contributions to political campaigns for individuals seeking election to a public office in the State of New Jersey or in a county or municipality of the state. Respondent admitted to using some of his bonus money to make contributions to political campaigns as intended by Birdsall.

In this case, the applicable statute, N.J.S.A. 45:1-21, states in relevant part:

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:

. . .

f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. . . . (emphasis added)

Pursuant to the statute, the Board may take disciplinary action if it determines that the crime involves moral turpitude, or if the crime relates adversely to the practice of the profession. It is not necessary to find both for a violation of N.J.S.A. 45:1-21(f).

Thus, for the reasons set forth above, the Board finds, and the parties agree, that Respondent's criminal conviction constitutes a crime that relates adversely to the practice of professional planning in violation of N.J.S.A. 45:1-21(f). While the Board is aware that the parties dispute whether this is also a conviction of a crime involving moral turpitude, it is, simply put, unnecessary for this Board to determine whether or not Respondent's crimes also involve moral turpitude, as the statutory predicate for the suspension or revocation of a license is fully

satisfied upon a finding of a conviction of a crime relating adversely to the practice of professional planning.

#### **HEARING AND DISCUSSION ON PENALTY**

Having found a basis for discipline of Respondent's license, the Board moved immediately to consider the discipline to be imposed on him. Respondent testified during this phase of the hearing, and relied upon various letters and character references, R-1 to R-4.<sup>3</sup>

Respondent testified that he is 58 years old and has practiced as a professional planner for about 30 years. He has had no other criminal convictions nor disciplinary action taken against his license. He spent his career building up an engineering firm, PMK Engineering, which eventually merged into Birdsall in 2008. He was a principal in PMK from 1998 to 2008, and pay to play laws were handled by Phil Angarone, who also went to Birdsall in the merger.

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<sup>3</sup> DAG Hewitt objected to R-4, Mr. Belsole's pre-hearing brief dated September 18, 2020, being entered into evidence. The character references attached to the brief were admitted into evidence without objection. The Board sustained the objection as to the brief, which it noted is part of the record and its contents presented by Mr. Belsole to the Board during the hearing. Finally, as to Mr. Netta's character letter, this was entered into evidence only as it related to him being a character witness, not for purposes of instructing the Board.

However, after the merger, Mr. Angarone moved into corporate headquarters in Sea Girt, New Jersey.

Respondent's testified that his role after the merger was to operate and manage the Cranford office and run the environmental, geotechnical and energy divisions of the merged entity. He had about 60-90 professionals working under him and was responsible for hundreds of projects.

He testified that the pay to play aspects at Birdsall were handled by Tom Rospos, who was assisted by Phil Angarone, in corporate compliance in Sea Girt. About six months after the merger, Respondent spoke to Mr. Rospos and was asked to provide political contributions in municipalities where corporations could not contribute. Respondent agreed to do it if he had the money. According to Respondent, Mr. Rospos said there was a corporate policy to provide bonus money to employees to help provide financial support in writing checks. Respondent expressed concerns about this practice and was told it could be done per the advice of a corporate lawyer. Respondent did not pursue his concerns any further. Instead, he testified that he wrote personal checks for Birdsall from June 2008 until 2013, a total of five years.

Eventually, the merged company went bankrupt. Respondent testified after his conviction he struggled to become gainfully employed and worked hard to rebuild trust with those with whom he previously worked. Respondent currently works for Ireland Brook Enterprises and Netta Architects.

Respondent testified that he pled guilty to a violation of N.J.S.A. 19:44A-20.1 because he committed the acts giving rise to it. Specifically, he used bonus money from Birdsall to make personal political contributions with a portion of that money. He testified that he received no benefit from his criminal activities and was not aware if Birdsall had received any benefit.

Respondent further testified that he takes full responsibility for his actions. He let himself and others down and his reputation was in ruins. Over the years, Respondent has tried to make amends and rebuild his reputation. He is active in his profession, community, and church. Over the past 3 years Respondent has been a keynote speaker in a "Fundamentals of Professional Practice" program offered by Bachner Communications, Inc. Respondent relates his own experiences to help participants understand what it means to be a professional engineer. He also offered numerous character letters.

During oral argument and in his written submission, Mr. Belsole pointed to several prior PELS Board orders which he suggested were like Respondent's case and therefore should have a similar outcome. He also attempted to distinguish this case from other orders entered by this Board and the PELS Board to avoid revocation. Mr. Belsole particularly relied on the disciplinary matters of Lino Dealmeida, P.E. and Michael Hanna, P.E., discussed below, to argue that a revocation is not warranted. Rather, he argued that something less, like a stayed suspension, was fair and reasonable punishment under these circumstances.

In response, DAG Hewitt urged the Board to permanently revoke Respondent's license to practice as a professional planner, as it had done in similar matters. He argued that Respondent's acts were a "big deal," despite Respondent's attempts to minimize and downplay the severity of his action, through his arguments that he only pled guilty to a 4<sup>th</sup> degree crime. He stated that many of Mr. Belsole's arguments made, and the character letters presented, to this Board were already made and presented to Judge Uyl in the criminal matter to persuade him to impose a lighter sentence. But these arguments were rejected - and should be here also -- because as stated by Judge Uyl, a lesser sentence would depreciate the

seriousness of the Respondent's offense because it did violate the public's trust and the public's confidence in the transparency of the political process.

DAG Hewitt further argued that this Board is charged with protecting the public and that Respondent's ongoing scheme to hide Birdsall's political contributions, and influence held, over a five year period from 2008 and 2013, warrants a permanent revocation of Respondent's license by this Board. He stated that Respondent had ample opportunities to evaluate the morality of his acts, but never did. Eventually the scheme came to an end, but only when law enforcement become involved.

Finally, DAG Hewitt argued that Respondent's health and youth, as opposed to those of the others involved in the Birdsall scheme who have been disciplined by the Board, should not be a reason for him to receive a lighter penalty. Rather, the Board should consider that Respondent was a high-ranking officer in Birdsall who willfully and knowingly participated in this scandal for a prolonged period. Respondent was an integral part of that scheme.

DAG Hewitt also requested that the Board impose attorney's fees and investigative costs in the amount of \$5,640.18. As part

of his presentation, DAG Hewitt submitted into evidence Exhibit P-5, his Certification of Costs, without objection. He did not call any witnesses.

In making a determination as to penalty, the Board has considered the written submissions and oral arguments of the parties, as well as the testimony of Respondent. The Board's mandate is to protect the public's health, safety and welfare. Each disciplinary case must be judged on its own facts with the goal of protecting the interests of the public, including maintaining the public trust and confidence in the profession, while considering the interests of the individual involved.

In this case, the Board finds Respondent's testimony credible as it relates to how he found himself involved in the criminal scheme over a five-year period resulting in his criminal conviction. However, the Board did not find Respondent's testimony credible that he received nothing for this scheme - or that he knew nothing of the benefits to Birdsall. It is clear from the other Birdsall disciplinary actions, discussed below, that the officers of Birdsall, as well as Birdsall, did receive benefits. There is no reason to believe differently here.

Respondent was a principal at PMK for many years and an officer of Birdsall after the merger. He was acutely aware that he must abide by the pay to play laws and, in fact, testified that Mr. Angarone specifically handled these matters at PMK. Respondent was concerned - and rightfully so - when asked to make political contributions on behalf of Birdsall using his own personal checks. These were hidden donations made on behalf of Birdsall, and Respondent knew it. But for his participation in this corrupt scheme, as well as those of others, it could not have been accomplished.

Despite his concerns, Respondent continued to engage in these acts for five years. He never again evaluated whether his conduct - or this scheme - was lawful until intervention by law enforcement.

The Board finds Respondent's criminal conviction, and his corrupt acts giving rise to it, to be extremely serious and clearly not the conduct expected of a professional planner in the State of New Jersey. His acts tainted the profession and shook the public's trust and confidence in the honesty and integrity of the institutions upon which it relies.

During oral argument, Mr. Belsole argued that Respondent's case was like two prior disciplinary matters before the PELS Board, namely, Michael J. Hanna, P.E. and Lino Dealmeida, P.E., and unlike the two Birdsall matters. This Board disagrees. Further, in his written submission, Mr. Belsole points to other disciplinary matters taken by the PELS Board, some of which were not based on a violation of N.J.S.A. 45:1-21(f). Since he did not discuss in detail how these other matters were similar or dissimilar, the Board addresses only those matters presented during oral argument.

Unlike Respondent's case, the PELS Board's disciplinary action in 2009 against Mr. Hanna was based on violations of N.J.S.A. 45:1-21(b) and N.J.S.A. 45:1-21(e), not a criminal conviction in violation of N.J.S.A. 45:1-21(f). Mr. Hanna's engineering license was suspended for two years, with six months to be served as active suspension and the remainder stayed to be served as probation. However, prior to resuming active practice, Mr. Hanna was required to demonstrate that he had successfully completed the Pretrial Intervention Program. While clearly a serious matter, it is different than the matter presently before the Board.

Respondent's reliance upon the matter of Lino Dealmeida, III, P.E., is similarly misplaced. The PELS Board's 2017 disciplinary action was based on a criminal conviction for violation of 18 U.S.C. §641 and 642, Embezzlement - Unemployment Fraud, different than Respondent's conviction. As a result of his criminal conviction, Mr. Dealmeida was sentenced to probation for two years, together with other terms and conditions. The PELS Board suspended Mr. Dealmeida's license for two years, which was stayed and served as probation, together with other terms and conditions. The PELS Board may have considered this to be a very serious crime. But again, the Board did not consider it as serious as a pay to play scheme that lasted for five years resulting in a criminal conviction with imprisonment.

Respondent seeks to distinguish his criminal conviction, and acts giving rise thereto, from two other Birdsall cases. In fact, there are three other Birdsall cases, including two prior matters before this Board and an additional PELS Board matter, where this Board and the PELS Board has sought and received a surrender of license to be deemed a revocation. The Board finds that Respondent's case is similar to the Birdsall cases, as opposed to all the other cases cited by Respondent, because the corrupt acts

in which he engaged were an integral part of the very same criminal scheme that all of the Birdsall defendants participated in.

Further, the Board does not feel it is constrained by the health or youth of the licensees involved in the Birdsall scheme as argued by Respondent - nor constrained by the degree of the crime or type of crime - when making its determination. However, the Board is mindful that each licensee involved in this scheme had his own role to play in achieving the desired outcome for Birdsall and ultimately themselves.

As to the Birdsall matters, three have been resolved by a surrender of license to deemed a revocation. Specifically, on or about January 30, 2017 Howard Birdsall, P.L.S., P.P. signed a Consent Order to surrender his licenses to practice as a professional planner and land surveyor to be deemed a revocation of each license. The Consent Order was based on his criminal conviction on or about April 22, 2016, in the Superior Court of New Jersey, Ocean County, for violation of N.J.S.A. 2C:21-9(c), Misconduct by a Corporate Official, a second-degree crime. He was sentenced to prison for four years and ordered to forfeit \$48,808.00, together with other terms and conditions.

At the time of entry of his guilty plea, Howard Birdsall testified that he was the Chief Executive Officer at Birdsall Services Group. He stated that between January 1, 2006 and May 31, 2012 he used Birdsall Services Group to promote the crime of concealment or misrepresentation of political contributions and he used Birdsall Services Group to reimburse officers and employees for the political contributions that they made. He further testified that this reimbursement scheme resulted in a benefit to himself and other employees, officers and directors in excess of \$75,000.00.

Thereafter, on or about March 21, 2017, William T. Birdsall, P.E., P.P. signed a Consent Order to surrender his licenses to practice as a professional planner and professional engineer to be deemed a revocation of each license. The Consent Order was based on his criminal conviction on or about July 11, 2016 in the Superior Court of New Jersey, Ocean County, for violation of N.J.S.A. 2C:21-9(c), Misconduct by a Corporate Official, a third-degree crime. As a result of his criminal conviction, William Birdsall was sentenced to prison for 270 days, probation for 2 years and ordered to forfeit \$129,115.00, together with other terms and conditions.

At the time of entry of his guilty plea, William Birdsall testified that he was an owner, shareholder and officer of Birdsall Engineering Group, an engineering firm. He stated that between January 1, 2006 and May 31, 2012 he agreed with others to make political contributions to various political entities and individuals in the State of New Jersey from his own personal checking account. Thereafter, he was reimbursed by Birdsall Engineering Group for those political contributions. He further testified that he made these political contributions for the purpose of concealing from the Election Law Commission in New Jersey the fact that it was Birdsall Engineering Group who was, in fact, funding or making those contributions. He stated that as a shareholder and owner, he benefitted from this scheme because it permitted Birdsall Engineering Group to be involved in the bidding process in the State of New Jersey and obtain contracts from public entities.

Finally, on March 21, 2019, Alan P. Hilla, P.E. signed a consent order to surrender his license to practice as a professional engineer to be deemed a permanent revocation, with no right to reapply. The Consent Order was based on his criminal conviction on or about July 6, 2017, in the Superior Court of New

Jersey, Ocean County for a violation of N.J.S.A. 2C:21-9(c), Misconduct by Corporate Official, a crime of the second degree. Respondent was sentenced to a five-year suspended custodial term, and ordered to forfeit \$155,730.00, together with other terms and conditions.

At the time of entry of his guilty plea, Mr. Hilla testified that between 2006 and 2012, he wrote political contribution checks which were subsequently reimbursed by the Birdsall, in violation of the New Jersey Election Law. During that time period, he served as an officer or director of the Birdsall.

These three criminal convictions, together with Respondent's criminal conviction, show an elaborate scheme for the benefit of Birdsall and its officers, where officers of Birdsall would make political contributions through their personal checking accounts and be reimbursed for same in violation of the laws of the State of New Jersey. These political contributions were made for the purpose of concealing from the Election Law Commission in New Jersey the fact that it was Birdsall funding them. This scheme permitted Birdsall to participate in the bidding process to obtain contracts from public entities. Respondent participated in this

scheme - and, again, but for his participation and those of the others, it could not have been accomplished.

Finally, the Board rejects any argument that there was a delay in bringing these proceedings and therefore Respondent should not be disciplined or alternatively receive a substantially reduced discipline. In fact, despite Respondent's assertions of taking responsibility for his acts, arguing that the Board should give him a lighter discipline for an alleged delay, is the exact opposite. Rather, the Board finds that there has been no significant delay, if at all, and that Respondent was fully aware of the Board's intent to take action against him.

It is in the interests and protection of the public to ensure that licensees of this Board understand the significance of, and comply with state and federal laws, as well as practice in a professional and ethical manner, which maintains the public's trust and confidence. Respondent has breached that trust and abused his professional practice. For all of these reasons, the Board concludes that nothing short of revocation is warranted.

Notwithstanding that determination however, upon consideration of the mitigation evidence presented, the Board has concluded that Respondent may be afforded the right to reapply for

licensure after a five-year period. The Board is satisfied that this action, short of a permanent revocation, strikes an appropriate balancing between Respondent's criminal activities over a five-year period with the mitigation evidence presented. The action appropriately protects the interests of the public, and sends a strong message to the licensed community that such unethical, corrupt acts will not be tolerated by this Board.

Finally, the Board concludes that Respondent should be assessed the costs incurred - specifically the State's attorneys' fees and the Enforcement Bureau investigation costs - in the prosecution of this matter. The State's costs application is supported by the certification of DAG Hewitt, dated August 25, 2020, (P-5, Exhibit A) and the certification of Richard L. Perry, dated August 19, 2020 (P-5, Exhibit C). The Attorney General seeks a total cost award of \$5,640.18, to include \$4,820.00 in attorneys' fees and \$820.18 in investigative costs.

Costs, to include attorneys' fees, are traditionally imposed on a disciplined licensee, pursuant to N.J.S.A. 45:1-25, so as not to pass the cost of those proceedings onto other licensees. The

Board has reviewed the cost application submitted by DAG Hewitt<sup>4</sup> (P-5) and find the costs to be fully reasonable and supported. Starting with the hourly rates sought, the Attorney General seeks compensation for attorney services at hourly rates of \$200/hour for services provided by DAG Hewitt (admitted to practice since 2017). This hourly rate is consistent with the rates established in a directive of Michelle Miller, Acting Director of the Division of Law ("Miller Directive") which became effective September 1, 2015. The Board notes that Respondent has not raised any contention

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<sup>4</sup> In reviewing the application for attorney's fees, the Board is guided by the general principles established in Rendine v. Pantzer, 141 N.J. 292 (1995), and reaffirmed in Walker v. Giuffre, 209 N.J. 124, 130 (2012). Specifically, the Board is required to establish a "lodestar" fee by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. In evaluating the reasonableness of hours, the Board is to "carefully and critically" evaluate the aggregate hours claimed, and eliminate duplicative or nonproductive time. See also Poritz v. Stang, 288 N.J. Super. 217, 221 (App. Div. 1996) (in evaluating reasonableness of actual hours expended, one must be mindful that "actual time expended does not necessarily equate with reasonable time."). An attorney seeking a fee award must prepare and provide a certification of services that is sufficiently detailed to allow for an accurate calculation of a lodestar. Rendine, 141 N.J. at 337. While "exactitude" is not required, the submission needs to include "fairly definite information as to the hours devoted to various general activities." Id.

that the rates were not reasonable. As for the time, DAG Hewitt has documented a total of 24.1 hours of time spent in this matter. The timesheets submitted by the Attorney General contain detailed notes as to work performed, and DAG Hewitt's certification provides additional detail. The Board finds the documentation submitted to be sufficiently detailed to support all of the hours of legal work performed, and concludes that the important state interests which were pursued in this matter provide a more than ample predicate to support an award of all attorneys' fees sought. The Board therefore concludes that attorneys' fees in the amount of \$4,820.00 shall be assessed against Respondent in this matter.

Similarly, the Board notes that that investigative costs, approved many times in the past, are based on salaries, overhead and costs of state employees. Considering the important state interest to be vindicated, specifically, the protection of the public safety and welfare, the investigative costs sought of \$820.18 are certainly reasonable.

The Board's ultimate determination as to the appropriateness of a costs in this matter was completed after a full hearing of the issue and review of the evidence. The time expended by the Deputy Attorney General and investigators in this matter warrants

reimbursement consistent with established principles of law. However, because there are two Boards involved and splitting the costs, this Board concludes, and is satisfied, that an award of costs and attorneys' fees in the total amount of \$2,820.09 is appropriate in this matter.

**WHEREFORE it is on this 10th day of November, 2020**

**ORDERED, effective as of October 15, 2020, the date on which this Order was announced on the public record:**

1. Respondent's license to practice as a professional planning in the State of New Jersey is hereby revoked, with no right to reapply for licensure for five years. The effective date of the revocation shall be November 16, 2020.

2. Effective November 16, 2020, Respondent shall immediately cease and desist from holding himself out as a professional engineer and shall refrain from the practice of professional planning in the State of New Jersey.

3. Respondent shall immediately forward his license, along with his wallet-sized biennial renewal license to: Acting Executive Director Ileana Botelho, State Board of Professional Planners, 124 Halsey Street, Third Floor, P.O. Box 45105, Newark, New Jersey 07101.

4. Respondent is assessed attorneys' fees and investigation costs in this matter in the amount of \$2,820.09, to be paid within thirty (30) days of the date this Order is filed. Payment shall be made by bank check, money order, wire transfer or credit card made payable to the "New Jersey State Board of Professional Planners" and mailed to: Acting Executive Director Ileana Botelho, State Board of Professional Planners, 124 Halsey Street, Third Floor, P.O. Box 45105, Newark, New Jersey 07101 within thirty (30) days of the filing of this Order. Any other form of payment will be rejected and will be returned to the party making the payment. In the event that Respondent fails to make timely payment, interest shall begin to accrue at the annual court rule rate, a Certification of Debt shall be issued, and the Board may institute such other proceedings as are authorized by law.

5. The Board may, in its discretion, require Respondent to appear before the Board prior to any reinstatement of his professional planner license at the conclusion of the five-year period, for the purpose of requiring Respondent to demonstrate his fitness to resume practice and his compliance with all terms contained herein.

STATE BOARD OF PROFESISONAL PLANNERS

BY:

A handwritten signature in blue ink, appearing to read 'J. M. Petrongolo', is written over a horizontal line.

JOSEPH M. PETRONGOLO, P.P.  
Board President

**EVIDENCE LIST**

Attorney General Exhibit List:

P-1 Transcript of the Plea Hearing in the matter of State of New Jersey v. James Johnston, docketed as I-13-03-00055-S, dated April 12, 2017.

P-2 Transcript of Sentencing in the matter of State of New Jersey v. James Johnston, docketed as I-13-03-00055-S, dated June 2, 2017.

P-3 Judgement of Conviction in the matter of State of New Jersey v. James Johnston, dated June 7, 2017.

P-4 Plea Form in the matter of State of New Jersey v. James Johnston, docketed as I-13-03-00055S, dated April 12, 2017.

P-5 DAG Hewitt Certification of Costs dated August 25, 2020.

Respondent Exhibit List:

R-1 November 16, 2017 letter from Belsole to Leone.

R-2 April 16, 2018 letter from Belsole to DAG Guzik.

R-3 February 18, 2020 letter from Belsole to DAG Hewitt.

R-4 Respondent's September 18, 2020 Pre-Hearing Brief with attachments.