

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 06-3246  
 )  
DEBI GOLD, d/b/a RENTAMAN )  
CONSTRUCTION/REMODELING, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings, on October 25, 2006, in Orlando, Florida.

APPEARANCES

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

For Respondent: Debi Gold, pro se  
2320 Pleasant Drive  
Longwood, Florida 32779

STATEMENT OF THE ISSUES

Whether Respondent engaged in the business of contracting without being registered or certified, in violation of

Subsection 489.127(1)(f), Florida Statutes (2004),<sup>1</sup> as charged in the Administrative Complaint; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On August 9, 2005, Petitioner filed an Administrative Complaint alleging Respondent had violated the laws regulating the practice of unlicensed construction contracting in the State of Florida. Respondent disputed the allegations and elected a formal administrative hearing. On August 25, 2006, the case was referred to the Division of Administrative Hearings, and the case was set for hearing.

At the hearing, Petitioner offered the testimony of two witnesses, Diandria Mason and William Darner. Petitioner introduced seven exhibits, which were accepted into evidence. Respondent testified on her own behalf, and offered ten exhibits, seven exhibits were accepted into evidence.

The Transcript of the hearing was filed on December 5, 2006. Both parties timely filed Proposed Recommended Orders, and the parties proposals have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the evidence in this proceeding, the following facts are found:

1. Petitioner is the state agency charged with the responsibility and duty to prosecute administrative complaints, pursuant to Section 20.165 and Chapters 120, 455, and 489, Florida Statutes. Petitioner is authorized to prosecute administrative complaints against unlicensed persons or business organizations, who engage in the business or act in the capacity of a contractor without being registered or certified.

2. At all times material hereto, Respondent, personally, was not licensed to engage in construction contracting in the State of Florida.

3. At all times material hereto, Rentaman or Rentaman Construction/Remodeling did not possess a certificate of authority to practice as a contractor qualified to do business in Florida.

4. At all times material hereto, Timothy Lee Allen was not licensed to engage in construction contracting in the State of Florida.

5. Beginning sometime in 2003 until September 30, 2005, Petitioner, doing business as Rentaman, operated as a sole proprietor under an occupation license in Seminole County.

6. In October 2004, Timothy L. Allen entered into an agreement with Respondent to purchase her trailer, tools, and the right to use her business name in Polk County. Respondent was to receive a five percent commission on any job in which she

assisted Allen, including bookkeeping, preparing invoices, and drafting contracts.

7. Allen set up a business in Polk County, using the name Rentaman Construction and Remodeling in October 2004.

8. In early November 2004, Allen negotiated with James and Diandria Mason to do repair/remodeling work on their home in Mulberry, Polk County, Florida. Respondent was contacted and brought in to negotiate the contract with the Masons.

9. On or about November 11, 2004, Respondent, doing business as Rentaman Construction/Remodeling, contracted with James and Diandria Mason to, inter alia, frame the back door and replace the subflooring in the Mason's Mulberry, Florida, mobile home for \$1,650.00.

10. The entire second page of the contract was handwritten by Respondent. The first page included a handwritten workmanship warranty, written and initialed by Respondent. The contract included the sentence: "I[the owners] have reviewed and accept the terms and conditions of Sale as presented to me by Debi Gold, an agent of Rentaman."

11. Mason paid Respondent \$1,100 cash, as a deposit for the construction project.

12. Allen was placed in charge of the work, but failed to complete the contract with the Masons.

13. The evidence is clear and convincing that Respondent engaged in the business or acted in the capacity of a contractor in November 2004, in Polk County, without being registered or certified.

14. The total investigative costs to Petitioner, excluding costs associated with any attorney's time, was \$762.43.

#### CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding, pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

16. Petitioner is the state agency charged with regulating the practice of unlicensed construction contracting, pursuant to Chapters 455 and 489, Florida Statutes.

17. Pursuant to Chapter 489, Florida Statutes, Respondent is empowered to impose administrative penalties upon any person who is found guilty of any of the grounds enumerated in Subsection 489.127(1), Florida Statutes.

18. Petitioner has the burden of proving, by clear and convincing evidence, the allegations against Respondent. § 120.57(1)(h), Fla. Stat.; Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

19. Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, fn. 5 (Fla. 1st DCA 1989), provides the following guidance regarding the clear and convincing evidence standard:

The standard has been described as follows: Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief of (sic) conviction, without hesitancy, as to the truth of the allegations sought be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

20. The Administrative Complaint alleges Respondent is guilty of having violated Subsection 489.127(1)(f), Florida Statutes, which provides, 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;

21. Section 489.105, Florida Statutes, as used in this part, defines a construction contractor as the following:

(3) "Contractor" means the person who is qualified for, and shall only be responsible for, the project contracted for and means,

except as exempted in this part, 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 . . .

22. The attempted sale of construction contracting services and the negotiation or bid for a contract on these services also constitutes contracting. § 489.105(6), Fla. Stat.

23. Subsection 489.127(1)(i), Florida Statutes, states in pertinent part:

. . . An occupational license certificate issued under the authority of Chapter 205 is not a license for purposes of this part.

24. Petitioner has proven by clear and convincing evidence that Respondent violated Subsection 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. Respondent engaged in unlicensed construction contracting when she contracted to perform repair/remodeling work for compensation at the Mason's residence, even though she did not perform the work herself.

25. Respondent is authorized to impose an administrative fine in the amount of up to \$10,000.00, for any person guilty of unlicensed construction contracting. Respondent also has the ability to assess reasonable investigative and legal costs for

prosecution of the violation against an unlicensed construction contractor. § 489.13(3), Fla. Stat.

RECOMMENDATION

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

RECOMMENDED that a final order be rendered as follows:

1. Finding Respondent guilty of having violated Subsection 489.127(1)(f), Florida Statutes, as alleged in the Administrative Complaint, and imposing as a penalty an administrative fine in the amount of \$5,000.00.

2. Assessing costs of investigation and prosecution to Respondent, excluding costs associated with an attorney's time, in the amount of \$762.43.

DONE AND ENTERED this 6th day of February, 2007, in Tallahassee, Leon County, Florida.



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DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of February, 2007.



ENDNOTE

1\ All references to Florida Statutes are to Florida Statutes (2004), unless otherwise indicated.

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.