

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PHILLIP SUNA, )  
)  
)  
Petitioner, )  
)  
vs. ) CASE NO. 94-4184  
)  
CONSTRUCTION INDUSTRY LICENSING )  
BOARD, )  
)  
Respondent. )  
\_\_\_\_\_)

RECOMMENDED ORDER

Upon due notice, William R. Cave, Hearing Officer, Division of Administrative Hearings (Division) held a formal hearing in this matter on September 20, 1994, in Sarasota, Florida.

APPEARANCES

For Petitioner: Phillip Suna, Pro se  
2301 Gulf of Mexico Drive  
Apartment 93-N  
Longboat Key, Florida 34228

For Respondent: Clark R. Jennings, Esquire  
Department of Legal Affairs  
The Capitol  
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUES

1. Does the master plumbing licensing examination administered by the New York City, New York (New York City), and taken by the Petitioner Phillip Suna in 1952, fall within the category of a regional or state licensing examination as set forth in Section 489.115, Florida Statutes?

2. If so, was the New York City master plumbing licensing examination taken by the Petitioner in 1952, substantially equivalent to the current plumbing contractors licensing examination administered by the Construction Industry Licensing Board (Board) of the State of Florida?

PRELIMINARY STATEMENT

By an application dated April 26, 1994, the Petitioner applied for a plumbing contractors license by endorsement as provided for in Section 489.115, Florida Statutes. By letter dated June 14, 1994, Milton Rubin, Program Administrator, Division of Professions, Construction Industry Licensing Board, advised Petitioner that at its meeting on June 9, 1994, the Board had denied his application for endorsement as a plumbing contractor. The basis of the denial

was that Petitioner's master plumbers license had been issued by New York City, after Petitioner had passed an examination administered by New York City rather than having passed a national, region, state, or United States territorial licensing examination as required by Section 489.115(3), Florida Statutes. An additional basis for denial was that the New York City licensing examination was not substantially equivalent to the licensing examination required by Part I, Chapter 489, Florida Statutes.

By letter dated June 22, 1994, the Petitioner requested a formal hearing pursuant to Section 120.57(1), Florida Statutes. By letter dated July 26, 1994, Clark Jennings, Assistant Attorney General, the Board's attorney, referred the matter to the Division for the appointment of Hearing Officer and the conduct of a hearing.

Petitioner testified on his own behalf but presented no other witness. Petitioner's exhibits A, B and G were received as evidence. Petitioner's exhibit H, a late filed exhibit, was received as evidence. The Board presented the testimony of Robert Wayne Crowell. The Board's exhibit 1 was received as evidence. Joint Composite exhibit 1 was received as evidence.

A transcript of this proceeding was filed with the Division on October, 6, 1994. The parties elected not to file any proposed findings of fact and conclusions of law.

#### FINDINGS OF FACT

Upon consideration of the evidence presented at the hearing, the following relevant findings of fact are made:

1. At all times material to this proceeding, Petitioner possessed a valid master plumbers license issued by New York City. There was no evidence that New York City had ever issued Petitioner a plumbing contractors license, or that the master plumbers license was the same as a plumbing contractors license in New York City.

2. At all times material to this proceeding, the State of New York did not administer a plumbing contractors licensing examination or a master plumbers licensing examination, having delegated this responsibility to the several municipalities within the State of New York, including but not limited to New York City. A plumbing contractors license or a master plumbers license issued by New York City or other cities within the State of New York are not valid in any jurisdiction other than the issuing jurisdiction.

3. Petitioner has some 40 years experience in the plumbing business within New York City.

4. Florida's Plumbing Contractors Examination prepared and administered by National Assessment Institute in accordance with Rule 61G4-16.001(13), Florida Administrative Code, consists of two parts: Part I, Business and Financial Management; and Part II, General Trade Knowledge.

5. Part I is comprised of the following major content areas. The number in parentheses is the approximate percentage of the examination devoted to that content area.

1. Maintaining Cash Flow (15 percent)
2. Estimating and Bidding a Job (20 percent)
3. Negotiation and Interpretation  
Contracts and Agreements ( 5 percent)
4. Processing Change Orders ( 5 percent)
5. Purchasing Control ( 5 percent)
6. Contract Scheduling ( 5 percent)
7. Controlling Costs of Fixed  
Assets ( 5 percent)
8. Obtaining Insurance and  
Bonding (10 percent)
9. Complying with Contracting  
Laws and Rules (15 percent)
10. Personnel Management ( 5 percent)
11. Complying with Payroll and  
Sales Tax Laws ( 5 percent)
12. Interpretation of Financial  
Statements and Reports ( 5 percent)

5. Under each of the major content areas are listed the tasks and the knowledge required to perform them. There are approximately 49 different tasks listed under Part I.

6. Part II of the examination consist of three questions each of which tests the applicant's knowledge of design, installation, and maintenance of several different systems. Approximately 40 percent of the examination is devoted to question one and 40 percent to question two and 20 percent to question three. Under Part II the applicant is tested on the design, installation and maintenance of 27 different systems.

7. Petitioner submitted several examinations (some were not complete) that he contended were master plumbers licensing examinations given by New York City in 1970, 1972, 1974 1976, 1982, 1983, 1985, 1987 and 1991. However, only one or two were marked as to the source or origin. The number of questions on the examinations ranged from 16 to 70 questions. The only major content area listed in Part I of the Florida plumbing contractors examination covered by the examinations submitted by the Petitioner was "Estimating and Bidding a Job". However, the coverage of "Estimating and Bidding a Job" in the tests submitted was cursory at best.

8. The examinations submitted by the Petitioner covered Part II in somewhat more detail than they did Part I. Question one of Part II was covered fairly extensively whereas Question two was somewhat less extensive than Question one, with Question three's coverage being only slight. The design, installation and maintenance of only three out of nine systems listed in Question two, and only one out of eleven systems listed in Question three were covered in the examinations submitted by the Petitioner. All of the systems listed in Question one were covered to some degree by the examinations submitted by the Petitioner.

9. Since the Petitioner was unable to submit a copy of the master plumbers examination administered by New York City in 1952, a determination of whether that particular examination is "substantially equivalent" to the Florida

Plumbing Contractors licensing examination currently in use cannot be made. However, even assuming that the New York City examinations submitted by the Petitioner were the same as the examination taken by the Petitioner in 1952, the New York master plumbers licensing examination is not "substantially equivalent" to the Florida Plumbing Contractors licensing examination currently in use..

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this proceeding pursuant to Section 120.57(1), Florida Statutes.

11. The burden of proof is on the party asserting the affirmative of an issue before and administrative tribunal. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So.2d 778 (Fla. 2d DCA 1981). To meet this burden the Petitioner must establish facts upon which his allegations are based by a preponderance of the evidence. The Petitioner has failed to meet his burden in this regard.

12. Pertinent to this case, Section 489.115(1) and (3)(a), Florida Statutes, provides:

(1) No person may engage in the business of contracting in this state without first being certified or registered in the proper classification.

\* \* \*

(3) The board shall certify as qualified for certification by endorsement any applicant who:

(a) Meets the requirements for certification as set forth in this section; has passed a national, regional, state, or United States territorial licensing examination that is substantially equivalent to the examination required by this part; and has satisfied the requirements set forth in s. 489.111; or

(b) Holds a valid license to practice contracting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to Florida's current certification criteria.

13. Petitioner contends that New York City, although not a state, it is a region because of its size, population, complexity of the plumbing within the city, the large number of public and private schools, the large number of television stations, the large number of colleges and universities, the large number of hospitals and the large number of prisons. On the other hand, the Board contends that had the legislature intended for the Board to use a contracting licensing examination administered by a city, because of its size, then it would have expressly provided for that in the language of the statutes. It is the Board's position that since region falls between national and state that the legislature intended region to encompass an area consisting of something less than national but more than one contiguous state.

14. The interpretation of Section 489.115(3)(a), Florida Statutes, urged by the Petitioner would result in the Board having to decide whether a city,

based on its size, etc., would be considered a region. The Petitioner's interpretation would lead to an unreasonable result and that interpretation should be avoided. See Department of Professional Regulation, Board of Medical Examiners v Durrani, 455 So.2d 515, 518, (Fla. 1st DCA 1984).

15. Where an agency construes a statute in its charge in a permissible way, that interpretation must be sustained though another may be possible or even, in view of some, preferable. State of Department of Health and Rehabilitative Services v. Framat Realty, Inc., 407 So.2d 238, 241 (Fla. 1st DCA 1981); Pan American World Airways, Inc. v. Florida Public Service Commission and Florida Power and Light Co., 427 So.2d 716, 719 (Fla. 1983). The Petitioner has failed to show that the Board's interpretation of the statute is clearly erroneous or unauthorized. New York City is not a region for the purposes of Section 489.115(3), Florida Statutes.

16. The second condition of Section 489.115(3))a), Florida Statutes, that Petitioner must meet in order to for the Board to approve his application for licensure by endorsement, is to show that the New York City licensing examination taken by the Petitioner is "substantially equivalent" to the Florida licensing examination currently in use. The Petitioner has failed to meet this burden.

#### RECOMMENDATION

Having considered the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Construction Industry Licensing Board enter a Final Order denying the Respondent's application for certification as a plumbing contractor by endorsement.

RECOMMENDED this 4th day January, 1995, in Tallahassee, Florida

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WILLIAM R. CAVE  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
4th day of January, 1995.

#### APPENDIX TO RECOMMENDED ORDER, CASE NO. 94-4184

The parties did not file any proposed findings of fact and conclusions of law.

#### COPIES FURNISHED:

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#### NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the Final Order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.