



## Regulation Matters: a CLEAR conversation

### Episode 2: Investigative Excellence Award winner, **Robert Herbert** **June 12, 2018**

**Line Dempsey:** Welcome to our podcast, Regulation Matters: a CLEAR conversation. I'm your host, Line Dempsey. For those of you who do not know me, I'm the senior investigator with the North Carolina Dental Board, and I'm the current chair of the National Certified Investigator Training committee with CLEAR. As many of you may know, CLEAR, or the Council on Licensure Enforcement, and Regulation, is an association of individual agencies and organizations that comprise the international community of professional and occupational regulation. Our new podcast is the chance for you to hear about the latest and greatest in our community. And today we welcome Robert Herbert, a special investigator with the Alabama Board of Licensure for Professional Engineers and Land Surveyors, to discuss the investigation that he was nominated for and received the CLEAR Investigative Excellence Award for in 2017. Hello, Bob, and welcome.

**Robert Herbert:** Good morning. How are you, Line?

**Line:** I'm very good, thank you, and thank you for joining me. So, a little background: CLEAR's awards program honors exceptional contributions to our regulatory communities, and the Investigative Excellence Award recognizes an investigator who has demonstrated exceptional performance in a particular case with performance beyond what is expected or required, resulting in a direct and significant impact to the protection of the public or consumer interests. We're pleased to have you with us today to talk about this case in which you're nominated and some of your investigative techniques that you used throughout the case. I guess if you would maybe start off giving us a little bit of introduction, maybe what the complaint was about and how it came about.

**Robert:** Actually, this is multi-faceted cases combined into one. It originally started in August of 2013, in which an individual by the name of Roddy Fitzgerald, and his firm, which is Commodore Steel Buildings, had provided a client with the pre-engineered steel building to meet the 2009 International Building Code and the 140 mile per hour wind load requirements for down in the Daphne, Alabama area. When Commodore Steel delivered its product and started direction, the client informed them that some of the building components were not sized per the documents. Mr. Fitzgerald indicated that he would get his engineer to review what was installed and provide the client with a revised set of

engineering drawings, which never happened. Throughout the investigation, we finally determined that Mr. Fitzgerald and his company, Commodore Steel, provided a pre-engineered steel building that would not meet the IBC code of 2009 and the 140 mile per hour wind load requirements. Also, they did not employ a professional engineer for its design, and a professional engineer review showed that the buildings provided did not meet the original design, nor does it comply with the current building code. We did a formal hearing January 15th of 2015 with the case being presented to the Alabama law judge and the full Board. On April 30th of 2015, the Board found Commodore Steel and Roddy Fitzgerald guilty, and he issued an order that required the following: A cease and desist of all actions pertaining to the practice of engineering in the state of Alabama, and they must pay a civil penalty to the Board of \$2500 within 30 days and also submit \$1925 as a payment for cost of the hearing within 30 days. Coming right on the heels of that outcome, January 28, 2015, new cases were initiated by the Board. We were contacted by a professional engineer that Commodore Steel had submitted drawings, and initially partially erected a pre-engineered building for the Mt. Zion Baptist Church and Irvington Fellowship Bible Church projects located in Mobile County, Alabama, which contained a professional engineer seal of Jalal Ketabi, Professional Engineer, without his knowledge. The complaint further indicated that the steel used by Commodore Steel Buildings for the Mt. Zion Baptist Church project, which was also partially erected, was not the grade required for the building to be code compliant. We had an additional case brought to us by an Alabama General Contractors Board. An investigator contacted me in reference to the Tri City Baptist Church in Millbrook, Alabama, in which Commodore Steel was hired as the general contractor in late 2014. Mr. Fitzgerald provided the engineered bulk and steel buildings of the Tri City Baptist Church plans to the city for permitting in February of 2015. The city of Millbrook accepted the bulk and steel design Tri City Church plans and issued a permit in February of 2015. The structure was built, but the building put in place was from a totally different manufacturer. The actual wings of the buildings had been enlarged from 80 feet to 88 feet without any engineering support. So with that information, we started building our cases, which led us to multiple different other locations in southern Alabama in Mobile and Baldwin County areas, which we then also started three additional cases, and all of them were for unauthorized use of engineering seals that were forged.

**Line:** Now, I know you mentioned a couple of times that these were church buildings or things like that. Was it pretty much all church buildings? Were they more for the worship service or was that gonna be for rec center or offices? What were the structures that were involved in this?

**Robert:** On the initial complaints, they were the main sanctuary, and also some administrative buildings were in place. That's what they were initially looking for. We're ranging in prices from multi-million dollars to what we end up finding out additional projects throughout the state, which were all the way down to a garage. So it ranged a big variety of different types of projects and monetary amounts. So we had warehouses, churches, garages, and in all these cases that we found that he had forged other engineers' seals, signatures, and dates on all of these plans to be accepted and to be permitted to be built. And so all these projects were never designed by an engineer; they were only designed by Mr. Fitzgerald, who was only a licensed general contractor within the state of Alabama.

**Line:** Wow! So, the engineers that were having their seals utilized, was he photocopying this? Working in the dental industry, I don't deal too much with buildings, but how is he forging this permit process?

**Robert:** In this particular case, he had a member of his staff, actually it was his son-in-law, who was very familiar with Photoshopping basically. So he used an application to scan other documents of legitimate drawings that they would have utilized from other companies who had legitimate engineers design certain buildings for them. They would scan them in, take the seals and signatures from those plans, and then import them and put them into their plans. And so it looked legit. If you just looked at the plans, it looked as if it was like any other set of plans that any other code official in the state would get and review and then permit for building. So just by looking at it, you would not be able to tell if it was a legit seal or not.

**Line:** Right. Now, were these things then being, I guess, either posted at the site or were they actually given to the local ordinances to say, hey, we've had this checked out and approved?

**Robert:** Both, and how the process works is when a general contractor, in this case let's say, they build it the church structure, it must be submitted into the local entity - the municipality - for review. That code official with the local entity reviews it for code compliance. If they're lucky enough to have an engineering department, and they go through the engineering department to evaluate calculations, to see if it is sufficient for the area. But typically, it's just a local code official who's not an engineer; they look at it for code compliance. Once they authorize it and they submit it back to the builder, they provide them a permit to build. And so the expectations would be the engineered product is supposed to be built from on site that was permitted. But in this case, it was never engineered.

**Line:** Gotcha. So how did you get involved? What was the process? Once the official saw that these things were not being done correctly, did they contact the board, file an actual written complaint? And then, what did you do from there?

**Robert:** Our process is we have to have a complaint on file that's signed, which is what was done by the professional engineer on the site who initially found these problems. Once that was initiated, it just snowballed from there. We started seeking additional assistance from local code officials - who out there also have seen products from Commodore Steel? What else has been built in your area? So we started in known areas where he was doing work, which was down in the Mobile and Baldwin Counties areas, and just snowballed to the point of we had hundreds of sets of plans that we end up gaining and reviewing. And in looking at those plans, the common denominator came when there appeared to be four to five professional engineers' seals being used that when we contacted those engineers to see if indeed they were aware of the plans, none of them were. And none of them had been involved with any of the projects. Actually, three of them had never personally been involved with Commodore Steel itself. They work for larger metal building companies. And so what typically happens with those, anyone, a client or general contractor can contract with those companies to build a building for them, and then it's drop shipped back to the location wherever they are looking to erect it at. And so they were working for their own metal building companies. They never worked for an

individual. So when they found out that their particular seals were being put on Commodore Steel logo set of plans, they were never aware of it until we notified them.

**Line:** Wow, and you're talking about multiple states too, like Texas, Mississippi, Georgia, Tennessee, and of course Alabama, all involved in this. Is that correct?

**Robert:** Right, there's multiple states involved, and none of the engineers were local; they're all out of state. So we have several civil and criminal penalties of this action and it happened with the forged seals.

**Line:** Well, how did you handle this when you've got so many different individuals from different states when you guys went to your formal hearing? Cost of bringing people like that in would be pretty prohibitive, I would think.

**Robert:** That's correct. And typically we would not. However, this was the first hearing that we had utilized, basically, we'll use the example of Skype. We use a different program; but nonetheless, we were able to have a hearing with all members, president of the board and hearing judge as well as the subject, Mr. Roddy Fitzgerald and witnesses, in this case, the engineers who had clearly identified that their seals were utilized. We contacted them via Skype and had them in during the time of the hearing as they were both victims and witnesses to the incident. And it was recorded. At the completion of the hearing, Mr. Fitzgerald was found guilty. We utilized those means of multimedia, skype, and obviously independent testimony for our technical reviewers to display a case against Mr. Fitzgerald.

**Line:** Wow, so direct examination and cross examination were able to be done over the video like that?

**Robert:** That is correct.

**Line:** That's awesome. Very, very interesting. And that was the first time that you guys have done something like that?

**Robert:** Yes, it was. We had not even attempted it to that point, but due to the complexity of the case, as well as the monetary amount it would take to fly everybody in, house them; and it was just not cost effective for the board to do that.

**Line:** Gotcha. Well, getting back to the case itself, what do you think were some of the key issues that helped you guys solve this?

**Robert:** I think you gotta look at several different fronts. Obviously, the initial professional engineer who did the review took notice of it and just didn't ignore it. So obviously, that was what started it all and what his review was and making the initial complaint to the board. We also were very grateful to the clients that we reached out to in those hundreds of different plans that were very willing to assist

and help us in gathering information, providing us documents, invoices, checks, interviews. We also had a lot of help from the local code officials who also dug through mountainous amounts of information to gather plans for us that Commodore Steel would have submitted them for permitting. We were lucky enough to have local assistance from the media sources down in the different areas of Mobile and Baldwin Counties to get the word out to the public so that they could call in for those who we were not aware about, and they would gather names and information and provide it to us so that we could reach out to them and speak to them.

**Line:** That brings up an interesting point with the media involved like that. You ended up getting additional cases that were unrelated to Mr. Fitzgerald because of the media exposure of what was going on.

**Robert:** That is correct. And that's something we could not have done ourselves. Things were being brought in to us as well as in the future with the criminal case we had with the criminal investigation. A lot more other information came in that we would never have dreamt of just by our research. So it was invaluable assistance.

**Line:** That's awesome. Well, ultimately, what happened? Obviously, I'm sure the Board took some action against him, but I guess in addition to that, were criminal charges eventually levied against him?

**Robert:** Yeah. We took the initial case to a hearing, which he got basically a \$30,000 fine total. That was both for hearing cost and the individual fines for his violations with us. And we forwarded it at that point to the Mobile County District Attorney's office, as well as the Baldwin County District Attorney's office. In Mobile County, we ended up getting 52 felony counts for possession of forged instrument, second degree, identity theft, theft of property, first degree. He ended up pleading to five counts with five years apiece for identity theft in Mobile County. In Baldwin County, they're still working out a plea deal and it's on four separate felony counts equally for the same things of possession of forged instrument, second degree, identity theft and theft of property, first degree. We still have that ongoing in Baldwin County, so that's yet to be determined.

**Line:** Well. What about some of the other states that I mentioned earlier? I know obviously you're not in those states, but do you know if they're taking action against him as well?

**Robert:** The last I heard from the Baldwin County, DA, they said that Mississippi and Tennessee were still gonna be taking action. I think they were holding off to determine their actions pertaining to what Baldwin County was going to do. It's still gonna happen. I know he's had some hearings already, at least in Mississippi I'm aware of. I don't know about Tennessee, but they're gonna still proceed on my understanding once Baldwin County had a conclusion to their agreement.

**Line:** Gotcha. Well, a fascinating case. Is there anything, any parting words on this case that you wanna bring to our listeners?

**Robert:** Well, I think, really the bottom line is, it's a cliché - If there's smoke, there's fire. If you feel as if there's a problem, ask more questions. Make sure you go to the source. Like in this case, the source was the professional engineer. If it didn't look right, contact that individual, see what he knows, confirm it with him that indeed, in this case, it was his product. And as it turned out, it was not. We just can't assume things; you need to dig. If something doesn't feel right, it's probably not.

**Line:** Very good. Well, thank you, Bob, for your time and being a part of this podcast. I was actually on the committee that selected your presentation "The Fitzgerald Effect," which is gonna be at our CLEAR Annual Educational Conference in Philadelphia this year, so I definitely look forward to hearing more from you about that and this case. And again, thank you for listening. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. Please subscribe to our podcast and feel free to visit our website at [www.clearhq.org](http://www.clearhq.org) for additional resources. Finally special thanks to CLEAR staff, specifically Stephanie Thompson, content coordinator and editor for this program. I'm Line Dempsey, and I hope to be speaking to you again soon.

*The audio version of this podcast episode is available at <https://podcast.clearhq.org/e/investigative-excellence-award-winner-robert-herbert/>*