STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, CONSTRUCTION INDUSTRY LICENSING BOARD	)	
Petitioner,	)	
vs.	)	Case No. 97-2139
RAYMOND GUY,	)	
Respondent.	)	

RECOMMENDED ORDER

Pursuant to notice, a Section 120.57(1) hearing was held in this case on September 8, 1997, by video teleconference at sites in Miami and Tallahassee, Florida, before Stuart M. Lerner, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Seymour Stern, OPS Attorney
Department of Business and Professional Regulation
401 Northwest Second Avenue, Suite N-607
Miami, Florida 33128

For Respondent: Harry G. Robbins, Esquire
Presidential Circle Building
4000 Hollywood Boulevard, Suite 630 North
Hollywood, Florida 33021

STATEMENT OF THE ISSUES

1. Whether Respondent committed the violation alleged in the Administrative Complaint?

2. If so, what punitive action should be taken against Respondent?

PRELIMINARY STATEMENT

On February 21, 1997, the Department of Business and Professional Regulation (Department) issued an Administrative Complaint against Respondent. The Administrative Complaint read as follows:

> Petitioner, DEPARTMENT OF BUISNESS AND PROFESSIONAL REGULATION, ("Petitioner"), files this Administrative Complaint before the Construction Industry Licensing Board, against Raymond Guy, ("Respondent"), and says:
>
> 1. Petitioner is the state agency charged with regulating the practice of contracting pursuant to Section 20.165, Florida Statutes, and Chapters 455 and 489, Florida Statutes.
>
> 2. Respondent is, and has been at all times material hereto, a Certified Roofing Contractor, in the State of Florida, having been issued license number CC C049569.
>
> 3. Respondent's last known address is 7130 Park Street, Hollywood, Florida 33024.
>
> 4. At all times material hereto, Respondent was the license qualifying agent for Ray Guy Roofing (hereinafter "Contractor") and was therefore responsible for the acts, omissions, and financial responsibility of the business as it relates to contracting.
>
> 5. On or about September 1, 1992, the Contractor contracted with Christopher Klein hereinafter ("Customer") to reroof the residence located at 7880 SW 132 Street, Miami, Florida.
>
> 6. The contract price was Seven Thousand Five Hundred dollars ($7,500.00).

7. Relating to the aforesaid construction project, on or about June 30, 1995, the Customer obtained a civil judgment against the Contractor in the County Court, Eleventh Judicial Circuit, Case No. 95-7415 CC 02.

8. The amount of the judgment was Five Thousand Five Hundred dollars ($5,500.00) plus costs in the sum of One Hundred and Ninety-Eight dollars ($198.00), for a total of Five Thousand Six Hundred and Ninety-Eight dollars (5,698.00).

9. The Respondent failed to satisfy the judgment within a reasonable time.

10. Based upon the foregoing, the Respondent violated Section 489.129(1)(r), Florida Statutes (1993), by failing to satisfy within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.

WHEREFORE, Petitioner respectfully requests the Construction Industry Licensing Board enter an Order imposing one or more of the following penalties: place on probation, reprimand the licensee, revoke, suspend, deny the issuance or renewal of the certificate or registration, require financial restitution to a consumer, impose an administrative fine not to exceed $5,000 per violation, require continuing education, assess costs associated with investigation and prosecution, impose any or all penalties delineated within Section 455.227(2), Florida Statutes, and/or any other relief that the Board is authorized to impose pursuant to Chapters 489, 455, Florida Statutes, and/or the rules promulgated thereunder.

Respondent subsequently requested a Section 120.57(1) hearing on the allegations made in the Administrative Complaint. On May 8, 1997, the matter was referred to the Division of Administrative

Hearings for the assignment of an Administrative Law Judge to conduct the Section 120.57(1) hearing Respondent had requested.

As noted above, the hearing was held on September 8, 1997. A total of four witnesses testified at the hearing: Christopher Klein, the homeowner referenced in the Administrative Complaint; Respondent; John McConaghy, an employee of Ray Guy Roofing, Inc.; and Patricia Diane Guy, Respondent's wife. In addition to the testimony of these four witnesses, 17 exhibits (Petitioner's Exhibits 1 through 17) were offered and received into evidence.

At the conclusion of the evidentiary portion of the hearing, the undersigned, on the record, announced that proposed recommended orders had to be filed no later than September 22, 1997. The Department filed its proposed recommended order on September 22, 1997. The Department's proposed recommended orders has been carefully considered by the undersigned. To date, Respondent has not filed any post-hearing submittal.

FINDINGS OF FACT

Based upon the evidence adduced at hearing, and the record as a whole, the following findings of fact are made:

1. Respondent is a roofing contractor.

2. He is now, and has been at all times material to the instant case, licensed to engage in the roofing contracting business in the State of Florida.

3. He has held license number CC C049569 since 1989.

4. In the eight years that he has been licensed, he has

been disciplined once. On January 28, 1993, Respondent was issued a Uniform Disciplinary Citation alleging that, "on the 8th day of July, 1992, and the 19th day of August, 1992, [he] did violate the following provisions of law: Section 489.129(1)(j), Florida Statutes (1991), by violation of Section 489.119(5)(b), Florida Statutes (1991), by committing the following act(s): failing to include a license number on a contract and failing to include a license number on an advertisement at: 771 S.W. 61st Terrace, Hollywood, Florida 33023." Respondent did not contest these allegations. Instead, he chose to pay a $200.00 fine for having committed the violations alleged in the citation.

5. Respondent is now, and has been since February 21, 1990, the primary qualifying agent for Ray Guy Roofing, Inc., a roofing contracting business owned by Respondent and located in Hollywood, Florida.

6. Respondent's brother, Rodney Guy (Rodney), is also in the roofing business in the South Florida area. At all times material to the instant case, Rodney engaged in such business under the name "Hot Rods Roofing." In addition to having his own business, Rodney also, on occasion, worked for Respondent.

7. In August of 1992, Rodney entered into a written agreement (Contract) with Christopher Klein in which Rodney agreed, for $7,000.00, to replace the damaged roof on Klein's residence in Dade County[1] with a new roof with a seven-year warranty (Project).

8. Subsequently, the Contract price was increased $500.00 to $7,500.00 by mutual agreement.

9. Prior to the commencement of work on the Project, Respondent verbally agreed to assume Rodney's obligations under the Contract.

10. Klein paid the Contract price in full, by check, in two installments. Both checks were made out to Hot Rods Roofing (in accordance with the instructions Klein was given) and cashed by Rodney. The second check contained the following handwritten notation made by Klein: "payment in full - roof - includes Ray Guy Roofing, Inc."

11. The Project was completed on or before September 18, 1992. The work was done by Respondent and the employees of Respondent's roofing business, including Rodney.

12. Following the completion of the Project, the roof started to leak.

13. Klein thereafter unsuccessfully attempted to contact Respondent and Rodney by telephone to apprise them of the situation.

14. On or about August 1, 1993, Klein sent a letter to Respondent and Rodney advising them of the leaks in the roof and requesting that they "send someone to fix them."

15. Neither Respondent nor Rodney responded to Klein's letter.

16. Klein therefore hired someone else to fix the leaks.

17. Leaks subsequently redeveloped in the roof.

18. Klein again unsuccessfully attempted to contact Respondent and Rodney by telephone to bring the matter to their attention.

19. On or about March 22, 1994, Klein sent Respondent and Rodney a letter, which read as follows:

> As you will recall, you acted as partners in the installation of a new roof at my house after Hurricane Andrew.
>
> I have developed a leak and I have been attempting to contact both of you for over a month in connection with warranty work related thereto. I am surprised that you have ignored me because, as you will recall, my hiring you resulted in your obtaining at least 3 other jobs on my street.
>
> Please contact me within one week to schedule the repair. If I do not receive word from you, I will be forced to hire another roofing company and I will thereafter send you the bill. The bill will be for the roof repairs and to repair interior damage.

20. Neither Respondent nor Rodney responded to Klein's request.

21. Klein made temporary repairs to the roof at his own expense.

22. Klein, who is a member of The Florida Bar, subsequently filed a complaint in Dade County Court (in Dade County Court Case No. 95-7415 CC 02) seeking a judgment for damages, plus interest and costs, against Ray Guy Roofing, Inc., Respondent, and Rodney for breach of contract (Count I), negligence (Count II), and breach of warranty (Count III).

23. Respondent was served with a copy of the complaint on or about May 12, 1995.

24. Shortly thereafter Klein received a telephone call from Respondent, who wanted to speak to Klein about the lawsuit. During their telephone conversation, they agreed to meet at 5:30 p.m. on May 17, 1995, at Klein's residence to discuss the possibility of settling the lawsuit.

25. Respondent did not show up for the meeting, nor did he telephone or otherwise communicate with Klein to explain his absence.

26. Respondent also failed to respond to Klein's complaint.[2]

27. On June 30, 1995, pursuant to Klein's written request, a Final Default Judgment was entered against Respondent and Ray Guy Roofing, Inc.,[3] in Dade County Court Case No. 95-7415 CC 02. The Final Default Judgment provided as follows:

> THIS CAUSE came before the Court this date on Plaintiff's Motion for Final Default Judgment against Defendants Raymond Guy, Individually and Ray Guy Roofing, Inc., and the Court having noted that said Defendants were duly served and defaulted herein, and the court being otherwise duly advised in the premises, it is thereupon
>
> ORDERED that Plaintiff's Motion is granted and that
>
> Plaintiff, Christopher J. Klein, hereby recovers from Defendants, Ray Guy Roofing, Inc., and Raymond Guy, Individually, the principal sum of $5,500.00 plus costs in the sum of $198.00, making a total sum due of $5,698.00, for which sum let execution issue.

Klein sent a copy of the Final Default Judgment to Respondent by United States Mail on or about July 21, 1995.

28. The Final Default Judgment was not appealed, and it has not been vacated, set aside, discharged, or satisfied, in whole or in part.

CONCLUSIONS OF LAW

29. The Department has been vested with the statutory authority to issue licenses to those qualified applicants seeking to engage in the roofing contracting business in the State of Florida. Section 489.115, Florida Statutes.

30. A business entity, like Ray Guy Roofing, Inc., may obtain such a license, but only through a licensed "qualifying agent." Section 489.119, Florida Statutes.

31. There are two types of "qualifying agents": "primary qualifying agents," and "secondary qualifying agents."

32. A "primary qualifying agent" is defined in subsection (4) of Section 489.105, Florida Statutes, as follows:

> "Primary qualifying agent" means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage and control the contracting activities of the business organization with which he is connected; who has the responsibility to supervise, direct, manage, and control construction activities on a job for which he has obtained the building permit; and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the [D]epartment.

33. A "secondary qualifying agent" is defined in subsection (5) of Section 489.105, Florida Statutes, as follows:

> "Secondary qualifying agent" means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage, and control construction activities on a job for which he has obtained a permit, and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the [D]epartment.

34. The "responsibilities" of "qualifying agents" are further described in Section 489.1195, Florida Statutes, which provides, in pertinent part, as follows:

> (1) A qualifying agent is a primary qualifying agent unless he is a secondary qualifying agent under this section.
>
> (a) All primary qualifying agents for a business organization are jointly and equally responsible for supervision of all operations of the business organization; for all field work at all sites; and for financial matters, both for the organization in general and for each specific job. . . .

35. The Construction Industry Licensing Board (Board) may take any of the following punitive actions against a contractor serving as the "primary qualifying agent" for a business entity if (a) an administrative complaint is filed alleging that the contractor or the business entity committed any of the acts proscribed by Section 489.129(1), Florida Statutes, and (b) it is shown that the allegations of the complaint are true: revoke or suspend the contractor's license; place the contractor on probation; reprimand the contractor; deny the renewal of the

contractor's license; impose an administrative fine not to exceed $5,000.00 per violation; require financial restitution to the victimized consumer(s); require the contractor to take continuing education courses; or assess costs associated with the Department's investigation and prosecution. Proof greater than a mere preponderance of the evidence must be submitted. Clear and convincing evidence of the contractor's guilt is required. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); McKinney v. Castor, 667 So. 2d 387, 388 (Fla. 1st DCA 1995); Tenbroeck v. Castor, 640 So. 2d 164, 167 (Fla. 1st DCA 1994); Nair v. Department of Business and Professional Regulation, 654 So. 2d 205, 207 (Fla. 1st DCA 1995); Pic N' Save v. Department of Business Regulation, 601 So. 2d 245 (Fla. 1st DCA 1992); Munch v. Department of Professional Regulation, 592 So. 2d 1136 (Fla. 1st DCA 1992); Newberry v. Florida Department of Law Enforcement, 585 So. 2d 500 (Fla. 3d DCA 1991); Pascale v. Department of Insurance, 525 So. 2d 922 (Fla. 3d DCA 1988); Section 120.57(1)(h), Florida Statutes ("[f]indings of fact shall be based on a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute"). "'[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly

remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.'" In re Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting, with approval, from Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). Furthermore, the punitive action taken against the contractor may be based only upon those offenses specifically alleged in the administrative complaint. See Cottrill v. Department of Insurance, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Kinney v. Department of State, 501 So. 2d 129, 133 (Fla. 5th DCA 1987); Hunter v. Department of Professional Regulation, 458 So. 2d 842, 844 (Fla. 2d DCA 1984).

36. The Administrative Complaint issued in the instant case alleges that punitive action should be taken against Respondent because he violated Section 489.129(1)(r), Florida Statutes, by failing to timely satisfy the Final Default Judgment entered in Dade County Court Case No. 95-7415 CC 02 against him and Ray Guy Roofing, Inc., the business entity for which he was (and still is) the primary qualifying agent.

37. At all times material to the instant case, Section 489.129(1)(r), Florida Statutes, has authorized the Board to take punitive action against a contractor if the contractor or the business entity for which the contractor is a primary qualifying

agent:

> Fail[s] to satisfy within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.

38. The failure to satisfy a civil judgment in violation of Section 489.129(1)(r), Florida Statutes, is a continuing offense that is not completed until the judgment is satisfied. See Haupt v. State, 499 So. 2d 16, 17 (Fla. 2d DCA 1986).

39. According to Rule 61G4-17.001(23), Florida Administrative Code, "[f]or purposes of Section 489.129(1)(r), F.S., 'reasonable time' means ninety (90) days following the entry of a civil judgment that is not appealed."[4]

40. A contractor may not defend against a charge of failing to satisfy an unappealed civil judgment (in violation of Section 489.129(1)(r), Florida Statutes) by challenging the correctness or the validity of the judgment. See The Florida Bar v. Onett, 504 So. 2d 388, 389 (Fla. 1987); The Florida Bar v. Vernell, 374 So. 2d 473, 475 (Fla. 1979); Department of Health and Rehabilitative Services v. Wood, 600 So. 2d 1298, 1300 (Fla. 5th DCA 1992); McGraw v. Department of State, Division of Licensing, 491 So. 2d 1193, 1195 (Fla. 1st DCA 1986).

41. An examination of the evidentiary record in the instant case reveals that the Department has clearly and convincingly established that, as alleged in the Administrative Complaint, in violation of Section 489.129(1)(r), Florida Statutes, Respondent

failed to satisfy within a reasonable time the Final Default Judgment entered against him and Ray Guy Roofing, Inc., in Dade County Court Case No. 95-7415 CC 02, a civil judgment "relating to the practice of [his] profession."[5] Punitive action against Respondent is therefore warranted.

42. In determining the particular punitive action the Board should take against Respondent for having committed this violation of Section 489.129(1)(r), Florida Statutes, it is necessary to consult Chapter 61G4-17, Florida Administrative Code, which contains the Board's "disciplinary guidelines." Cf. Williams v. Department of Transportation, 531 So. 2d 994, 996 (Fla. 1st DCA 1988)(agency required to comply with its disciplinary guidelines when taking disciplinary action against its employees).

43. Rule 61G4-17.001, Florida Administrative Code, provides, in pertinent part, as follows:

> Normal Penalty Ranges. The following guidelines shall be used in disciplinary cases, absent aggravating or mitigating circumstances and subject to the other provisions of this Chapter. . . .
>
> (18) Failure to satisfy a civil judgment obtained against the licensee or the business organization qualified by the licensee within a reasonable time. First violation, $500 to $1,000 fine and/or proof of satisfaction of civil judgment; repeat violation, $1,000 to $5,000 fine and/or proof of satisfaction of civil judgment, probation, suspension or revocation.
>
> (19) For purposes of these guidelines, violations for which the Respondent has

> previously been issued a citation pursuant to Section 455.224, F.S., and rule 61G4-19.001, shall be considered repeat violations.
>
> (20) For any violation occurring after October 1, 1989, the board may assess the costs of investigation and prosecution. The assessment of such costs may be made in addition to the penalties provided by these guidelines without demonstration of aggravating factors set forth in rule 61G4-17.002.
>
> (21) For any violation occurring after October 1, 1988, the board may order the contractor to make restitution in the amount of financial loss suffered by the consumer. Such restitution may be ordered in addition to the penalties provided by these guidelines without demonstration of aggravating factors set forth in rule 61G4-17.002, and to the extent that such order does not contravene federal bankruptcy law. . . .
>
> (23) . . . The Board will consider a mutually agreed upon payment plan as satisfaction of such a judgment so long as the payments are current.

44. "Repeat violation," as used in Chapter 61G4-17, Florida Administrative Code, is described in Rule 61G4-17.003, Florida Administrative Code, as follows:

> (1) As used in this rule, a repeat violation is any violation on which disciplinary action is being taken where the same licensee had previously had disciplinary action taken against him or received a letter of guidance in a prior case; and said definition is to apply (i) regardless of the chronological relationship of the acts underlying the various disciplinary actions, and (ii) regardless of whether the violations in the present or prior disciplinary actions are of the same or different subsections of the disciplinary statutes.

> (2) The penalty given in the above list for repeat violations is intended to apply only to situations where the repeat violation is of a different subsection of Chapter 489 than the first violation. Where, on the other hand, the repeat violation is the very same type of violation as the first violation, the penalty set out above will generally be increased over what is otherwise shown for repeat violations on the above list.

45. Rule 61G4-17.005, Florida Administrative Code, provides that "[w]here several of the . . . violations [enumerated in Rule 61G4-17.001, Florida Administrative Code] shall occur in one or several cases being considered together, the penalties shall normally be cumulative and consecutive."

46. The aggravating and mitigating circumstances which are to be considered before a particular penalty is chosen are listed in Rule 61G4-17.002, Florida Administrative Code. They are as follows:

> (1) Monetary or other damage to the licensee's customer, in any way associated with the violation, which damage the licensee has not relieved, as of the time the penalty is to be assessed. (This provision shall not be given effect to the extent it would contravene federal bankruptcy law.)
>
> (2) Actual job-site violations of building codes, or conditions exhibiting gross negligence, incompetence, or misconduct by the licensee, which have not been corrected as of the time the penalty is being assessed.
>
> (3) The severity of the offense.
>
> (4) The danger to the public.
>
> (5) The number of repetitions of offenses.

(6) The number of complaints filed against the licensee.

(7) The length of time the licensee has practiced.

(8) The actual damage, physical or otherwise, to the licensee's customer.

(9) The deterrent effect of the penalty imposed.

(10) The effect of the penalty upon the licensee's livelihood.

(11) Any efforts at rehabilitation.

(12) Any other mitigating or aggravating circumstances.

47. Having considered the facts of the instant case in light of the provisions of Chapter 61G4-17, Florida Administrative Code, it is the view of the undersigned that the appropriate punitive action to take against Respondent in the instant case is to require him to: (a) pay a fine in the amount of $1,000.00; (b) submit proof of satisfaction of the Final Default Judgment entered against him and Ray Guy Roofing, Inc., in Dade County Court Case No. 95-7415 CC 02; and (c) reimburse the Department for all reasonable costs associated with the investigation that led to the filing of the charges set forth in the Administrative Complaint[6] and for all reasonable costs associated with its successful prosecution of these charges.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department issue a final order (1) finding Respondent guilty of the violation of Section 489.129(1)(r), Florida Statutes, alleged in the Administrative Complaint, and (2) disciplining Respondent for having committed this violation by requiring him to: (a) pay a fine of $1,000.00; (b) submit proof of satisfaction of the Final Default Judgment entered in Dade County Court Case No. 95-7415 CC 02; and (c) reimburse the Department for all reasonable costs associated with the Department's investigation and prosecution of the charges set forth in the Administrative Complaint.

DONE AND ENTERED this 25th day of September, 1997, in Tallahassee, Leon County, Florida.

STUART M. LERNER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675 SUNCOM 278-9675
Fax Filing (904) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of September, 1997.

ENDNOTES

[1] The roof had been damaged by Hurricane Andrew.

[2] At no time had Klein advised Respondent that it was unnecessary for Respondent to answer the complaint.

[3] Klein had been unable to locate Rodney and to have process served on him.

[4] Because it merely clarified existing law (by defining the term "reasonable time," as used in Section 489.129(1)(r), Florida Statutes), Rule 61G4-17.001(23), Florida Administrative Code, may be applied in cases where the alleged violation of Section 489.129(1)(r), Florida Statutes, occurred prior to its [Rule 61G4-17.001(23)'s] effective date. Cf. Agency for Health Care Administration v. Associated Industries of Florida, Inc., 678 So. 2d 1239, 1256 (Fla. 1996)("The law is clear in this state that there can be no retroactive application of substantive law without a clear directive from the legislature. However, procedural provisions and modifications for the purposes of clarity are not so restricted."); Nussbaum v. Mortgage Service America Company, 913 F. Supp. 1548, 1557 (S.D. Fla. 1995)("A new rule intended to clarify or apply the law to a new factual setting does not constitute a substantive change in the law. A rule meant to clarify an unsettled area of the law does not change the law, but rather clarifies 'what the law according to the agency is and has always been,' and 'is no more retroactive in its operation than is a judicial determination construing and applying a statute to a case in hand.'")

[5] The evidence submitted by Respondent is insufficient to support a finding of his or his business' inability to pay the judgment due to indigence or insolvency. See Eberhardt v. Eberhardt, 590 So. 2d 1134. 1135 (Fla. 4th DCA 1992)("A party is not an indigent simply by declaring himself indigent."). Although Respondent's wife testified that Respondent did not have the funds to pay Klein, there were no details presented concerning Respondent's or his business' current or past assets, liabilities, net worth, or income. Without such information, the undersigned is unwilling to find that Respondent has failed to satisfy the judgment due to lack of funds, particularly in light of the evidence suggesting that, since the entry of the judgment, Respondent has remained in business and that he has had the money to retain and pay counsel to represent him in this matter. Cf. Bain v. State, 642 So. 2d 578 (Fla. 5th DCA 1994)("The only evidence offered the trial court about future inability to pay the amount of the losses suffered by the victim came from Bain herself, which the court was entitled to accept or reject based on credibility."). In any event, a licensed contractor who "[f]ail[s] to satisfy within a

reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession," is guilty of violating Section 489.129(1)(r), Florida Statutes, regardless of the licensee's ability to pay the judgment. The failure to pay need not be willful for there to be such a violation. Section 489.129(1)(r), Florida Statutes, was designed to protect the public against contractors who fail to meet their legal obligations, whether they have the financial ability to do so or not.

[6] Pursuant to Rule 61G4-12.018, Florida Administrative Code, the Department is required

> to submit to the Board an itemized listing of all costs related to investigation and prosecution of an administrative complaint when said complaint is brought before the Board for final agency action.

Fundamental fairness requires that the Board provide a respondent with an opportunity to dispute and challenge the accuracy and/or reasonableness of the Department's itemization of investigative and prosecutorial costs before determining the amount of costs a respondent will be required to pay.

COPIES FURNISHED:

Seymour Stern, OPS Attorney
Department of Business and Professional Regulation
401 Northwest Second Avenue, Suite N-607
Miami, Florida 33128

Harry G. Robbins, Esquire
Presidential Circle Building
4000 Hollywood Boulevard, Suite 630 North
Hollywood, Florida 33021

Rodney Hurst, Executive Director
Construction Industry Licensing Board
7960 Arlington Expressway, Suite 300
Jacksonville, Florida 32211

Lynda L. Goodgame, General Counsel
Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.