

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
BUILDING CODE ADMINISTRATORS )  
AND INSPECTORS, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-5629  
 )  
JAMES L. BROWN, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 8, 2000, at Stuart, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Dorota Trzeciecka, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399

For Respondent: Michael A. Rodriguez, Esquire  
County Attorney's Office  
2401 Southeast Monterey Road  
Stuart, Florida 34996

Leif Grazi, Esquire  
LAW OFFICES OF GRAZI & GIANINO, P.A.  
217 East Ocean Boulevard  
Stuart, Florida 34995

STATEMENT OF THE ISSUES

Whether the Respondent committed the violation alleged and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

The Petitioner, Department of Business and Professional Regulation (Department), filed an Administrative Complaint against the Respondent, James L. Brown, on November 2, 1998. The complaint alleged that the Respondent violated Section 468.621(1)(f), Florida Statutes. More specifically, the complaint alleged that the Respondent filed a false record by initialing inspections reports prior to being licensed to do so. The Respondent timely filed an Election of Rights disputing the allegations of fact and requested a formal hearing. The matter was forwarded to the Division of Administrative Hearings for formal proceedings on December 23, 1998.

The case was placed in abeyance during a time when the parties attempted to reach a settlement. After the parties' stipulated settlement agreement was rejected by the Board, the matter was rescheduled for final hearing for August 8, 2000. This case was heard concurrently with Department of Business and Professional Regulation, Building Code Administrators and Inspectors Board v. Bobby T. Chambers, DOAH Case No. 99-4892. A separate Recommended Order has been entered in that matter. The record of both cases will be forwarded to the Department together.

At the hearing, the Petitioner presented testimony from Martin A. Joyce, Jr.; Charles Sabin, and Robert Holsclaw. The Petitioner's Exhibits 1 through 4 and 7 through 10 were admitted into evidence. Official recognition was taken of the provisions of law cited in the record. The Respondent presented testimony from Bartley D. Stuart and Kevin Hempel.

The Transcript of the proceeding was filed with the Division of Administrative Hearings on August 30, 2000. The Petitioner was granted leave to late-file a Proposed Recommended Order. All proposed orders have been fully considered in the preparation of this order.

#### FINDINGS OF FACT

1. The Petitioner is the state agency charged with the responsibility of regulating building code administrators and inspectors.

2. At all times material to the allegations of this case, the Respondent was either an applicant for licensure or held a building inspector license, license number BN 0002765.

3. At all times material to this case, the Respondent was employed by the Martin County Building Department as a Building Inspector.

4. Harriet R. Edwards owns a residence located at 2595 Hickory Avenue, Jensen Beach, Florida. This home is located in Martin County, Florida.

5. At some point in early 1996, it became Ms. Edwards' desire to construct an addition to her residence. She retained a contractor to perform the work and returned to Ohio during the time of the construction.

6. When Ms. Edwards returned to Florida she was dissatisfied with the quality of the work. Mr. Joyce, Ms. Edwards' friend, expressed that they had expressed a desire for, and requested only, a high quality of work for the addition to Ms. Edwards' home.

7. Upon investigation it was discovered that the permit card located at the construction site had been initialed by the Respondent. All of the inspections listed on the permit card occurred prior to December 17, 1996.

8. The Respondent was issued a provisional license to perform building inspections on or about December 17, 1996.

9. All of the inspections initialed by the Respondent had been performed by another inspector employed by the Martin County Building Department, Bobby T. Chambers. Mr. Chambers was fully licensed at the times of the inspections and acted as the Respondent's training supervisor.

10. The Respondent accompanied Mr. Chambers during a training period during which time Mr. Chambers was to instruct the Respondent in the procedures and practices of the Martin County Building Department.

11. At all times material to the allegations of this complaint, the Martin County Building Department allowed unlicensed employees to assist its inspectors at construction sites. Such employees were authorized to initial permit cards and to radio to the main office the information regarding inspections performed at the job sites. Because of this informal and haphazard reporting system the official records maintained by the County falsely reflected that the Respondent had performed the inspections listed in this Administrative Complaint. He did not. The records were maintained inaccurately.

12. By initialing the permit card and transmitting the information to the County, the Respondent was performing his duties as an employee-in-training and as directed by his supervisors. The Respondent did not intend to mislead officials and did not intend to file a false report required by law.

13. As a result of the flawed training system used by the Martin County Building Department, this Respondent initialed permit documents prior to licensure.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings.

15. The Petitioner bears the burden of proof in this cause to establish by clear and convincing evidence the allegations of the violation.

16. Section 468.621(1), Florida Statutes, provides, in pertinent part:

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

\* \* \*

(f) Making or filing a report or record which the certificateholder knows to be false, or knowingly inducing another to file a false report or record, or knowingly failing to file a report or record required by state or local law, or knowingly impeding or obstructing such filing, or knowingly inducing another person to impede or obstruct such filing.

17. The Petitioner has failed to establish that this Respondent knowingly filed a false report. In this case the clear and convincing evidence established that this Respondent was following the instructions and training given to him. The County supervisors directed the instant conduct. This Respondent should not face administrative penalties due to a miscommunication in the recording of the name of the person who actually performed the inspections. Mr. Chambers admitted he performed the inspections described in this case. The Respondent's conduct in this case was in accordance with the employer's directives and was not an attempt to obstruct the accurate filing of required inspection records.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and

Professional Regulation, Building Code Administrators and Inspectors Board, enter a final order dismissing the Administrative Complaint against this Respondent.

DONE AND ENTERED this 23rd day of October, 2000, in Tallahassee, Leon County, Florida.

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J. D. Parrish  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of October, 2000.

COPIES FURNISHED:

Dorota Trzeciecka, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399

Michael A. Rodriguez, Esquire  
County Attorney's Office  
2401 Southeast Monterey Road  
Stuart, Florida 34996

Leif Grazi, Esquire  
LAW OFFICES OF GRAZI & GIANINO, P.A.  
217 East Ocean Boulevard  
Stuart, Florida 34995

Anthony B. Spivey, Executive Director  
Building Code Administrators  
and Inspectors  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

Barbara D. Auger, General Counsel  
Department of Business and  
Professional Regulation  
Northwood Centre  
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.