

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
)
Petitioner,)
)
vs.) Case No. 06-3917
)
BRUCE P. BOSTON,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings (DOAH) conducted a final hearing in the above-styled matter on January 9, 2007, in Gainesville, Florida. The following appearances were entered:

APPEARANCES

For Petitioner: Drew F. Winters, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202

For Respondent: No Appearance

STATEMENT OF THE ISSUES

The primary issue for determination in this case is whether Respondent, Bruce P. Boston, engaged in the unlicensed practice of electrical contracting in the State of Florida without being certified or registered in violation of Chapter 489, Part II of

the Florida Statutes; and secondarily, if Respondent committed that violation, what penalty should be imposed?

PRELIMINARY STATEMENT

On June 7, 2006, Petitioner issued an Administrative Complaint alleging that Respondent engaged in the practice of contracting without being duly registered or certified to engage in that activity.

Respondent disputed the allegations in the Administrative Complaint and requested a formal administrative hearing. The case was referred to the Division of Administrative Hearings on or about October 10, 2006. A formal hearing was set for January 9, 2007, in Gainesville, Florida.

At hearing, Petitioner presented testimony of two witnesses and three exhibits, which were admitted into evidence. Respondent did not appear and no appearance was made on his behalf.

A one-volume transcript of the final hearing was filed on January 29, 2007. Petitioner filed a Proposed Recommended Order, which has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Department of Business and Professional Regulation (Petitioner) is a state agency charged with the duty and

responsibility of regulating the practice of electrical contracting in the State of Florida.

2. Respondent's address is 18204 Southwest 200 Street, Archer, Florida 32618.

3. At no time material hereto was Respondent certified or registered in the State of Florida to engage in the practice of electrical contracting or to perform electrical contracting work.

4. Mrs. Dawn Wingert is the owner of the residence located at what is currently designated as 16675 Southwest 143rd Avenue, Archer, Florida. Mrs. Wingert, as lawful owner, had the authority to enter contracts regarding the residence. The Wingert residence was previously known as 110 Park Avenue, Archer, Florida, prior to the assignment of the current address.

5. Wingert entered into a contract with Respondent to perform construction of a carport and perform electrical contracting work at Wingert's residence subsequent to assignment of the address of 110 Park Avenue, Archer, Florida.

6. Respondent received compensation for the contracted work directly from Wingert via personal check, which Respondent then cashed.

7. Terry Vargas, a licensed electrical contractor having been issued license number ER 13012448, was subsequently

contacted by Respondent to perform the electrical contracting work at the Wingert residence.

8. Vargas installed an electrical outlet on the back porch, put a flood light on the back porch, moved the switch board to a more convenient location, and put a security light in the front of Wingert's residence. All work required electrical fixtures to be permanently affixed and become a permanent part of the structure of the Wingert residence.

9. Although Vargas completed the electrical contracting work at the Wingert residence, Wingert paid the Respondent for the services because the work was contracted for through Respondent.

10. At no time pertinent to this matter did Terry Vargas contract with Wingert to complete the electrical services enumerated above.

11. After he completed the work at Wingert's residence, Vargas invoiced Respondent for the electrical contracting work. Respondent, however, refused to pay Vargas for the electrical contracting work performed, despite having received compensation for the work from Wingert.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case.

13. Pursuant to Section 489.531(1)(a), Florida Statutes, a person may not practice contracting unless the person is certified or registered. Additionally, such action may subject one to criminal sanctions. § 489.531(3)(a), Fla. Stat.

14. Section 489.505(9), Florida Statutes, states that:

"[c]ontracting" means, except where exempted in this part, engaging in business as a contractor or performing electrical or alarm work for compensation and includes, but is not limited to, performance of any of the acts found in subsections (2) and (12), which define the services which a contractor is allowed to perform. 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 corresponding licensure.

15. Section 489.531(3), Florida Statutes, further states that the remedies set forth in this subsection are not exclusive and may be imposed in addition to the remedies set forth in Section 489.533(2).

16. Section 489.533(2), Florida Statutes, provides that when any applicant, contractor, or business organization is found guilty of any of the violations set forth above, a final order may be entered imposing one or more of the following penalties:

(a) Denial of an application for certification or registration.

(b) Revocation or suspension of a certificate or registration.

(c) Imposition of an administrative fine not to exceed \$10,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the contractor on probation for a period of time and subject to such conditions as the board may specify, including requiring the contractor to attend continuing education courses or to work under the supervision of another contractor.

(f) Restriction of the authorized scope of practice by the contractor.

(g) Require financial restitution to a consumer.

17. Petitioner has the burden of proving by clear and convincing evidence the allegations against Respondent.

Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996). Evans Packing, supra, 550 So. 2d 112, 116, fn. 5, provides the following, pertinent to the clear and convincing evidence standard:

That standard has been described as follows:
[C]lear 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 to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

18. In addition, the disciplinary action may only be based upon the offenses specifically alleged in the Administrative Complaint. See Sternberg v. Department of Professional Regulation, Board of Medical Examiners, 465 So.2d 1324, 1325 (Fla. 1st DCA 1985); Kinney v. Department of State, 501 So. 2d 129, 133 (Fla. 5th DCA 1987); Hunter v. Department of Professional Regulation, 458 So. 2d 842, 844 (Fla. 2d DCA 1984).

19. Petitioner alleged with specificity allegations constituting the uncertified or unregistered practice of electrical contracting by Respondent Bruce P. Boston.

20. Petitioner proved by clear and convincing evidence that Respondent violated Section 489.531(1)(a), by performing electrical contracting at Mrs. Wingert's residence without certification or registration to practice electrical contracting in the State of Florida.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED that Petitioner enter a final order, in accordance with Section 489.533(2)(c), Florida Statutes, requiring that Respondent pay an administrative fine in the

amount of \$5,000.00 to the Department of Business and Professional Regulation.

DONE AND ENTERED this 20th day of February, 2007, in Tallahassee, Leon County, Florida.



DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of February, 2007.

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.