

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAN VARGA, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 06-1509  
 )  
 BOARD OF BUILDING CODE )  
 ADMINISTRATORS AND INSPECTORS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A formal administrative hearing was conducted before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings (DOAH) on June 20, 2006, in Melbourne, Florida.

APPEARANCES

For Petitioner: Jan Varga, pro se  
400 Jonquil Lane  
Melbourne, Florida 32901

For Respondent: Jeffrey D. Jones, Esquire  
Department of Legal Affairs  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether Petitioner's application for licensure in the category of mechanical plans examiner should be approved.

PRELIMINARY STATEMENT

On June 10, 2005, the Building Code Administrators and Inspectors Board ("the Board") denied Petitioner's application to obtain certification as a mechanical plans examiner. The denial was based on Petitioner's alleged performance of unlicensed activity in violation of the provisions of Chapter 468, Florida Statutes (2004).<sup>1</sup> The Board concluded that Petitioner had not met her burden of establishing her entitlement to a license. Petitioner requested a formal administrative hearing to contest the denial of her application. Petitioner also sought to have her limited plans examiner license reinstated. However, that issue is not properly before this tribunal. The case was referred to DOAH to conduct an evidentiary hearing.

At the hearing, Petitioner offered the testimony of Koert Van Wormer, deputy building official for the City of Melbourne, Florida, and testified in her own behalf. Nine exhibits were admitted into evidence. Respondent called no witnesses and submitted no documents. Official recognition was taken of Chapters 455 and 468, Part XII, Florida Statutes, and Florida Administrative Code Rule 61G19-5.

The Transcript of the hearing was filed with DOAH on July 7, 2006. Petitioner submitted her Proposed Recommended Order on July 10, 2006. Respondent filed its Proposed

Recommended Order also on July 10, 2006. Both have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon the testimony and evidence received at the formal hearing, the following findings of fact are made:

1. Petitioner has been employed as a plans examiner for the City of Melbourne (City) since 1988. Petitioner has been a certified building plans examiner since 1994. She also holds certification as a standard and limited building inspector.

2. Sometime in October 2003, Petitioner was informed that her limited plans examiner license, No. LP 369, had been permitted to expire on November 30, 1997, for failure to pay her renewal fee. The building official in her department at the City advised her that the renewal for the license had not been paid since 1996. It has been the practice of her department to automatically renew each of her licenses with the appropriate board, each year, as it came due, as a service to its employees. Why this one license, among several, was not renewed is unknown.

3. After notification of the expiration of her limited plans examiner license, Petitioner immediately discontinued the review of electrical, mechanical, and plumbing plans and contacted the Department of Business and Professional Regulation

(DBPR), reported the oversight, and requested directions on how to reinstate the limited plans examiner license, No. LP 369.

4. No response was forthcoming; however, on October 27, 2003, DBPR issued an unsigned Notice and Order directed to Petitioner to cease and desist practicing as a limited plans examiner. Petitioner immediately complied and sought reinstatement. No formal disciplinary action was taken; however, reinstatement was denied on the grounds that her license had become null and void on November 30, 1997, pursuant to the self-executing language contained in Section 455.271, Florida Statutes.

5. On January 3, 2005, Petitioner submitted an application to DBPR as a mechanical plans examiner. By Notice of Intent to Deny, dated July 18, 2005, DBPR notified Petitioner that it intended to deny Petitioner's application for licensure as a mechanical plans examiner. Citing Sections 468.607, 468.609, and 468.621, Florida Statutes, Respondent alleged that Petitioner did not have five years of combined experience in the field of construction, or a related field, or plans review corresponding to building plan review; that Petitioner did not provide an affidavit for each separate period of work experience from an architect, engineer, contractor, or building code administrator who has knowledge of Petitioner's duties and responsibilities; that Petitioner was employed by a local

government authority without being properly licensed; and that she performed unlicensed activities in violation of the provisions of Chapter 468, Florida Statutes.

6. Petitioner has shown that she satisfied the following requirements for licensure as a mechanical plans examiner. The evidence shows that:

a. Petitioner is more than 18 years of age and is of good moral character;

b. Petitioner has more than five years of combined experience in the field of construction and plans review; and

c. Petitioner's application provided an affidavit for each separate period of work experience from a building code administrator who has knowledge of Petitioner's duties and responsibilities.

7. Petitioner has more than adequate time in plans review, she did submit an affidavit of work experience signed by her building code administrator, and the administrator has a thorough knowledge of her duties. Building Official Alan Beyer, BU 383, certified to her years of plans review.

8. Petitioner has been reviewing plans for the City since 1988. In 1994, based on her prior experience, Petitioner received a license as a limited plans examiner. Said license was allowed to expire through non-renewal and became void on November 30, 1997. Petitioner continued to perform her job

until she was notified in October 2003 that her license had expired. Petitioner immediately discontinued the review of electrical, mechanical, and plumbing plans. Nevertheless, Petitioner performed activities during the period of 1997 through 2003, for which she was not licensed. However, the evidence is clear that Petitioner did not knowingly do so.

9. Respondent has been previously licensed by Petitioner as a limited building inspector, a standard building inspector, and a standard building plans examiner. Each of these licenses has been maintained and is current, including the standard building plans examiner license, No. PX 838. Petitioner has no history of discipline in any of these areas, since 1993, the year the state first began to regulate this occupation.

10. Petitioner has kept current the continuing educational requirements for each category for which she holds a license, including that of limited plans examiner.

11. The subcategory of plumbing plans examiner was recently added to the standard building plans examiner license already held by Respondent. This subcategory required the same work experience (five-year combined experience) and affidavits signed by a building code administrator. The Board approved this addition to Petitioner's license.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding pursuant to Chapters 455 and 468, Section 120.569, and Subsections 120.57(1) and 120.60(5), Florida Statutes (2006).

13. From 1994 until November 30, 1997, Petitioner was licensed as a limited plans examiner, License No. LP 369, pursuant to Subsection 468.609(6), Florida Statutes. It is Respondent's position that because the license was allowed to expire, through non-payment of the renewal fee, Petitioner's limited plans examiner license became null and void, under the provisions of Section 455.271, Florida Statutes. Petitioner now seeks to have that license reinstated. However, that determination was not challenged and is not properly before this tribunal. Petitioner filed an application to be certified as a mechanical plans examiner, and that application was denied, by Notice of Intent to Deny dated July 20, 2005. The propriety of that notice is the only issue properly before this tribunal.

14. Petitioner bears the ultimate burden of proving entitlement to a license. Antel v. Department of Professional Regulations, Florida Real Estate Commission, 522 So. 2d 1056 (Fla. 5th DCA 1988); Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

15. Section 468.607, Florida Statutes, provides that no person may be employed by a state agency or local governmental authority to perform the duties of a building code administrator, plans examiner, or building code inspector without being properly licensed. See also § 468.609(4), Fla. Stat.

16. Subsection 468.609(2), Florida Statutes, governs standards for certification as a building code inspector or plans examiner and states that a person shall be entitled to take the examination for certification as a plans examiner if the person:

- (a) Is at least 18 years of age.
- (b) Is of good moral character.
- (c) Meets eligibility requirements according to one of the following criteria:

- 1. Demonstrates 5 years combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought. . . .

17. Petitioner is more than 18 years of age and is of good moral character and meets the requirement for certification as an inspector or plans examiner with five years of combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought, as set forth in Section 468.609, Florida Statutes.



18. Respondent previously licensed Petitioner in a category with substantially the same requirements as those at issue in this proceeding.

19. However, Section 468.621, Florida Statutes, provides that the Board may deny an application for licensure for violating or failing to comply with any provision of Part XII of Chapter 468, Florida Statutes.

20. Petitioner has shown by a preponderance of the evidence that she satisfies each of the criteria for licensure, under Subsection 468.609(2), Florida Statutes, except that she violated or failed to comply with the provision in Part XII of Chapter 468, Florida Statutes (between 1997 and 2003), which required her to keep her limited plans examiner's license current. The evidence shows that Petitioner continued to act as a plans examiner during the expiration period (1997 to 2003).

21. Petitioner had a duty to ensure that her license as a limited plans examiner remained current. However, the evidence is clear that she did not let it expire knowingly. This fact should not preclude Respondent from permitting Petitioner to seek certification as a mechanical plans examiner. See generally Mogavero v. State of Florida, 744 So. 2d 1048 (Fla. 4th DCA 1999).

22. Although Respondent has the authority take disciplinary action against Petitioner for failure to comply

with a provision of Part XII of Chapter 468, Florida Statutes, it has the discretion not to act under appropriate circumstances. See § 468.621(1), Fla. Stat. In view of the hyper-technical violation committed by Petitioner, Respondent should exercise its discretion and allow Petitioner's application to move forward.

23. When she learned that her limited plans examiner's license had expired, Petitioner self-reported the violation. Petitioner ceased plan review in the electrical, mechanical, and plumbing categories (until the recent license as plumbing plans examiner was added as a subcategory of the standard building plans examiner license) and has maintained the continuing educational requirements since 1994, as required by Respondent, to qualify for license renewal. There is no evidence that Petitioner committed any act of misconduct in her entire professional career.

24. The evidence indicates that the limited plans examiner license, No. LP 369, was not renewed due to an honest oversight by City staff since all of her other licenses were renewed. No harm has occurred to the public as a result of this oversight. Petitioner has been proactive in seeking to rectify this oversight in her licensing history.

25. Although Florida Administrative Code Rule 61G19-5.005 does not apply in this case, it provides guidance. The Rule reads as follows:

When considering a licensee's application for reinstatement or recertification, the Board shall consider the following criteria in evaluating the applicant's eligibility for such action: (1) the nature and severity of the offense for which the certificate was suspended; (2) evidence of any acts committed subsequent to the act for which the certificate was revoked; (3) the time elapsed since the act for which the license was revoked; (4) the extent to which the applicant has complied with any sanctions or penalties lawfully imposed upon him; (5) evidence of rehabilitation submitted by the applicant; (6) any legal or administrative action pending against the applicant; and (7) corrective action taken to rectify violation.

26. Petitioner's offense was a technical violation; Petitioner acted promptly to rectify the violation; and Petitioner has demonstrated extensive qualifications as a plans examiner, without any disciplinary action taken against any of her licenses. Therefore, Petitioner should be permitted to complete the requirements for the mechanical plans examiner license.

#### RECOMMENDATION

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

RECOMMENDED that Respondent enter a final order granting Petitioner's request to complete the requirements for future standard licensing as a mechanical plans examiner.

DONE AND ENTERED this 7th day of December, 2006, in Tallahassee, Leon County, Florida.

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DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of December, 2006.

ENDNOTE

1/ Unless otherwise indicated, all references to the Florida Statutes shall be to the 2004 version.

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.