

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY CONSTRUCTION)
LICENSING BOARD,)
)
Petitioner,)
)
vs.) Case No. 01-3651PL
)
AUGUST T. NOCELLA,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on November 27, 2001, by teleconference between Largo and Tallahassee, Florida, before Administrative Law Judge, Carolyn S. Holifield of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Rodney S. Fischer, Executive Director
Pinellas County Construction
Licensing Board
11701 Belcher Road, Suite 102
Largo, Florida 33773

For Respondent: August T. Nocella, pro se
1017 Robinson Drive, North
St. Petersburg, Florida 33710

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, August T. Nocella, committed the violations alleged in the Administrative Complaint and, if so, what discipline is appropriate.

PRELIMINARY STATEMENT

By Administrative Complaint dated August 14, 2001, Petitioner, the Pinellas County Construction Licensing Board, seeks to suspend, revoke, or take other disciplinary action against Respondent, August T. Nocella, as licensee, and against his license as an aluminum contractor.

Count One of the Administrative Complaint alleges that Respondent failed to obtain a satisfactory inspection as required by Section 105, Standard Building Code, 1997 Edition, as amended. Count Two of the Administrative Complaint alleges that Respondent committed misconduct in the practice of contracting. According to the Administrative Complaint, these acts constitute offenses enumerated in Chapter 89-504, Subsections 24(2)(d), (j), (m), and (n), Laws of Florida, as amended.

Respondent disputed the allegations contained in the Administrative Complaint and requested a formal hearing.

By letter dated September 11, 2001, the matter was referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct a formal proceeding.

At the hearing, Petitioner presented the testimony of Rodney S. Fischer, executive director of the Pinellas County Construction Licensing Board, and Mary J. Pugh, homeowner. Petitioner's Exhibits 1 through 5 were admitted into evidence.

Respondent testified on his own behalf and did not offer any documentary evidence. The hearing was recorded using a tape recorder, but was not transcribed. A copy of the tape was filed with the Division on December 7, 2001.

FINDINGS OF FACT

1. Petitioner, the Pinellas County Construction Licensing Board (Board), is the agency within Pinellas County, Florida, authorized under Chapter 89-504, Laws of Florida, as amended, to regulate and discipline the licenses of, among others, certified aluminum contractors.

2. Respondent, August T. Nocella (Respondent), is, and has been at all times material hereto, a certified aluminum contractor in Pinellas County, Florida, having been issued license C-3197. At times relevant to this proceeding, Respondent was doing business as Allied Aluminum, located in St. Petersburg, Florida.

3. In 1997, Ms. Mary J. Pugh had a small screened porch added to her house located at 12855 Gorda Circle West. Approximately two years later, in July 1999, the porch was damaged or destroyed by a storm. Thereafter, Ms. Pugh requested and received a proposal from Allied Aluminum to repair or rebuild the screened porch.

4. On September 1, 1999, Respondent entered into a contract with Ms. Pugh to repair or reconstruct the previously existing screened porch.

5. The contract provided that Respondent would install a new aluminum roof to replace the damaged existing screened porch roof, install gutters and trim, replace 13 feet of valance, replace the screen, and install a new wall front.

6. The contract noted that a riser wall was required for "proper roof pitch."

7. The contract price was \$2,300.00, with \$1,000.00 to be paid as a down payment and the remaining \$1,300.00 to be paid upon completion of the project.

8. Ms. Pugh paid Allied Aluminum in accordance with the terms of the contract. She made the first payment of \$1,000.00 on September 1, 1999, and made the final payment of \$1,300.00 on September 22, 1999, upon Respondent's completing the job.

9. On or about September 16, 1999, Respondent obtained a permit for the repair or reconstruction of the screened porch at Ms. Pugh's house.

10. Respondent began the project on or about September 15, 1999, and completed the job on September 22, 1999.

11. Section 105.6 of the Standard Building Code, 1997 Edition, as amended, (Standard Building Code) requires local building officials, "upon notification from the permit holder or

his agent," to make a final inspection of a building after the building is completed and ready for occupancy. In order to comply with the Standard Building Code, it was the responsibility of the permit holder, in this case, Respondent, to call local officials for a final building inspection. Upon completion of the inspection, a building official would then notify the permit holder of "any violations which must be corrected in order to comply with the technical codes."

12. Respondent failed to notify building officials that the Pugh project was completed and ready for occupancy and, thus, ready for final inspection by appropriate building officials. As a result of Respondent's failure to call for a final inspection, building officials never inspected Respondent's work on Ms. Pugh's screened porch and made no determination as to whether the project complied with the applicable technical codes.

13. In July 2000, during a storm, the roof of Ms. Pugh's screen porch collapsed.

14. Relying on statements of unnamed contractors, Ms. Pugh believes that the roof collapsed because it did not have the proper pitch. Respondent attributes the collapse of the roof to the gutters being blocked with leaves. Despite these assertions no evidence was presented at hearing to establish the cause of the roof's collapsing.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57, Florida Statutes.

16. The Pinellas County Construction Licensing Board (Board) is statutorily empowered to discipline the license of contractors based upon any of the grounds enumerated in Chapter 89-504, Section 24, Laws of Florida.

17. Respondent, a certified aluminum contractor, is charged with the responsibility of complying with all applicable building codes and regulations adopted by the Board. Likewise, Respondent is subject to disciplinary guidelines of Chapter 89-504, Section 24, Laws of Florida.

18. The Board has adopted the Standard Building Code pursuant to Chapter 89-504, Section 28, Laws of Florida.

20. Because Respondent is subject to penal sanctions including revocation of his license as an aluminum contractor and imposition of an administrative penalty, the Board has the burden of proving by clear and convincing evidence the specific allegations in the Administrative Complaint. Department of Banking and Finance v. Osborne & Company, 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

21. The Administrative Complaint alleges that Respondent failed to obtain a satisfactory final inspection as required by Section 105 of the Standard Building Code, and committed misconduct in the practice of contracting. The Administrative Complaint further alleges that this conduct by Respondent constitutes the following offenses enumerated in Chapter 89-504, Subsections 24 (2)(d), (j), (m), and (n), Laws of Florida:

(d) Willfully or deliberately disregarding and violating the applicable building codes or laws of the state, this board, or of any municipality or county of this state;

* * *

(j) Failing in any material respect to comply with the provisions of this part.

* * *

(m) Being found guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the practice of contracting.

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

22. Petitioner established by clear and convincing evidence the allegation contained in Count One of the Administrative Complaint. The clear and convincing evidence is that upon his completing the screened porch at the Pugh residence, Respondent failed to call for an inspection of the structure as required by the Standard Building Code.

Respondent's failure to do so constitutes a willful disregard and violation of the Standard Building Code and, thus, offenses described in Chapter 89-504, Subsections 24(2)(d), (j), and (n), Laws of Florida.

23. With regard to Count Two, the Board failed to prove by clear and convincing evidence that Respondent engaged in misconduct in the practice of contracting. This allegation appears to be premised on Ms. Pugh's assertion that the collapsed screened porch roof, approximately ten months after it was installed, was the result of Respondent's failing to install or construct the roof at the proper pitch. However, there was no evidence presented at the final hearing to support this assertion. Ms. Pugh's belief was based solely on comments made to her by unnamed contractors. Moreover, there was no testimony from any qualified contractor or building official to support this assertion. Accordingly, the Board failed to prove by clear and convincing evidence that Respondent engaged in misconduct in the practice of contracting as alleged in Count Two.

24. Petitioner is authorized to suspend certificate holders from all operations as contractors, suspend or revoke certificates, impose administrative fines not to exceed \$1,000.00, require restitution, and impose reasonable investigative and legal costs. Chapter 89-504, Section 24, Laws of Florida, and Chapter 93-387, Section 24, Laws of Florida.

RECOMMENDATION

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

RECOMMENDED that the Pinellas County Construction Licensing Board enter a final order: (1) finding that Respondent failed to obtain a satisfactory inspection as alleged in Count One, and is guilty of the offenses described in Chapter 89-504, Subsections 24, (2)(d), (j), and (n), Laws of Florida; (2) imposing an administrative fine of \$1,000.00 for the foregoing offenses; and (3) dismissing Count Two of the Administrative Complaint.

DONE AND ENTERED this 28th day of December, 2001, in Tallahassee, Leon County, Florida.

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of December, 2001.

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 must be filed with the agency that will issue the Final Order in this case.