

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
CONSTRUCTION INDUSTRY LICENSING )  
BOARD, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-3022PL  
 )  
ROMUALD EDWARD PRICE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was conducted in this case on September 28, 2001, by video teleconference between Tallahassee, Florida, and Daytona Beach, Florida, before the Division of Administrative Hearings by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: Brian A. Higgins, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: Bruce Johns, Esquire  
944 South Ridgewood Avenue  
Daytona Beach, Florida 32114

STATEMENT OF THE ISSUES

The issues are whether Respondent violated Sections 489.129(1)(i) and 489.129(1)(o), Florida Statutes, and if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On May 7, 2001, Petitioner Department of Business and Professional Regulation, Construction Industry Licensing Board (Petitioner), filed an Administrative Complaint against Respondent Romuald Edward Price (Respondent). Count I of said complaint alleged that Respondent had violated Section 489.129(1)(i), Florida Statutes, by failing to comply with the provisions of Part I, Chapter 489, Florida Statutes, in that Respondent had not notified Petitioner in writing of Respondent's current mailing address and phone number as required by Section 489.124(2), Florida Statutes. Count II of said complaint alleged that Respondent had violated Section 489.129.(1)(o), Florida Statutes, by proceeding on a job without obtaining applicable local building department permits and inspections.

On June 20, 2001, Respondent requested a formal administrative hearing to contest the allegations in the Administrative Complaint. Petitioner referred the case to the Division of Administrative Hearings on July 26, 2001.

After receiving Petitioner's Unilateral Response to the Initial Order on August 1, 2001, Administrative Law Judge Charles C. Adams issued a Notice of Hearing on August 8, 2001. Said notice scheduled the formal hearing for September 28, 2001. Subsequently, the Division of Administrative Hearings transferred the case to the undersigned.

On September 21, 2001, Petitioner filed a Unilateral Prehearing Stipulation.

During the hearing, Petitioner presented the testimony of three witnesses and offered five exhibits, which were accepted into evidence. Respondent testified on his own behalf but offered no exhibits for admission into evidence.

The court reporter filed a copy of the hearing Transcript on October 25, 2001. Petitioner filed its Proposed Recommended Order on November 5, 2001. As of the date of this Recommended Order, Respondent has not filed proposed findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. At all times material to this proceeding, Respondent was licensed as a Certified Plumbing Contractor, holding License No. CF C056847. Respondent has maintained an active license since October 19, 1995.

2. At all times material to this proceeding, Respondent conducted his business under the name of Ron Price Plumbing and

Tile. On May 18, 2000, Respondent's business was located at 2043 Mike Street, South Daytona, Florida.

3. On May 18, 2000, Respondent gave Edward Carlson a written proposal to perform some repair work in a bathroom at Mr. Carlson's residence, which was located in Daytona Beach, Volusia County, Florida. The letterhead on the written proposal indicates that Respondent's business address was 2043 Mike Street, Daytona Beach, Florida. The written proposal states that for the sum of \$1,200, Respondent would perform the following work : (a) remove floor and bottom two rows of tile; (b) install PVC pan and drain; (c) install dura rock to walls; (d) install four-by-four wall tile; (e) install second floor; (f) install two-by-two floor tile; (g) use white grout; and (h) haul away refuse. Mr. Carlson accepted this proposal.

4. Respondent did not pull a permit from the City of Daytona Beach Building Department before commencing the work in Mr. Carlson's bathroom. The City of Daytona Beach, Florida, requires a permit for the type of work performed by Respondent, even though very few plumbers or contractors actually take the time to pull one. Specifically, City of Daytona Beach Ordinance 104.1.4.1 requires a permit for minor repairs exceeding \$500.

5. Respondent, subsequently, completed the work in Mr. Carlson's bathroom. Mr. Carlson inspected the work and paid Respondent \$1,200 as agreed. There is no credible evidence that

Respondent's work was substandard or that he damaged Mr. Carlson's property in any respect.

6. Thereafter, Respondent moved his business to 6089 Airport Road, Port Orange, Volusia County, Florida. As of September 1, 2000, Petitioner's records correctly reflect Respondent's current address of record at the new business location.

7. Petitioner expended \$312.48 in total cost, excluding attorney's fees, for investigating, filing, and pursuing the complaint against Respondent through the administrative complaint process.

#### CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

9. Petitioner has the burden of proving the following by clear and convincing evidence: (a) Respondent failed to notify Petitioner of his current mailing address and phone number; and (b) Respondent proceeded on a job without obtaining the applicable local building department permit. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

10. Section 489.124 (2), Florida Statutes, states as follows:

Each certificateholder or registrant of the department shall be solely responsible

for notifying the department in writing of the certificateholder's or registrant's current mailing address and phone number. If the mailing address is not the certificate holder's or registrant's physical address, the certificateholder or registrant shall also supply the physical address.

11. Section 489.129(1), Florida Statutes, states as follows in pertinent part:

(1) The Board may take any of the following actions against any certificate holder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate, registration, or certificate of authority, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed \$5,000 per violation, require continuing education, or assess cost associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

\* \* \*

(i) Failing in any material respect to comply with the provisions of this part or violating a rule or lawful order of the board.

\* \* \*

(o) Proceeding on any job without obtaining applicable local building department permits and inspections.

(4) In recommending penalties in any proposed recommended final order, the department shall follow the penalty guidelines established by the board by rule. The department shall advise the administrative law judge of the appropriate penalty, including mitigating and aggravating circumstances, and the specific rule citation.

12. Petitioner has not proven by clear and convincing evidence that Respondent violated Sections 489.124(2) and 489.129(1)(i), Florida Statutes. Respondent's business was located at 2043 Mike Street, South Daytona, Florida, on May 18, 2000. He subsequently moved his business to 6089 Air Port Road, Port Orange, Florida. Petitioner's records correctly reflect the new address of record for Respondent's business as of September 2000.

13. Petitioner has proven by clear and convincing evidence that Respondent violated Section 489.129(1)(o), Florida Statutes. Respondent failed to pull a required permit from the City of Daytona Beach, Florida, before beginning the job for Mr. Carlson. The failure of other plumbers or tile men to apply for permits before performing similar jobs does not excuse Respondent's behavior.

14. Pursuant to Section 455.2273(5), Florida Statutes, recommended penalties must follow the penalty guidelines established by the Florida Construction Industry Licensing

Board. Rule 61G4-17, Florida Administrative Code, sets forth the guidelines that are pertinent to this proceeding.

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

The following guidelines shall be used in disciplinary cases, absent aggravating or mitigating circumstances and subject to other provisions of this Chapter.

\* \* \*

(10) 489.129(1)(j)<sup>[1]</sup>: Failing in any material respect to comply with the provisions of Part I of Chapter 489.

\* \* \*

(f) 489.124: Failure to keep business and financial records as required. First violation, \$100 to \$1,000 fine and/or reprimand to probation; repeat violation, \$500 to \$5,000 fine and/or probation or suspension.

\* \* \*

(16) 489.129(1)(p)<sup>[2]</sup>: Proceeding on any job without obtaining applicable local building department permits and/or inspections.

\* \* \*

(c) Job finished without a permit having been pulled, or no permit until caught after job, or late permit during the job resulting in missed inspection or inspections. First violation, \$500 to \$1,500 fine; repeat violation, \$1,000 to \$2,500 fine and suspension or revocation.

16. Rule 61G4-17.002, Florida Administrative Code, states as follows in relevant part:



Circumstances which may be considered for the purpose of mitigation or aggravation of penalty shall include, but are not limited to the following:

(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 being 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.

17. There are no aggravating circumstances in this case. Petitioner presented evidence of a Closing Order in DBPR Case Number 94-16335 in which Petitioner found probable cause to believe that Respondent was working as a contractor/plumber without a license. The Closing Order alone is insufficient to support a conclusion that Respondent is a repeat offender.

18. There are a couple of mitigating factors. First, Respondent has not been the subject of a disciplinary action since he became licensed in 1995. Second, there is no credible evidence that Respondent caused Mr. Carlson any actual damage, physical or otherwise.

RECOMMENDATION

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

RECOMMENDED:

That Petitioner enter a final order finding Respondent guilty of violating Section 489.129(1)(o), Florida Statutes, imposing an administrative fine in the amount of \$500, and assessing investigative costs in the amount of \$312.48.

DONE AND ENTERED this 8th day of November, 2001, in Tallahassee, Leon County, Florida.

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SUZANNE F. HOOD  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of November, 2001.

ENDNOTES

1/ The reference to Section 489.129(1)(j), Florida Statutes, in this subsection of Rule 61G4-17.001, Florida Administrative Code, is incorrect because Section 489.129(1)(i), Florida Statutes, is the statutory provision that addresses compliance with Part I of Chapter 489, Florida Statutes.

2/ The reference to Section 489.129(1)(p), Florida Statutes, in this subsection of Rule 61G4-17.001, Florida Administrative Code, is incorrect because Section 489.129(1)(o), Florida Statutes, is the statutory provision that addresses working on a job without pulling the applicable local building permit.

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.