

4-29-02

Final Order No. BPR-2000-03670 Date: 9-15-00
FILED

Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk

By: Brandon M. Nichols

STATE OF FLORIDA
CONSTRUCTION INDUSTRY LICENSING BOARD

STEPHAN A. HUMPHREY,

Petitioner,

-vs-

CONSTRUCTION INDUSTRIES
RECOVERY FUND,

Respondent,

-vs-

ROBERT P. RYAN, Jr., d/b/a Personalized
Homes of Brevard, Inc., License No.
CBC038918,

Respondent.

01-4668
DMK-Clos

AT

CLAIM NO.: 96-C0119

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FILED
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS MATTER came on to be heard before the Construction Industry Licensing Board (hereinafter referred to as the "Board") at a public meeting on April 16, 1999, in Orlando, Florida, upon Petitioner Humphrey's request that the Board consider the Proposed Settlement Agreement between the Petitioner and Respondent Construction Industries Recovery Fund, following the Board's denial with prejudice of the Petitioner's claim against the Fund, as reflected in the Board's Order filed April 24, 1998. The hearing was conducted in accordance with the provisions of Section 120.57(2), Florida Statutes.

The parties were duly notified of the hearing. At the hearing before the Board, Petitioner Humphrey was not present, nor was he represented by counsel. Respondent Ryan was present, but he was not represented by counsel. Respondent Fund was represented by Lealand McCharen, Assistant Attorney General.

FINDINGS OF FACT

1. The Petitioner's claim against the Recovery Fund was denied by the Recovery Fund Committee on March 12, 1998.
2. That decision was ratified by the Board on March 13, 1998.
3. On May 14, 1998, the Petitioner petitioned for a formal administrative hearing.
4. Jurisdiction over the petition was transferred to the Division of Administrative Hearings ("DOAH").
5. The Petitioner and Respondent Fund negotiated a Proposed Settlement Agreement, which was approved by the Board at its April 1999 meeting.
6. On June 21, 2000, the Petitioner and Respondent Fund moved that the DOAH court enter an order relinquishing jurisdiction of the case to the Board.
7. On July 12, 2000, Daniel M. Kilbride, DOAH Administrative Law Judge, entered an order closing the DOAH case, relinquishing jurisdiction of the case to the Board.
8. There is no dispute as to any material fact.

CONCLUSIONS OF LAW

1. The findings of fact set forth herein are supported by clear and convincing evidence.
2. The burden of proof is on the Petitioner by a preponderance of evidence.
3. The Board has determined that the judgment obtained by the Petitioner in Case Number 96-07575-CA-D in the Circuit Court of the Eighteenth Judicial Circuit, in and for

Brevard County, Florida, is based on a demonstrated violation of 489.129(1)(d), Florida Statutes (1997).

4. The Order filed in this case on April 24, 1998, is hereby VACATED.

Upon consideration of the documentation and testimony submitted, it is hereby ORDERED:

1. Petitioner's claim (No.96-CO119) is hereby GRANTED as follows:

The Petitioner has satisfied all requirements for payment from the Construction Industries Recovery Fund. The Petitioner has obtained a judgment against Personalized Homes of Brevard, Inc., the company qualified by Respondent Ryan, in the amount of \$96,041.75, in the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida, based on a violation of Section 489.129(1)(d), Florida Statutes (1997).

The Petitioner's claim against the Construction Industries Recovery Fund is approved in the amount of \$25,000.00. In accordance with Rule 61G4-21.005, Florida Administrative Code, the Secretary of the Florida Department of Business and Professional Regulation is hereby directed to pay the Petitioner's claim from the Fund after forty-five (45) days from the date upon which this Order is filed with the agency clerk, assuming there are no requests for hearing or appeals filed pursuant to Sections 120.57 and 120.68, Florida Statutes.

2. Pursuant to Section 489.143(6), Florida Statutes, upon payment of the Petitioner's claim from the Fund, Respondent Ryan's licensure to practice contracting is hereby AUTOMATICALLY SUSPENDED without any further administrative action. Respondent Ryan shall repay in full, plus interest, the amount paid from the Fund.

3. Pursuant to Section 489.143(2), Florida Statutes, upon Petitioner's receipt of payment from the Fund, Petitioner's right, title, and interest in his judgment against

Respondent Ryan, to the extent of the amount of payment from the Fund, is hereby assigned to the Construction Industries Recovery Fund. Thereafter, the Board shall be subrogated to the right, title, and interest of the Petitioner, and any amount subsequently recovered on the judgment by the Board to the extent of the Board's right, title, and interest shall be for the purpose of reimbursing the Fund.

Pursuant to Section 120.68, Florida Statutes, the Parties are hereby notified that they may appeal this Order by filing one copy of a Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, and by filing the filing fee and one copy of the Notice of Appeal with the District Court of Appeal within thirty (30) days of the effective date of this Order.

This Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 13 day of September, 2000.



PAUL T. MCKITRICK, Chair
Construction Industry Licensing
Board

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to: Stephan A. Humphrey c/o Bruce M. Harris, Esq., Gray, Harris & Robinson, P.A., 210 East Pine Street, Suite 1200, Orlando, Florida 32802-3068; Robert P. Ryan, 8160 Taft Street, Pembroke Pines, Florida 33024; Charles L. Curtis, Esq., 1177 Southeast Third Avenue, Fort Lauderdale, Florida 33316; Susan B. Bodell, Assistant Attorney General, PL-01, The Capital, Tallahassee, Florida 32399-1050, and to the Agency Clerk, Department of Business and Professional Regulation, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0792, on or before 5:00 p.m., this 15th day of Sept., 2000.

Brandon M. Nichols