

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case Nos. 06-2307  
 ) 06-2308  
KEVIN DAVIDSON, d/b/a WISE AND )  
DAVIDSON CONSTRUCTION, AND )  
DAVIDSON CONTRACTING AND )  
CONSTRUCTION, )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice this cause came on for formal proceeding and hearing before P. Michael Ruff, a duly-designated Administrative Law Judge of the Division of Administrative Hearings on August 31, 2006, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Brian A. Higgins, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: No Appearance

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Respondent should be subjected to disciplinary

sanctions based upon alleged violations of Sections 489.127(1) and 489.531(1), Florida Statutes, by engaging in the business or capacity of a general contractor, and as an electrical or alarm system contractor, without being certified or registered.

PRELIMINARY STATEMENT

This cause arose upon the filing of two Administrative Complaints, on July 29, 2005, and February 8, 2006. The complaints alleged that the Respondent violated laws regulating the practice of unlicensed construction contracting and electrical contracting in the State of Florida. The complaints charged the Respondent with having twice violated Section 489.127(1)(f), Florida Statutes, by engaging in the business or acting in the capacity of a contractor, or advertising himself or a business organization, without being registered or certified, and having twice violated Section 489.531(1), Florida Statutes, by practicing contracting or advertising himself or a business organization as available to engage in electrical or alarm system contracting, without being certified or registered.

The Respondent elected to dispute the allegations and requested a formal administrative hearing. Consequently, in due course the cases were transmitted to the Division of Administrative Hearings and the undersigned Administrative Law Judge to conduct a formal proceeding and hearing in accordance with Sections 120.569 and 120.57, Florida Statutes. Both cases

were noticed for hearing and tried together, although not formally consolidated. Both are disposed of by this Recommended Order.

The cause came on for hearing as noticed. The Petitioner offered the testimony of two witnesses, Floyd Hanson and Jan Crowell. The Petitioner also introduced 16 Exhibits, all of which were admitted into evidence. The Respondent made no appearance at the hearing and consequently offered no exhibits or evidence. The Respondent was provided notice at the last known address of record and, upon convening the hearing at the appointed time, the undersigned recessed it for approximately one-half hour while waiting for the Respondent to appear. No person in attendance at the hearing had observed the Respondent in the immediate environs of the hearing site and, upon waiting approximately one-half hour, the hearing was conducted. The Petitioner Agency, having the burden of proof, proceeded to present its case-in-chief. Upon concluding its case-in-chief, the Respondent still had not appeared, after a substantial period of time had elapsed since the appointed time for the commencement of the hearing. Consequently, since the Respondent had not appeared the taking of evidence was concluded and the hearing was adjourned. No communication from the Respondent has been received or filed since the hearing.

A Transcript of the proceeding was obtained by the Petitioner and duly filed. The Petitioner's Proposed Recommended Order was timely filed and has been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is an agency of the State of Florida charged with regulating and enforcing the statutes and rules pertaining to the licensure and practice of contracting, including construction contracting and electrical contracting. The Petitioner is also charged with regulating and enforcing statutes concerning the unauthorized practice of such contracting, including practicing without proper certification or registration.

2. At all times material hereto the Respondent, Kevin Davidson, d/b/a Wise and Davidson Construction and Davidson Contracting and Construction (Davidson or Kevin Davidson) was not licensed, certified or registered to engage in construction contracting or any electrical or alarm system contracting in the State of Florida.

3. On or about December 21, 2004, the Respondent, doing business as Davidson Contracting and Construction, contracted with Mr. Hanson, a witness for the Petitioner, to install and erect a 50-foot by 60-foot by 17 and one-half foot airplane hanger on a concrete foundation. He also contracted to install

a 200 amp electrical panel box on Mr. Hanson's property in conjunction with construction of the building. The property was located in Morriston, Florida. The contracted price for the work described was \$47,597.30.

4. Mr. Hanson paid the Respondent the total of \$20,514.30 as part of the contract price. The Respondent never finished the project, but only laid the concrete foundation. At the insistence of the Respondent, Mr. Hanson rented a backhoe which the Respondent agreed to operate in constructing a driveway. The work was never finished, and Mr. Hanson had to obtain other help in constructing the driveway. The Respondent also damaged the rented backhoe while he was operating it. These factors caused Mr. Hanson an additional economic loss of \$4,830.38.

5. On or about December 13, 2004, the Respondent, doing business as Wise and Davidson Construction, contracted with Ms. Crowell, a Petitioner witness, to install and erect a 50-foot by 60-foot by 17 and one-half foot steel building on a concrete foundation, also in Morriston, Florida. The Respondent also contracted to install a 200 amp electrical panel box in conjunction of construction of that building. The total amount of the contract price was \$47,047.30.

6. Ms. Crowell paid the Respondent at least \$35,251.35 in partial payment for the contract. After laying the foundation, however, the Respondent abandoned this project as well. The

Respondent's abandonment of the project cost Ms. Crowell \$29,943.00 in additional economic damage in order to obtain completion of the project by another contractor.

7. The Department incurred certain investigative costs in prosecuting these two cases. It was thus proven by the Petitioner that the Department expended \$510.06 for the prosecution of DOAH Case No. 06-2308. The Petitioner also established that it spent the sum of \$944.13 in costs for Case No. 06-2307. This represents total investigative costs expended by the Agency of \$1,454.19, for which the Petitioner seeks recovery. The Petitioner is not contending that any attorney's fees are due.

#### CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2006).

9. The Petitioner is a state agency charged with regulating the practice of licensed and unlicensed construction and electrical contracting in accordance with the relevant provisions of Chapter 455 and 489, Florida Statutes.

10. Pursuant to Section 455.228, Florida Statutes, the Department is empowered to discipline any person found guilty of any of the grounds enumerated in Sections 489.127(1) and 489.531(1), Florida Statutes (2004).

11. The Administrative Complaints allege that the Respondent is guilty of a violation of Section 489.127(1)(f), Florida Statutes (2004), which provides in pertinent part, as follows:

No person shall engage in the business or act in the capacity of a contractor or advertise himself or herself or business organization without being duly registered or certified or having a certificate of authority.

12. Section 489.105(3), Florida Statutes (2004), defines a construction contractor as the following:

A person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, substract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others.

13. The Administrative Complaints also allege that the Respondent is guilty of having violated Section 489.531(1), Florida Statutes (2004), which provides, in pertinent part, as follows:

(b) Use of the name or title 'electrical contractor' or 'alarm system contractor' or words to that affect, or advertise himself or herself or a business organization as available to practice electrical or alarm system contracting, when the person is not then the holder of a valid certification or registration issued pursuant to this part.

14. Section 489.505(12), Florida Statutes (2004), defines an electrical contractor, in pertinent part, as the following:

A person who conducts business in the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, appliances, apparatus, raceways, conduits, or any part thereof, which generates, transmits, transforms, or utilizes electrical energy in any form, including the electrical installations and systems within plants and substations, all in compliance with applicable plans, specifications, codes, laws, and regulations. The term means any person, firm, corporation that engages in the business of electrical contracting under an express or implied contract; or that undertakes, offers to undertake, purports to have the capacity to undertake or submits a bid to engage in the business of electrical contracting; or that does itself or by or through others engage in the business of electrical contracting.

15. In accordance with Sections 489.105(6) and 489.505(9), Florida Statutes (2004), the attempted sale of construction and electrical contracting services, respectively, and the negotiation or bid for a contract on these services also constitutes contracting.

16. There is no question, since the evidence is unrefuted, that the Petitioner has established by clear and convincing evidence the Respondent's violation of Section 489.127(1)(f), Florida Statutes, by engaging in the business or acting in the capacity of a construction contractor or advertising himself or a business organization, as available to engage in contracting without being duly registered or certified. The Respondent



engaged in unlicensed construction contracting when he contracted to install and erect the building structures on the Hanson and Crowell properties for compensation. Structural work, such as erecting a building, requires a construction license.

17. The Petitioner has also established by clear and convincing evidence that the Respondent violated 489.531(1), Florida Statutes (2004), by practicing electrical contracting or advertising himself or a business organization as being available to engage in such contracting without a certification or registration. Although he did not possess an electrical contracting license or certification, the Respondent contracted to perform electrical work at both the Hanson and Crowell residences or job sites.

18. In accordance with Section 455.228, Florida Statutes (2004), the Department may impose an administrative penalty not to exceed \$5,000.00 per incident of construction or electrical contracting without certification or registration, as well as being entitled to recover the costs of the investigation.

19. Notwithstanding the administrative penalty provided for in Section 455.228, Florida Statutes (2004), Section 489.13(3), Florida Statutes (2004), authorizes the Department to impose an administrative fine in an amount up to \$10,000.00 for any person guilty of unlicensed construction contracting, as

well as the ability to assess reasonable investigative and legal costs for prosecution of the violation against the unlicensed construction contractor.

#### RECOMMENDATION

Having considered the foregoing findings of fact, conclusions of law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that the Department of Business and Professional Regulation enter a final order determining that the Respondent has violated Sections 489.127(1)(f) and 489.531(1), Florida Statutes (2004), as alleged in the earlier-filed Administrative Complaint in Case No. 06-2308, and impose an administrative fine in the amount of \$5,000.00 for the violation of Section 489.127(1)(f), Florida Statutes (2004), and an administrative penalty of \$5,000.00 with regard to the electrical contracting violation, as provided for by Section 455.228, Florida Statutes (2004).

It is further recommended that the final order determine that the Respondent is guilty of violating Sections 489.127(1)(f) and 489.531(1), Florida Statutes (2004), as alleged in the later-filed Administrative Complaint in Case No. 06-2307 and that an administrative fine in the amount of

\$10,000.00 for the violation of Section 489.127(1)(f), Florida Statutes (2004), and that an administrative penalty of \$5,000.00 be imposed for the electrical contraction violation, as provided for by Section 455.228, Florida Statutes (2004). It is further recommended that costs be assessed against the Respondent for investigation and prosecution of both cases, not including costs associated with attorney's time and efforts, in the total amount of \$1,454.19, payable to the Petitioner Agency.

DONE AND ENTERED this 15th day of November, 2006, in Tallahassee, Leon County, Florida.



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P. MICHAEL RUFF  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with Clerk of the  
Division of Administrative Hearings  
this 15th day of November, 2006.

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.