

STATE OF FLORIDA  
CONSTRUCTION INDUSTRY LICENSING BOARD

Final Order No. BPR-2007-02959 Date: **4-10-07**  
FILED

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Department of Business and Professional Regulation  
AGENCY CLERK

Petitioner,

Sarah Wachman, Agency Clerk

By: Brenda M. Nichol

-vs-

CASE NO.: 2004-056690,  
2005-045647,  
2005-034560,  
2005-036101,  
2005-035843  
LICENSE NO.: CG C059603

FRANK JOSEPH POLACEK,  
Respondent.

**FINAL ORDER**

**THIS MATTER** came before the Construction Industry Licensing Board pursuant to Sections 120.569 and 120.57(1), Florida Statutes at the duly noticed meeting on November 10, 2006, in St. Petersburg, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order of September 20, 2006 (attached). Petitioner filed Petitioner's Exceptions to Recommended Order on October 5, 2006. At the hearing, Respondent clarified that paragraphs 1, 2, and 3 constitute exception I. Paragraphs 4 and 5 constitute exception II. And paragraphs 6 and 7 constitute exception III. Petitioner was represented by April Hammonds, Esq. The Board was represented by Diane, Guillemette, Esq. Respondent was not present.

**Exceptions**

1. Petition takes exception to Paragraph 4 of the Recommended Order which states:

At all times material , Mr. Polack was certified as doing business as Endeavor Development, Inc (hereinafter referred to as "Endeavor") a Florida Corporation. Endeavor possessed a certificate of authority as a qualified business organization.

A. Petitioner presented evidence at the hearing in the form of an affidavit of a Department of Business and Professional Regulation records custodian, which states:

There is no evidence that Endeavor Development Inc. has a certificate of Authority as a Contractor Qualified Business in State of Florida.

B. That affidavit was accepted into evidence as Petitioner's Exhibit C.

C. From review of the entire record, the acceptance of Exhibit C, and the lack of any testimony to the contrary, the Board accepts the exception and finds that paragraph 4 of the Recommended Order was not based on competent substantial evidence.

2. Petitioner takes exception to Paragraph 55 of the Recommended Order which states:

The evidence failed to prove that Mr. Polacek failed to apply for any permits required by the Rentz/Jackson Contract or that Endeavor was not in compliance with fictitious-name statutes.

Based upon the acceptance of exception I, the Board accepts the change to this finding of law as more reasonable to find that Endeavor was not in compliance with the fictitious-name statute, since no evidence was presented that Endeavor possessed a qualified business license.

3. Petitioner takes exception to Paragraph 83 of the Recommended Order

which states:

The evidence failed to prove that Mr. Polacek failed to comply with Section 489.119(2)(b), Florida Statutes.

Based upon the acceptance of exception I, the Board accepts the change to this finding of law as more reasonable to find that Endeavor was not in compliance with the fictitious-name statute, since no evidence was presented that Endeavor possessed a qualified business license.

**Findings of Fact**

4. From review of the entire record, the acceptance of Exhibit C, and the lack of any testimony to the contrary, the Board finds that paragraph 4 of the Recommended order was not based on competent substantial evidence. Paragraph 4 is modified to read:

At all times material, Mr. Polacek was certified as doing business as Endeavor Development, Inc (hereinafter referred to as "Endeavor") a Florida Corporation. Endeavor did not possess a certificate of authority as a qualified business organization.

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

**Conclusions of Law**

6. The Board has jurisdiction over this matter pursuant to the provisions of Section 120.57 and Chapter 489, Florida Statutes.

7. Based upon the change to the findings of fact, the Board changes paragraph 55 to read:

The evidence failed to prove that Mr. Polacek failed to apply for any permits required by the Rentz/Jackson Contract.

The remainder of the paragraph as contained in the RO is omitted.

8. Based upon the change to the findings of fact, the Board changes paragraph 83 to read:

Petitioner presented substantial evidence to prove that Mr. Polacek failed to comply with Section 489.119(2)(b), Florida Statutes.

9. The above changes to the findings of law are more reasonable than those that were rejected.

10. The remaining conclusions of law set forth in the Recommended Order are consistent with the findings and are approved, adopted, and incorporated herein by reference.

#### Penalty

11. Based on the record as stated above the penalty found in the Recommended Order is changed consistent with the above exceptions to read:

1. Finding that Frank Joseph Polacek, V, Committed the violations alleged in Counts I, II, IV through VII, IX through XII, and XV through XXV of the Administrative Complaint
2. Dismissing Counts III, VIII, XIII, and XIV of the Administrative Complaint; and
3. Imposing and administrative fine in the total amount of \$26,500.00; requiring that Mr. Polacek pay restitution on the five contracts equal to the amount of damages found in this Recommended Order; requiring that Mr. Polacek pay \$2,275.58 as the cost of the investigation and prosecution of this matter; and that his license be permanently revoked.

12. The remainder of the Administrative Law Judge's recommended penalty, is approved, adopted, and incorporated in this Final Order of the Board.

**WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED** that the

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

**DONE and ORDERED** this 3<sup>rd</sup> day of April, 2007.

  
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PAUL DEL VECCHIO, 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 Certified Mail to: FRANK JOSEPH POLACEK, 5245 Center

Street Jupiter, Fl 33401, and 925 N. Loxahatchee Drive, Jupiter, FL 33401 and by hand/interoffice delivery to the Construction Industry Licensing Board, 1940 N. Monroe Street, Tallahassee, Florida 32399-1039; April Hammonds, Esq., Chief Construction Attorney, Office of the General Counsel, 1940 N. Monroe St., Ste. 60, Tallahassee, Florida 32399-2202, and Diane L. Guillemette, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on or before 5:00 p.m., this 10<sup>th</sup> day of April, 2007.

*David Wachman*