

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)	
PROFESSIONAL REGULATION,)	
)	
Petitioner,)	
)	
vs.)	Case Nos. 06-3277
)	06-3278
CLIFFORD GRANDMONT,)	06-3279
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

This cause came on for formal hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on November 2, 2006, in West Palm Beach, Florida.

APPEARANCES

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

For Respondent: Clifford Grandmont, pro se
(No Appearance)

STATEMENT OF THE ISSUE

The issue is whether Respondent undertook to act as a contractor without a license as charged in the Administrative Complaints, and if so, what disciplinary action should be taken.

PRELIMINARY STATEMENT

This matter had its genesis in the filing, on May 15, 2006, of three Administrative Complaints, asserting that Respondent Clifford Grandmont (Mr. Grandmont), had acted as a contractor without having a license. Respondent demanded a hearing in each of the cases. They were forwarded to the Division of Administrative Hearings on August 30, 2006, and consolidated in an Order of Consolidation filed September 11, 2006. The cases were set for hearing on November 2, 2006, and were heard on that date.

At the hearing, Petitioner presented the testimony of three witnesses and offered Exhibits numbered 1 through 10 into evidence and all were accepted.

A Transcript was filed on November 8, 2006. After the hearing, Petitioner filed its Proposed Findings of Fact and Conclusions of Law on November 16, 2006.

References to statutes are to Florida Statutes (2005) unless otherwise noted.

FINDINGS OF FACT

1. Pursuant to Section 20.165, the Division of Professions is a subordinate unit of the Department of Business and Professional Regulation (the Department). The Department provides administrative support, including prosecutorial support

to the Construction Industry Licensing Board (the Board), which is also located within the Department.

2. Mr. Grandmont is not currently licensed as a State Registered or State Certified Contractor in this state, nor has he ever been licensed by the Board.

3. Mr. Grandmont's last known address is 355 China Berry Circle, Davenport, Florida. He was provided notice of the hearing at that address, and at 7733 Park Road, Charlotte, North Carolina 28210, which is the address he used when demanding a hearing on disputed facts in two of these cases. In DOAH Case No. 06-3279, he provided no address in his demand for a hearing.

4. All attempts by U. S. Mail to notify Mr. Grandmont of the hearing, were returned. Mr. Grandmont is deemed to have known of the time, date, and place of the hearing, and is deemed to have waived his appearance at the hearing.

5. On November 11, 2005, subsequent to Hurricane Wilma, Robert L. Coe, of Lake Worth, Florida, was contacted by Mr. Grandmont, who offered to repair his damaged mobile home. He provided a written estimate of \$10,500. The estimate contained a list of 11 items requiring repair, and stated that he would accomplish the repair of them. He demanded a \$4,200 down payment, which Mr. Coe provided in a draft drawn on Fidelity Cash Reserves, and dated November 11, 2005.

6. Mr. Coe never saw Mr. Grandmont again. The repairs set forth in the written estimate were not accomplished. The draft, however, was negotiated by Mr. Grandmont.

7. On November 12, 2005, subsequent to Hurricane Wilma, Joseph Webster, of Lake Worth, Florida, was contacted by Mr. Grandmont, who offered to repair his damaged residence. Mr. Grandmont discussed charging \$13,500 in return for repairing Mr. Webster's residence. After negotiations, Mr. Grandmont agreed to do it for \$11,500. No written estimate or contract was prepared. Mr. Grandmont demanded \$5,750 payment in advance. Mr. Webster rounded off the down payment to \$6,000 and presented Mr. Grandmont an official check of the Taunton Federal Credit Union, of Taunton, Massachusetts, for that amount.

8. The check was negotiated by Mr. Grandmont, but the promised repairs were not accomplished.

9. On November 4, 2005, subsequent to Hurricane Wilma, Ella Arseneau, of Lake Worth, Florida, was contacted by Mr. Grandmont, who offered to replace her roof. He provided an estimate of \$5,500 in return for repairing Ms. Arseneau's residence. He demanded that she pay \$3,500 in advance, which Ms. Arseneau provided by presenting Mr. Grandmont a check for \$3,500, drawn on an account in Wachovia Bank.

10. The check was negotiated by Mr. Grandmont, but the roof was not repaired as promised.

11. Mr. Coe is 78 years of age, Mr. Webster is 85, and Ms. Arseneau is 77.

CONCLUSIONS OF LAW

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

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

14. Sections 489.105(3) and (6), provide as follows:

489.105. Definitions

As used in this part:

* * *

(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; and whose job scope is substantially similar to the job scope described in one of the subsequent paragraphs of this subsection. For the purposes of regulation under this part, "demolish" applies only to demolition of steel tanks over 50 feet in height; towers

over 50 feet in height; other structures over 50 feet in height, other than buildings or residences over three stories tall; and buildings or residences over three stories tall. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(a) 'General contractor' means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) 'Building contractor' means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which commercial or residential buildings do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) 'Residential contractor' means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

* * *

(6) 'Contracting' means, except as exempted in this part, engaging in business as a contractor and includes, but is not limited to, performance of any of the acts as set

forth in subsection (3) which define types of contractors. The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure. However, the term "contracting" shall not extend to an individual, partnership, corporation, trust, or other legal entity that offers to sell or sells completed residences on property on which the individual or business entity has any legal or equitable interest, if the services of a qualified contractor certified or registered pursuant to the requirements of this chapter have been or will be retained for the purpose of constructing such residences.

15. Section 489.127(1)(f) provides as follows:

§ 489.127. Prohibitions; penalties

(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;

* * *

16. Section 489.113(2), provides as follows:

489.113. Qualifications for practice; restrictions

* * *

(2) No person who is not certified or registered shall engage in the business of contracting in this state. However, for purposes of complying with the provisions of this chapter, a person who is not certified or registered may perform construction work under the supervision of a person who is certified or registered, provided that the work is within the scope of the supervisor's license and provided that the person being supervised is not engaged in construction work which would require a license as a contractor under any of the categories listed in s. 489.105(3)(d)-(o). This subsection does not affect the application of any local construction licensing ordinances. To enforce this subsection:

* * *

17. The evidence of record proves by clear and convincing evidence that Mr. Grandmont engaged in contracting without a license on three occasions in 2005, in Lake Worth, Florida, in violation of Section 489.127(1)(f), Florida Statutes.

18. Section 489.13(3), Florida Statutes, authorizes the Department to impose an administrative fine in the amount of up to \$10,000 for any person found guilty of unlicensed construction contracting. It further provides for reasonable investigative and legal costs in prosecuting violations. However, no evidence of the amount of investigative and legal expense was produced, so no recommendation in that regard is made.

RECOMMENDATION

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

RECOMMENDED that the Department of Business and Professional Regulation impose a fine upon Clifford Grandmont in the amount of \$30,000.

DONE AND ENTERED this 28th day of November, 2006, in Tallahassee, Leon County, Florida.



HARRY L. HOOPER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th 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.