

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
)
Petitioner,)
)
vs.)
) Case Nos. 06-2764
LAMAR CAMPBELL, a/k/a) 06-3171
MARTY CAMPBELL, d/b/a)
JOHNSTON HANDYMAN SERVICES,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held on December 11, 2006, via video teleconferencing with sites in Tallahassee and Pensacola, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

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

For Respondent: Mark A. Bednar, Esquire
11 East Zaragoza Street
Post Office Drawer 13146
Pensacola, Florida 32591

STATEMENT OF THE ISSUE

At issue is whether Respondent committed the offenses set forth in the Administrative Complaints and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

Petitioner, Department of Business and Professional Regulation, filed two Administrative Complaints on May 15, 2006, and July 25, 2006, which charged Respondent, Lamar Campbell, a/k/a Marty Campbell, d/b/a Johnston Handyman Services, with violating Sections 489.127(1)(f), and 489.531(1), Florida Statutes, by engaging in the business or acting in the capacity of a contractor without being duly registered or certified and by engaging in the unlicensed practice of electrical contracting.

Respondent disputed the allegations of the Administrative Complaints and requested an administrative hearing. The cases were referred to the Division of Administrative Hearings on or about July 31 and August 23, 2006. An Order of Consolidation was issued on October 16, 2006. Motions for Continuance were granted and the case was ultimately heard on December 11, 2006.

At hearing, Petitioner presented the testimony of Tracy Cauley, Kenneth Cauley, and Malcom Harrison. Petitioner's Exhibits numbered 1 through 11 were admitted into evidence.

Respondent presented the testimony of Booth Iburg, Denise Williams, Debbie Waters, and testified on his own behalf. Respondent's exhibits numbered 1 and 2 were admitted into evidence.

A Transcript, consisting of one volume, was filed on January 18, 2007. The parties timely filed Proposed Recommended Orders which have been considered in the preparation of this Recommended Order. All citations are to Florida Statutes (2006), unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner, the Department of Business and Professional Regulation (Department), is the state agency charged with the duty and responsibility of regulating the practice of contracting and electrical contracting pursuant to Chapters 20, 455, and 489, Florida Statutes.

2. At all times material to the allegations of the Administrative Complaints, Lamar "Marty" Campbell was not licensed nor had he ever been licensed to engage in contracting as a State Registered or State Certified Contractor in the State of Florida and was not licensed, registered, or certified to practice electrical contracting.

3. Mr. Campbell readily acknowledges that he has not had training or education in construction or contracting and has

never held any licenses related to any type of construction or contracting.

4. At all times material to the allegations of the Administrative Complaints, Johnston Handyman Services did not hold a Certificate of Authority as a Contractor Qualified Business in the State of Florida and was not licensed, registered, or certified to practice electrical contracting.

5. Respondent, Lamar Campbell, resides in Gulf Breeze, Florida. After Hurricane Ivan, he and his roommate took in Jeff Johnston, who then resided in Mr. Campbell's home at all times material to this case. Mr. Johnston performed some handywork in Respondent's home. Mr. Johnston did not have a car, a bank account, or an ID.

6. Mr. Campbell drove Mr. Johnston wherever he needed to go. At some point in time, Mr. Campbell drove Mr. Johnston to obtain a handyman's license in Santa Rosa County. Mr. Campbell did not apply for the license with Mr. Johnston and Mr. Campbell's name does not appear on this license. The license is in the name of Johnston's Handyman Services.

7. Mr. Campbell is a neighbor of Kenneth and Tracy Cauley. In the summer of 2005, which was during the period of time when Mr. Johnston resided in Mr. Campbell's home, the Cauleys desired to have repairs done on their home to their hall bathroom, master bathroom, kitchen and laundry room.

8. With the help of Mr. Campbell and others, Mr. Johnston prepared various lists of repairs that the Cauleys wanted performed on their home. In August 2005, Mr. Johnson and Mr. Campbell went to the Cauley's home and the proposed repairs were discussed with the Cauleys.

9. There are documents in evidence dated August and October, 2005, which the Cauleys perceive to be contracts for the repairs to be done in their home. However, these documents are not contracts but are estimates, itemizing both materials and labor. The documents have the word "Estimate" in large bold type at the top and "Johnston Handyman Services" also at the top of the pages. The list of itemized materials includes electrical items, e.g., light fixtures and wiring.

10. Also in evidence are documents dated August and October, 2005, with the word "Invoice" in large bold letters and "Johnston Handyman Services" at the top of the pages.

11. Both Mr. and Mrs. Cauley acknowledge that Mr. Johnston performed the vast majority of the work on their home. However, at Mr. Johnston's request, Mr. Campbell did assist Mr. Johnston in working on the Cauley residence.

12. Between August 5, 2005, and October 11, 2005, Mrs. Cauley wrote several checks totaling \$24,861.53. Each check was written out to Marty Campbell or Lamar Campbell.^{1/}

13. Mr. Campbell acknowledges endorsing these checks but asserts that he cashed them on behalf of Mr. Johnston, who did not have a bank account or identification, and turned the cash proceeds over to Mr. Johnston. Further, Mr. Campbell insists that he did not keep any of these proceeds. The undersigned finds Mr. Campbell's testimony in this regard to be credible.

14. Work on the project ceased before it was finished and Mr. Johnston left the area. Apparently, he cannot be located.

15. The total investigative costs, excluding costs associated with any attorney's time, was \$419.55 regarding the allegations relating to Case No. 06-2764, and \$151.25 regarding the allegations relating to case No. 06-3171, for a total of \$570.80.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case. §§ 120.569 and 120.57(1), Fla. Stat.

17. Petitioner has the burden of proving by clear and convincing evidence the specific allegations of the Administrative Complaints. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

18. Section 489.127(1)(f), Florida Statutes, reads in pertinent part as follows:

(1) No person shall:

* * *

(f) Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified or having a certificate of authority; . . .

19. Section 489.105(3), Florida Statutes, defines a contractor as:

. . . the 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, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others . . .

20. Section 489.531(1), Florida Statutes, reads in pertinent part as follows:

(1) A person may not:

* * *

(b) Use the name or title "electrical contractor" or "alarm system contractor" or words to that effect, 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; . . .

21. Subsection 489.505 (12), Florida Statutes, reads in pertinent part:

(12) 'Electrical contractor' . . . means any person, firm, or 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.

22. Subsections 489.505(9) and 489.105(6), Florida Statutes, state that the attempted sale of construction and electrical contracting services, respectively, and the negotiation or bid for a contract on these services also constitutes contracting.

23. Section 455.2273, Florida Statutes, reads as follows:

Disciplinary guidelines.--

(1) Each board, or the department when there is no board, shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board, or the department when there is no board, pursuant to this chapter, the respective practice acts, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and the such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board, or the department when there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department must review such disciplinary guidelines for compliance with legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. 120.56.

(5) 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 circumstances upon which the recommended penalty is based.

24. The Department cites to no rule which sets forth disciplinary guidelines with a meaningful range of penalties applicable to the unlicensed practice of contracting or electrical contracting as contemplated by Section 455.2273, Florida Statutes.

25. The Department cites only to Sections 455.228 and 489.13(3), Florida Statutes, regarding the Department's authority to impose fines. These statutes provide in pertinent part as follows:

455.228 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.--

(1) . . . In addition to the foregoing remedies, the department may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 . . .

489.13 Unlicensed contracting; notice of noncompliance; fine; authority to issue or receive a building permit; web page.--

* * *

(3) Notwithstanding s. 455.228, the department may impose an administrative fine of up to \$10,000 on any unlicensed person guilty of unlicensed contracting. In addition, the department may assess reasonable investigative and legal costs for prosecution of the violation against the unlicensed contractor. The department may waive up to one-half of any fine imposed if the unlicensed contractor complies with certification or registration within 1 year after imposition of the fine under this subsection.

26. The Administrative Complaint in Case No. 06-2764 charges Respondent with violating Section 489.127(1)(f), Florida Statutes, by engaging in the business or acting in the capacity of a contractor without being duly registered or certified. The checks were made out to Mr. Campbell, and he cashed them for Mr. Johnston. Technically, he received compensation for contracting services. And on one or more occasions he

accompanied Mr. Johnston when the estimates of work to be performed were discussed with the Cauleys.

27. The Administrative Complaint in Case No. 06-3171 charges Respondent with violating Section 489.531(1), Florida Statutes, by engaging in the unlicensed practice of electrical contracting. The estimates clearly referred to electrical items as part of the job on the Cauleys home.

28. The Department, pursuant to Sections 455.288 and 489.13(3), Florida Statutes, seeks imposition of fines in the total amount of \$15,000.00, and the costs of investigation. The fines sought by the Department are a combination of the maximum amount of \$10,000 pursuant to Section 489.13(3) and the maximum amount of \$5,000 pursuant to Section 455.228, Florida Statutes.

29. After a careful review of Sections 489.13(3) and 455.2273, Florida Statutes, the undersigned is not persuaded that the Department may impose a \$5,000 fine in addition to the \$10,000 fine referenced in Section 489.13(3), Florida Statutes.

30. In addition to citing to no rule setting forth disciplinary guidelines setting forth a meaningful range of designated penalties as required by Section 455.2273, Florida Statutes, the Department cites to no rule designating possible mitigating or aggravating circumstances and the variation and range of penalties permitted for each circumstance as contemplated by Section 455.2273(3), Florida Statutes.

31. Notwithstanding, there is no evidence that Mr. Campbell has previously been cited for unlicensed practice of contracting or electrical contracting. The Department presented no aggravating circumstances. This appearing to be a first offense, a lesser fine than the maximum allowed by law is more appropriate here.

32. Moreover, there are mitigating circumstances in evidence. Specifically, the person most responsible, Mr. Johnston, apparently is nowhere to be found, leaving Mr. Campbell to be punished for actions which were primarily those of Mr. Johnston.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is,

RECOMMENDED:

That the Department of Business and Professional Regulation enter a final order imposing a fine of \$1,000 for a violation of Section 489.127(1), Florida Statutes; imposing a fine of \$500 for a violation of Section 489.531(1), Florida Statutes, and requiring Respondent, Lamar Campbell, to pay \$570.80 in costs of investigation and prosecution.

DONE AND ENTERED this 9th day of March, 2007, in
Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of March, 2006.

ENDNOTE

^{1/} The Department asserts that the amount totals \$30,861.53.
However, two of the check copies in evidence are duplicates.

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.