

10-28-03 AP
FILED
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DIVISION OF ADMINISTRATIVE LAW
FINAL ORDER

STATE OF FLORIDA
CONSTRUCTION INDUSTRY LICENSING BOARD

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
CONSTRUCTION INDUSTRY
LICENSING BOARD,
Petitioner,

vs.

EDWARD MIDGETT,
Respondent.

Final Order No. BPR-2005-05789

FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandon M. Nichol

DOAH Case No.: 03-2420

CILB Case No.: 2001-07181

License No.: CG C028520

DSM
CLOSED

FINAL ORDER

This matter came before the Construction Industry Licensing Board (Board) pursuant to Sections 120.569 and 120.57(2), Florida Statutes, on February 12, 2004, at a duly-noticed public meeting in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order of October 28, 2003 (attached). Neither Mr. Midgett nor his Attorney, Darrin Schutt, were present at the meeting. The Board was represented by Diane Guillemette, Assistant Attorney General.

Upon consideration of the Recommended Order and after a review of the record in this case, the Board arrived entered a Final Order which assessed a fine of \$12,000. That Order was appealed. The Second DCA held that the Recommended Order erroneously found Respondent guilty of Count IV of the Administrative Complaint. Because the prior Final Order did not allocate the fines to each count of the complaint the case was remanded for allocation of the fines to the 3 remaining charges. The Board reconsidered the case on August 11, 2005, at a duly-noticed public meeting in Ponte Vedra Beach, Florida. Both Mr. Midgett and his Attorney, Darrin Schutt, were

present at the meeting. The Department was represented by Patrick Creehan. The Board was represented by Diane L. Guillemette.

FINDINGS OF FACT

The findings of fact set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

CONCLUSIONS OF LAW

1. The Board has substantive jurisdiction over this matter pursuant to the provisions of Section 120.57 and Chapter 489, Florida Statutes. The Board has substantive jurisdiction over Chapter 61G4 Florida Administrative Code.

2. The conclusions of law set numbered 22 through 26 in the Recommended Order are consistent with the findings and are approved, adopted, and incorporated herein by reference.

3. The fine in conclusion number 27 is rejected by the Board.

4. Section 455.2273(5), Florida Statutes, states:

The administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstance upon which the recommended penalty is based.

5. 61G4-17.005 F.A.C states "Where several of the above violations shall occur in one or several cases being considered together, the penalties shall normally be cumulative and consecutive."

6. A more reasonable interpretation of the administrative rule is that fines in this one case be applied cumulatively.

7. The Respondent was found to have been previously disciplined (finding of fact No. 20) and to have violated:

489.129(1)(g)2, Financial mismanagement, misconduct, (finding of fact No.13),
489.129(1)(j), Abandonment, (finding of fact No.12),
489.129 (m) , Misconduct/incompetence, (finding of fact No. 16).

8. The fine for each respective violation is:

489.129(1)(g)2, \$750 to \$1,500,
489.129(1)(j), \$500 to \$2,000,
489.129 (m), \$1,000 to \$2,500.

9. The aggravating and mitigating factors, as outlined in the Recommended order, support a fine of \$6,000.

WHEREFORE, it is ORDERED AND ADJUDGED that:

1. Respondent's license as a Certified General Contractor (CG C028520) is hereby REVOKED. Respondent shall immediately surrender all evidence of his license to the Executive Director, Construction Industry Licensing Board, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-0792.

2. Respondent shall pay an administrative fine in the amount of Six Thousand (\$6,000.00) and investigative costs in the amount of One Thousand Four Hundred Twenty-Nine Dollars and Sixty-One Cents (\$1,429.61). Said fine and costs shall be paid within thirty (30) days after the date of filing of the Final Order. In addition, the Respondent is required to pay interest on the fine due to the Board at a rate of 18% per annum, beginning on the thirty-first (31st) day after the issuance of the final order.

3. Respondent shall pay restitution in the amount of Seventy Thousand Dollars (\$70,000.00) to Linda Luck. Said restitution shall be paid within thirty (30) days of the date of filing of the Final Order, with interest accrued at a rate of 18% annum from thirty (30) days after the date of filing of the Final Order.

To assure payment of the fine, costs and restitution, it is further ordered that Respondent's license to practice contracting shall be suspended with the imposition of the suspension being stayed for thirty (30) days from the date of the filing of the Final Order. If the ordered fine, costs and restitution are paid within that thirty (30) day period, the suspension imposed shall not take effect. Upon payment of the fine, costs and restitution after the thirty (30) days, the suspension imposed shall be lifted. If the licensee does not pay the fine, costs and restitution within said period, then immediately upon expiration of the stay, he shall surrender his license to the Department of Business and Professional Regulation.

A change in your licensure status, including the suspension, revocation, voluntary relinquishment, or involuntary relinquishment of your license does not relieve you of your obligation to pay any fines, costs, interest, or restitution imposed in this order.

This Final Order shall take effect upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 14th day of September, 2005.


JOAN M. BROWN, Chair
Construction Industry Licensing Board

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to: Darrin R. Schutt, Esquire, Seeman & Schutt, P.A., 1105 Cape Coral Parkway East, Suite C, Cape Coral, Florida 33904 and by hand/interoffice delivery to the Construction Industry Licensing Board, 1940 N. Monroe Street, Tallahassee, Florida 32399-1039, Patrick F. Creehan, Esq., Chief Construction Attorney, Office of the General Counsel, 1940 N. Monroe St., Ste. 60, Tallahassee, Florida 32399-2202, and Diane L. Guillemette, Senior Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on or before 5:00 p.m., this 14th day of October, 2005.

