

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DAVID B. ARMSTRONG,)	
)	
Petitioner,)	
)	
vs.)	Case No. 01-1573
)	
DEPARTMENT OF BUSINESS AND)	
PROFESSIONAL REGULATION,)	
ELECTRICAL CONTRACTORS)	
LICENSING BOARD,)	
)	
Respondent.)	
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RECOMMENDED ORDER

The parties having been provided proper notice, Administrative Law Judge John G. Van Laningham of the Division of Administrative Hearings convened a formal hearing of this matter by video teleconference on June 18, 2001. Petitioner appeared pro se in Fort Lauderdale, Florida, and Respondent, through counsel, was present in Tallahassee, Florida, where the Administrative Law Judge presided.

APPEARANCES

For Petitioner: David B. Armstrong, pro se
5726 Southwest 103rd Avenue
Fort Lauderdale, Florida 33328

For Respondent: Barbara Rockhill Edwards, Esquire
Assistant Attorney General
Department of Legal Affairs
The Capitol, Plaza Level 01
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STATEMENT OF THE ISSUE

Whether Petitioner is entitled to licensure as a certified electrical contractor pursuant to the "grandfathering" provisions of Section 489.514, Florida Statutes.

PRELIMINARY STATEMENT

On December 11, 2000, Petitioner David B. Armstrong ("Armstrong"), a state-registered and locally-licensed specialty electrical contractor doing business in Fort Lauderdale, Florida, applied to Respondent Electrical Contractors Licensing Board (the "Board"), which is a board under the jurisdiction of the Department of Business and Professional Regulation (the "Department"), for licensure as a certified electrical contractor. On February 6, 2001, the Board denied Armstrong's application for one reason: he lacked the required five years of experience as a state-registered contractor.

Armstrong timely requested a formal hearing, and the matter was referred to the Division of Administrative Hearings on April 27, 2001. The case was assigned to the undersigned, who set the final hearing for June 18, 2001.

The final hearing took place as scheduled. Armstrong, representing himself, testified in his own behalf and called no other witnesses. The parties introduced one joint composite exhibit comprised of the Department's file on Armstrong's application. The Board called one witness: its Program

Administrator, George Ayrish. After the conclusion of the hearing, Armstrong filed an additional exhibit, with leave, which was received in evidence without objection as Petitioner's Exhibit 1.

Neither party ordered a transcript of the final hearing. By Order of Post-Hearing Instructions entered June 18, 2001, the parties were directed to file their proposed recommended orders on or before June 28, 2001. The Board timely submitted one; Armstrong did not. The Board's papers were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The evidence presented at final hearing established the facts that follow.

1. Armstrong is a specialty electrician who operates a business named Sound Planning Distributors, Inc. in Fort Lauderdale, Florida.

2. Armstrong holds a local license (called a Certificate of Competency) from the Broward County Central Examining Board of Contractors that authorizes him to engage in specialty electrical contracting in Broward County.

3. Armstrong's local license was issued on November 14, 1989. To obtain it, Armstrong had been required to pass a written examination prepared, proctored, and graded by Block and

Associates, a prerequisite which he had accomplished on October 28, 1989.

4. Armstrong's local license is active and in good standing; he has not been the subject of any complaints filed with, or discipline imposed by, the local licensing authority.

5. In 1996, Armstrong learned that he needed to become state-registered as a specialty contractor pursuant to Section 489.513, Florida Statutes. He applied to the Department, which in due course issued him a license as a registered specialty contractor, originally effective December 9, 1996.

6. Armstrong has renewed his state registration from time to time as required by law. His state registration is currently active and valid through August 31, 2001.

7. On December 11, 2000, Armstrong applied for certification as a specialty contractor pursuant to the "grandfathering" provisions of Section 489.514, Florida Statutes. (Registration and certification are distinct forms of licensure under Part II of Chapter 489, Florida Statutes, which deals with the regulation of electrical and alarm system contractors.)

8. On February 6, 2001, the Board denied Armstrong's application for certification solely because he lacked five years of experience as a registered contractor, which is a condition of licensure pursuant to Section 489.514(2)(c),

Florida Statutes, and Rule 61G6-5.0035, Florida Administrative Code.¹

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

10. As an applicant for licensure, Armstrong bore the burden at hearing of going forward initially with proof of his fitness for certification; he also was required to shoulder the ultimate burden of persuasion. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932, 934 (Fla. 1st DCA 1996).

11. The statute under which Armstrong presented his application to the Board provides as follows:

489.514 Certification for registered contractors; grandfathering provisions.-

(1) The board shall, upon receipt of a completed application, appropriate fee, and proof of compliance with the provisions of this section, issue:

(a) To an applying registered electrical contractor, a certificate as an electrical contractor, as defined in s. 489.505(12); or

(b) To an applying registered alarm system contractor, a certificate in the matching alarm system contractor category, as defined in s. 489.505(2)(a) or (b); or

(c) To an applying registered electrical specialty contractor, a certificate in the matching electrical specialty contractor category, as defined in s. 489.505(19).

(2) Any contractor registered under this part who makes application under this

section to the board shall meet each of the following requirements for certification:

(a) Currently holds a valid registered local license in the category of electrical contractor, alarm system contractor, or electrical specialty contractor.

(b) Has, for that category, passed a written, proctored examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(c) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required under this subsection.

(d) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended in the last 5 years, or been assessed a fine in excess of \$500 in the last 5 years.

(e) Is in compliance with the insurance and financial responsibility requirements in s. 489.515(1)(b).

(3) An applicant must make application by November 1, 2004, to be licensed pursuant to this section.

Section 489.514, Florida Statutes (emphasis added).

12. The statute defines the term "contractor" to mean "a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department." Section 489.505(10), Florida Statutes (emphasis added).

13. Thus, as a function of the unambiguous definition of "contractor," it is clear that to have "five years of experience as a contractor" as required in Section 489.514(2)(c), Florida Statutes, an applicant must have five qualifying years' experience as a registered contractor.

14. Further, the Board has promulgated a rule, which was in effect at the time Armstrong submitted his application, that provides:

61G6-5.0035 Certification of Registered Contractors.

Any registered contractor who wishes to become a certified contractor in the appropriate category pursuant to the "grandfathering" provisions of Section 489.514, FS, shall meet all of the following requirements:

(1) Submit a completed "Application for Certification of a Registered License" on Form BPR/ECLB- REG.TO.CERT.5/2000, with instructions attached, which is hereby incorporated by reference, effective 11-12-00, a copy of which may be obtained from the Board office.

(2) Submit proof of continuing education pursuant to Rule 61G6-9.001, F.A.C., for the latest renewal cycle prior to application.

(3) For purposes of implementing §489.514, Florida Statutes, the registered contractor must have:

(a) passed a written, proctored examination in the appropriate category as specified in subsection (2) of the statute, and

(b) five (5) years experience as a registered contractor in the category for which certification is sought. The registered contractor must have held an active license in that category for a period of at least 5 years. The 5 year period is not required to be consecutive. Any time periods when the license was placed on inactive status or when the licensee was on probationary status shall not count toward the 5 years required experience; or

(c) five (5) years of oversight or inspection responsibility as a building code administrator or inspector in the category for which certification is sought. Any time periods when the license was placed on inactive status or when the licensee was on probationary status shall not count toward the five (5) years' required experience.

Rule 61G6-5.0035, Florida Administrative Code (emphasis added).

15. The Rule makes clear, as does the statute, that, to become certified under the "grandfathering" provisions, an applicant must have five years of experience as a registered contractor.

16. It is undisputed that Armstrong did not have, at the time he applied for certification, the necessary five years of experience as a registered contractor. Armstrong will reach that milestone on December 9, 2001, at which time he may reapply.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board enter a final order denying Armstrong's application for licensure as a certified electrical contractor.

DONE AND ENTERED this 22nd day of August, 2001, in
Tallahassee, Leon County, Florida.

JOHN G. VAN LANINGHAM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of August, 2001.

ENDNOTE

^{1/} In its Proposed Recommended Order, the Board argues for the first time that Armstrong wrongfully engaged in the unlicensed practice of specialty electrical contracting from 1989 until December 1996 when he became state-licensed as a registered contractor. The Board actually goes so far as to suggest that Armstrong committed a first degree criminal misdemeanor. It must have been alarming for Armstrong—who, after all, had simply exercised his right to an independent review of an agency decision with which he disagreed—suddenly and unexpectedly to find himself branded a criminal by the Board that regulates his occupation. These accusations are an uncalled-for red herring.

To begin, the Board did not base its denial of Armstrong's application on misconduct of any sort. The Board gave no notice to Armstrong that a charge of unlicensed contracting would be

leveled against him in this proceeding, and no evidence of wrongdoing was presented at hearing. It is axiomatic that due process demands, at a minimum, that a person accused of grounds for discipline be afforded notice and an opportunity to be heard.

In addition, the state issued Armstrong a license to operate as a registered contractor nearly five years ago, and has since renewed that license, apparently without ever attempting to discipline him for having operated in Broward County for some years before that under a local—but without a state—license. Presumably, the state knew about Armstrong's previous experience when it originally licensed him as a registered contractor, because one would expect such information to have been the subject of inquiry on the application for licensure. Assuming, as is likely, that the state knew in December 1996 that Armstrong previously had been engaged in the electrical contracting business under a local license only and nevertheless issued him a registration (and thereafter renewed it) without objection, the situation would cry out for an invocation of waiver or estoppel were the state to attempt a prosecution of Armstrong at this late date. Cf. Fraga v. Department of Health and Rehabilitative Services, 464 So. 2d 144 (Fla. 3d DCA), pet. rev. denied, 475 So. 2d 694 (1985).

Finally, the Board's below-the-belt accusations are superfluous. As set forth in the Conclusions of Law, the Board's original ground for denial was clearly sufficient, without more. The Board should have stuck with that in its Proposed Recommended Order.

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.