

**IN THE MATTER OF THE ENGINEERS AND GEOSCIENTISTS ACT**

**R.S.B.C. 1996, CHAPTER 116 as amended**

**and**

**IN THE MATTER OF PERSHING J. BALAYO, P. Eng.**

**T15-059**

**CONSENT ORDER**

**Background and Facts**

1. On June 2, 1995, Pershing J. Balayo, P. Eng. ("Mr. Balayo") and the Association of Professional Engineers and Geoscientists of British Columbia ("APEGBC") entered into a Stipulated Order (the "1995 Order") by which Mr. Balayo accepted that he had engaged in unprofessional conduct by signing a Letter of Completion-Structural that stated that the construction of a mezzanine was in general conformity with drawings and code requirements when in fact that statement was not founded upon adequate knowledge or honest conviction with respect to the construction and certification of the mezzanine.
2. Pursuant to the terms of the 1995 Order, a number of conditions were imposed upon Mr. Balayo, including:
  - A. Mr. Balayo was reprimanded;
  - B. Mr. Balayo was required to write, and pass, APEGBC's Professional Practice Examination;
  - C. Mr. Balayo was subject to a Practice Review and the costs associated with that review; and
  - D. Mr. Balayo was required to pay APEGBC's investigation costs in the amount of \$1,000.
3. On March 5, 1998, Mr. Balayo and APEGBC entered into a Stipulated Order (the "1998 Order") by which Mr. Balayo accepted that:
  - A. he had demonstrated incompetence, negligence, and unprofessional conduct with respect to certain structural engineering services provided for a building in Surrey, British Columbia, specifically, the

design lacked sufficient detail, did not meet code requirements for lateral stability, and the design was not reviewed by an independent concept reviewer or as required under APEGBC's Bylaws; and

- B. he had demonstrated incompetence, negligence, and unprofessional conduct with respect to certain structural engineering services provided for a building in Vancouver, British Columbia, specifically, that the design was highly deficient in regard to lateral bracing, slab reinforcement, and provisions against punching shear.
4. Pursuant to the terms of the 1998 Order, a number of conditions were imposed upon Mr. Balayo, including that Mr. Balayo's membership in APEGBC was suspended for a period of six months.
  5. On January 30, 2017, a Notice of Inquiry in Association file T15-059, dated January 24, 2017, was served upon Mr. Balayo, containing the following allegations:
    - A. That in connection with a project located at Kwantlen Polytechnic University's Langley campus, located at 20901 Langley Bypass, Langley B.C. (the "Project"), you have demonstrated unprofessional conduct by affixing your seal to a Schedule B and Schedule C-B, each dated March 25, 2013, by which you gave assurance to the City of Langley, among other things:
      - i. You had prepared the design for certain rooftop guardrails and related components (the "Guardrail Components") to be installed at the Project;
      - ii. You would undertake responsibility for field reviews of the Guardrail Components during construction; and
      - iii. You fulfilled your obligation to perform field reviews of the Guardrail Components;

in circumstances where you were not involved in the design of the Guardrail Components and performed no field reviews of Guardrail Components.
    - B. That the conduct set out above at paragraph 5A is contrary to section 20(9) of the Act.

### **Admissions**

6. Mr. Balayo admits the allegations contained in the January 24, 2017 Notice of Inquiry set out above, in particular, that the conduct set out at paragraph 5A:
  - A. constitutes unprofessional conduct; and

B. is contrary to section 20(9) of the Act.

**Disposition**

7. APEGBC and Mr. Balayo wish to resolve this matter by consent in order to avoid the need for a disciplinary inquiry.
8. This Consent Order is made by consent pursuant to section 32.1 of the Act.
9. Mr. Balayo's membership in APEGBC is cancelled effective July 1, 2017 (the "Date of Cancellation").
10. During the period from the date of the execution of this Consent Order to the Date Of Cancellation, Mr. Balayo will:
  - A. make reasonable arrangements for the orderly transfer of his ongoing professional engineering project files to other professional engineers;
  - B. limit his practice to those project files that he is currently engaged on and not take on any new project files or other engineering work; and
  - C. refrain from executing Schedule "B" and "C-B" Letters of Assurance under the *British Columbia Building Code* unless the execution of such Letters of Assurance by Mr. Balayo is peer reviewed in accordance with APEGBC's *Discipline Committee Ordered Peer Review Policy*.
11. Any peer reviewer performing the peer review referred to in condition 10C above must be approved in advance in writing by the APEGBC Registrar.
12. Mr. Balayo shall pay a fine in the amount of \$7,500 to APEGBC (the "Fine") within 60 days.
13. Mr. Balayo shall pay \$1,500 towards APEGBC's investigation and inquiry costs (the "Costs") within 60 days.

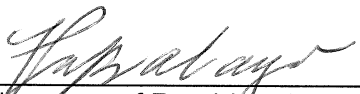
**Consequences of the Consent Order**

14. The full text or a summary of this Consent Order will be published by APEGBC in print and electronic publications including on APEGBC's website.
15. Mr. Balayo agrees that he has had the benefit of independent legal advice regarding this Consent Order.

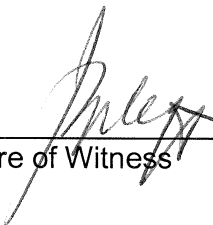
16. This Consent Order has the same force and effect as an Order made under section 33(2) of the Act and may be dealt with under section 34 of the Act if conditions in the Consent Order are not met.

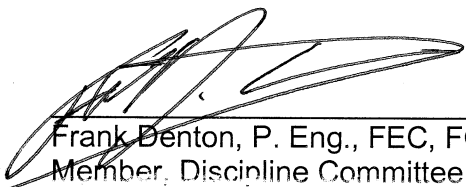
17. APEGBC and Mr. Balayo agree that this Consent Order may be executed in counterparts and delivered as an electronic document.

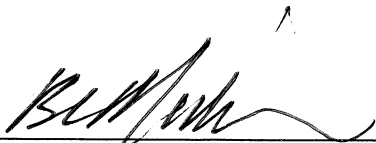
This Consent Order is approved and accepted by Mr. Balayo and the members of the Discipline Committee Review Panel this 5<sup>th</sup> day of April, 2017.

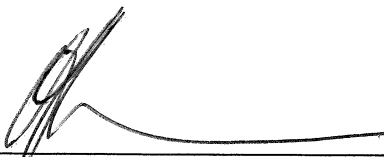
  
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Signature of Pershing J. Balayo, P. Eng.

  
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Name of Witness

  
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Signature of Witness

  
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Frank Denton, P. Eng., FEC, FGC  
Member, Discipline Committee

  
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Bruce Nicholson, P. Eng.  
Member, Discipline Committee

  
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Oliver Bonham, P. Geo, FGC, FEC (Hon)  
Member, Discipline Committee