

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

KENNETH J. MAXWELL, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 98-3468  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, )  
 ELECTRICAL CONTRACTORS' )  
 LICENSING BOARD, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 16, 1998, by video between Tallahassee, Florida, and Miami, Florida, before Claude B. Arrington, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Oscar Syger, Esquire  
Law Offices of Oscar Syger  
Biscayne Building, Suite 810  
19 West Flagler Street  
Miami, Florida 33130

For Respondent: Ann Cocheu, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether Petitioner meets the criteria to sit for the Alarm Contractor I licensure examination.

PRELIMINARY STATEMENT

Petitioner's application to sit for the Alarm Contractor I licensure examination contained information pertaining to his experience. On June 16, 1998, Respondent denied his application to sit for the examination. The denial letter asserted that Petitioner failed to meet the criteria set forth in Rule 61G6-5.003(1), Florida Administrative Code. Petitioner timely challenged the denial, the matter was referred to the Division of Administrative Hearings, and this proceeding followed.

At the formal hearing, Petitioner testified on his own behalf, but presented no other testimony. The only exhibit submitted by the Petitioner was a copy of a schematic drawing of one of the jobs on which he worked. Respondent presented the testimony of Herbert Morris, a member of the Construction Licensing Board, who was accepted as an expert in the field of alarm contracting.

A transcript of the proceedings has been filed. The Petitioner and Respondent filed proposed recommended orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Electrical Contractor's Licensing Board is the agency of the State of Florida responsible for licensing alarm system contractors.

2. Section 489.505, Florida Statutes, contains the

following definitions pertaining to this proceeding:

As used in this part:

(1) "Alarm system" means any electrical device or combination of electrical devices used to detect a situation which causes an alarm in the event of a burglary, fire, robbery, medical emergency, or equipment failure.

(2) "Alarm system contractor" means a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems for compensation, including, but not limited to, all types of alarm systems for all purposes.

(a) "Alarm system contractor I" means an alarm system contractor whose business includes all types of alarm systems for all purposes. . . .

3. Petitioner applied to sit for the alarm system contractor I examination pursuant to the provisions of Section 489.511(2)(a)3.c., Florida Statutes, which provides that a person can sit for the licensure examination if that person:

c. Has, within the 12 years immediately preceding the filing of the application, at least 6 years of comprehensive training, technical education, or broad experience associated with an electrical or alarm system installation or servicing endeavor; or

4. Rule 61G6-5.003(1)(c)2., Florida Administrative Code, provides, in pertinent part, as follows:

(1) Any person desiring to take the certification examination must establish that he or she meets eligibility requirements according to one of the following criteria:

\* \* \*

(c) Has, within 12 years immediately preceding the filing of the application, at least 6 years of comprehensive training,

technical education, or broad experience associated with an electrical or an alarm system installation or servicing endeavor. The experience required must include:

\* \* \*

2. For an alarm contractor I, at least 40% of work that is in fire alarm systems.

5. By letter dated June 16, 1998, Respondent denied Petitioner's application on the ground that the application failed to demonstrate compliance with Rule 61G6-5.003(1)(c)2., Florida Administrative Code.

6. At all times pertinent to this proceeding, Petitioner worked full-time for Florida Power and Light in the capacity of a connect and disconnect man. Petitioner described this position as installing electric meters or disconnecting electric meters when there has been an initiation, change, or termination of service.

7. Petitioner's employment with Florida Power and Light does not require him to work directly with any type of alarm system.

8. The application form provided by Respondent required Petitioner to submit a representative list of his experience. He was to provide a detailed description of the work performed, the job location and address, the general contractor's name, and the name and telephone number of the contractor who pulled the permit.

9. Petitioner provided information pertaining to five jobs

in his application and at the formal hearing. Petitioner claimed to have worked on the burglar and fire alarm system during the construction of the First Baptist Church of Brownsville, 4600 Northwest 23rd Avenue, Miami, Florida, between March 29, 1997, and February 9, 1998. Petitioner claimed that he designed the fire alarm system and drew the plans for that system on the blueprint that was used for the construction of the building. Petitioner also claimed to have participated in the installation of the fire and burglar alarm systems. Petitioner testified that the alarm system had 99 devices and was a Fire Light 5210 U.D. system. Petitioner testified that he kept a computer generated time ticket for each job. These computer records were not offered into evidence. Petitioner testified that he spent approximately 2300 hours on the job involving the church. 1/

10. The second job identified by Petitioner was a joint project with West Kendall Electric for the installation of a NAPCO 2600 model fire alarm system in a residence between March and October 1993. Petitioner estimated that he spent approximately twenty hours on this job.

11. The third job identified by Petitioner was the installation of a residential fire alarm system, security system, burglar alarm system, intercom system, television antenna system, and telephone system at a residence located at 199905 Southwest 135th Avenue, Miami, Florida. The dates of the job were between December 19, 1990, and July 15, 1991. The fire and burglar alarm

system was a NAPCO 2600 model. Petitioner did not estimate the amount of time he expended on that job.

12. The fourth job identified by Petitioner was the installation of a NAPCO 3000 model system at 14911 Southwest 144th Terrace, Miami, Florida. Petitioner described this system as an industrial fire and burglar alarm panel with automation and approximately 35 sensors. The dates of the job were between January 6, 1995, and October 20, 1996. Petitioner testified that he expended approximately 90 hours on this project, with forty to forty-five percent of the job being devoted to the fire alarm system.

13. The fifth job identified by Petitioner was the installation of a NAPCO 2600 model fire and burglar alarm system at 14460 Southwest 152nd Court, Miami, Florida. This was another joint project with West Kendall Electric. Petitioner estimated that he expended 80 hours on that job with forty to forty-five percent of the job being devoted to the fire alarm system. This job lasted between December 14, 1993, and March 27, 1994.

14. Petitioner testified that he spent 2,358 hours on the five jobs he identified. He also stated that he had devoted 1,414 of those hours to burglar alarm systems, "according to the ratio." 2/

15. Petitioner testified that he had been a member of the National Fire Protection Association since 1994. There are no standards for admission to that association, other than the

payment of a membership fee.

16. Petitioner has attended various fire alarm seminars over the years sponsored either by system manufactures or associations, such as the National Fire Protection Association. He attended a seminar consisting of 16 hours sponsored by the National Fire Protection Association in May of 1994. He attended an alarm installers seminar sponsored by a manufacturer in February 1990 consisting of 24 hours over a three-day period. He attended another seminar sponsored by a manufacturer for eight hours on October 29, 1992. Petitioner attended a fire alarm training seminar on May 19, 1998.

#### CONCLUSIONS OF LAW

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

18. Petitioner has the burden of proving by a preponderance of the evidence that he meets the criteria to sit for the licensure examination. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

19. Rule 61G6-5.001, Florida Administrative Code, contains the following definitions pertinent to this proceeding:

(8) "Comprehensive" means skill, knowledge and experience covering all areas of contracting.

\* \* \*

(10) "Education" means formal instruction provided by an accredited public or private school, community college or university which



includes formal classroom time and testing and results in the conference [sic] of a recognized degree. For the purposes of this definition 500 man hours equals one year of instruction.

(11) "Experience" means informal exposure to the trade wherein knowledge and skill is obtained via direct observation or participation.

\* \* \*

(14) "Broad Experience" means that he or she has experience in the electrical or alarm contracting industry which may include management, supervision and hands on experience in the installation of electrical or alarm components as applicable.

(15) "Comprehensive training" means obtaining technical, management, and supervision knowledge and experience through the use of instruction and practice in all phases of the electrical or alarm contracting trade.

20. Petitioner testified that he expended 2,300 hours of his time on the commercial project involving the church between March 29, 1996, and February 9, 1997. When one considers that Petitioner was working full-time for Florida Power and Light during this time, his uncorroborated testimony that he spent 2,300 hours on this project is not credible.

21. Petitioner testified that he spent 20 hours on the second job, 90 hours on the fourth job, and 80 hours on the fifth job. No estimate was given for the third job, which lasted between December 19, 1990, and July 15, 1991.

22. Petitioner testified that he spent a total of 2,358 hours on the five projects he identified. When one adds the hours he claimed to have spent on these jobs, the total is 2,490

hours (excluding all hours for the third job). The conflict in these sums serves to underscore the equivocal nature of Petitioner's testimony.

23. Even if one accepts the estimates offered by Petitioner as to the amounts of time expended on these jobs, it is concluded that the one commercial job and the four residential jobs, done with no supervision from a licensed alarm contractor, are insufficient to establish that he meets the criteria to sit for the certification examination pursuant to Section 489.511(2)(a)3.c., Florida Statutes.

24. In reaching the foregoing conclusion, the undersigned has considered Petitioner's testimony as to the seminars he attended and the association to which he belongs. The seminars added to Petitioner's experience, and have been considered to be positive factors for Petitioner. The association to which he belongs has no membership criteria, other than the payment of a fee. Membership in that association was not shown to add to Petitioner's experience.

25. Petitioner has failed to establish that he has at least 6 years of "comprehensive training," "technical education," or "broad experience" associated with an electrical or alarm system installation or servicing endeavor as those terms are used in the statute and defined by rule.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of

Law, it is RECOMMENDED that Respondent enter a Final Order that denies Petitioner's application to sit for the certification examination.

DONE AND ENTERED this 4th day of January, 1999, in Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of January, 1999.

#### ENDNOTES

1/ The transcript at page 24 reflects the following questions by Petitioner's attorney and the answers by Petitioner:

Q. Mr. Maxwell, did you participate in the installation of the fire alarm system?

A. Yes. I was a participant.

Q. And tell us what you did?

A. Well, at the time of the preconstruction there was an original electrician out on the job and they did all the foundational work, foot work, with this system, which included the typing, the raceways, et cetera, et cetera. They also originally ran a conventional wiring, which is not a standard requirement within this field.

Q. What did you do?

A. The electrician brought me in to redesign this system to bring it up to code and to coordinate with the Fire Marshall's office so

that we can get the system properly  
operational for life safety purposes.

2/ This testimony is reflected at page 33, lines 12 through 13  
of the Transcript. The ratio to which Petitioner referred  
pertains to fire alarm systems, not burglar alarm systems.

COPIES FURNISHED:

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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.