

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)	
PROFESSIONAL REGULATION,)	
CONSTRUCTION INDUSTRY)	
LICENSING BOARD,)	
)	
Petitioner,)	
)	Case No. 07-1630PL
vs.)	
)	
RICHARD STEVEN RHODES,)	
d/b/a R. S. RHODES)	
CONSTRUCTION, INC.,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Notice was provided and on June 26, 2007, a formal hearing was held in this case. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes (2006). The hearing proceeded by video-teleconferencing between sites in Tallahassee and Jacksonville, Florida. The hearing was held before Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Michael B. Golen, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202

For Respondent: No appearance

STATEMENT OF THE ISSUE

Should discipline be imposed against Respondent's license as a certified general contractor in Florida for violations of Chapter 489, Florida Statutes (2004)?

PRELIMINARY STATEMENT

On June 28, 2006, in case numbers 2005-054514 and 2005-054794, before the Construction Industry Licensing Board (the Board), the Department of Business and Professional (DBPR), brought an Administrative Complaint against Respondent accusing him of a violation of the statute referred to in the Statement of the Issue. The Administrative Complaint was premised upon alleged construction contracts or agreements entered into with Mario E. Canas and Escolastico Gumapas, Jr., respectively.

Respondent was provided several options in addressing the Administrative Complaint by executing an Election of Rights Form. He chose the second option. That option was to dispute the allegations of fact contained in the Administrative Complaint and the legal conclusions drawn from the factual allegations. Respondent asked that he be heard in accordance with Section 120.57(1), Florida Statutes, by an administrative law judge to resolve certain of the facts he disputed. Specifically he contested the following facts:

Count I #10, #16; Count II #21; Count IV #26;
Count V #28, #30, #35, #38; Count VI # 38;
Count VII #43; Count IX #45; and Count X #47

In executing the Election of Rights Form with his signature, Respondent also provided his address as 1964 Beachside Court, Atlantic Beach, Florida 32233.

On April 10, 2007, DBPR forwarded the case to the Division of Administrative Hearings (DOAH), to assign an administrative law judge to conduct the hearing in accordance with Respondent's request for formal hearing. The assignment was made by Robert S. Cohen, Director and Chief Judge of DOAH in reference to DOAH Case No. 07-1630PL. The assignment was to the present administrative law judge.

On April 10, 2007, an Initial Order was sent to the parties. On April 23, 2007, a Notice of Hearing by Video-teleconference setting the hearing date as June 26, 2007, was sent to the parties. On April 23, 2007, an Order of Prehearing Instructions was sent to the parties. Respondent's copies of the orders and notice were sent to him at the address he had provided in signing the Election of Rights Form. The copies were provided by ordinary mail. None of the copies were returned as undeliverable.

Although Respondent had been duly noticed of the hearing, he did not attend.

At hearing Petitioner's counsel was questioned concerning any contacts he may have had with Respondent prior to the hearing date, that might explain Respondent's lack of appearance.

Petitioner's counsel had no explanation, having a similar experience of contacts with Respondent through the mails, involving various pleadings that were filed by Petitioner; the experience was that Respondent was served with those pleadings and no indication given that the service was not perfected.

No one else attended the hearing to represent Respondent's interest.

Inquiry was made concerning Petitioner's intentions absent the Respondent. Petitioner chose to proceed with its case in view of the Election of Rights by Respondent and his choice to dispute certain underlying facts in the case and the legal conclusions that followed. In that posture, Petitioner's counsel asked that the uncontested facts set forth in the Administrative Complaint be accepted as true. That request was granted. The uncontested facts will be set forth in the Findings of Fact to this Recommended Order, in addition to facts found based upon the record established at hearing.

Escolastico Gumapas, Jr., testified. He appeared in Jacksonville, Florida. Mario E. Canas participated by telephone from a location in Texas, in accordance with Petitioner's motion to have that witness appear by telephone, a motion granted at hearing. Petitioner's Exhibits A1 through A13, A13A, A14 and A15 were admitted. Petitioner's Exhibits A13 and A13A were late-filed exhibits received on June 27, 2007.

The hearing record was not transcribed. On June 28, 2007, Petitioner filed its proposed recommended order. Respondent has not filed a proposed recommended order within the time allowed for filing. On July 6, 2007, the period for submitting proposed findings of fact and conclusions of law orders and memoranda ended.

FINDINGS OF FACT

Uncontested Facts:

1. Petitioner is the state agency charged with regulating the practice of contracting pursuant to Section 20.165, Florida Statutes, and Chapters 455 and 489, Florida Statutes.

2. Respondent has been at all times material hereto, a Certified General Contractor in the State of Florida, having been issued license number CGC062689.

3. Respondent's last known address of record is 1964 Beachside Court, Atlantic Beach, Florida 32233.

4. At all times material hereto, Respondent was the primary qualifying agent for R.S. Rhodes Construction, Inc. ("RRC"), which did not possess a certificate of authority.

5. On or about November 10, 2004, Respondent entered into a contract with Mario E. Canas ("Canas") to build a room addition to Canas' house located at 2528 Ligustrum Road, Jacksonville, Florida.

6. The contract did not contain information regarding the Florida Homeowners' Construction Recovery Fund.

7. The contracted price for the construction was \$34,946.00, of which RRC accepted \$25,967.40.

8. On or about April 4, 2005, Duval County Building Department issued Permit No. B0518467, by and through Respondent's license, for the contracted construction.

9. Construction commenced in or around April 2005, and continued until on or about August 19, 2005, at which time construction ceased before completion due to Respondent's license being revoked.

10. On or about June 27, 2005, Respondent's Certified General Contractor's license was revoked by the Construction Industry Licensing Board for the Florida Department of Business and Profession Regulation.

11. As a result of Respondent's failing to pay subcontractors, Canas was forced to pay an additional \$2,850.00 to subcontractors to avoid liens being placed on his property.

12. To date, Respondent has failed to return any money to Canas which Respondent received above the amount completed on the contract.

13. In or around 2004, Respondent entered into an agreement with Escolastico Gumapas, Jr. ("Gumapas") to construct a front porch addition to Gumapas' house located at 12242 Antoni Court, Jacksonville, Florida.

14. The contract did not contain information regarding the Florida Homeowners' Construction Recovery Fund.

15. The contract price for the construction was \$12,000.00, of which RRC accepted \$2,000.00.

16. Respondent failed to obtain a permit for the contracted construction due to the fact that the City requested a zoning variance before a permit would be issued.

17. Respondent failed to apply for or obtain a zoning variance and, therefore, Respondent failed to commence construction.

Additional Facts:

Canas Transaction

18. On November 10, 2004, Mario Eduardo Canas and Xiomara Canas, as owners, entered into a contract with Respondent d/b/a R.S. Rhodes Construction Company, Inc. (R.S. Rhodes), for work to be performed at 2028 Ligustrum Road, Jacksonville, Florida. On October 16, 2004, prior to signing the contract, Mr. Canas had paid R.S. Rhodes \$2,000.00 to commence the project.

19. The contract terms anticipated that the contractor would furnish needed materials and perform the work shown on the drawings and/or described in specifications in relation to the proposal for the work.

20. The time of completion was referred to in Article 2 of the contract which states:

The work to be performed under this Contract shall be commenced WITHIN TWO WEEKS AFTER PERMIT IS ISSUED, and shall be substantially completed WITHIN 16 WEEKS FROM PERMIT ISSUE DATE Time is of the essence. The following constitutes substantial commencement of work pursuant to this proposal and contract:

(specify) Work begins first day of ground breaking.

21. The overall contract price was \$34,946.00.

22. Article 4 established Progress Payments accordingly:

Payment of the Contract Price Shall be paid in the manner Following:

1st Draw	Due at signing of contract	\$6,989.20
2nd Draw	Due After Foundation and columns	\$6,989.20
3rd Draw	Due After Framing, Trusses, Roof Sheathing, Wall Sheathing, Doors, Electrical Rough-In, Dry-In	\$6,989.20
4th Draw	Due After Roofing (Fiberglass) Insulation, Drywall, Interior Trim, Interior Paint	\$6,989.20
5th Draw	Due Upon Substantial Completion.	\$6,989.20
Total Cost of Construction		\$34,946.00

23. Among the general provisions within Article 5 was the provision that stated:

* * *

4. Contractor shall furnish Owner appropriate releases or waivers of lien for all work performed or materials provided at the time the next periodic payment shall be due (when applicable).

* * *

24. In relation to the Canas contract, it did not contain Respondent's registration or certification number used in the business of contracting.

25. In April 2005 Respondent broke ground on the Canas project. Respondent quit working around June 2005.

26. In addition to the \$2,000.00 paid in October 2004, Mr. Canas made several more payments by check to R.S. Rhodes. On November 11, 2004, Mr. Canas paid R.S. Rhodes \$6,989.20. On April 14, 2005, Mr. Canas paid R.S. Rhodes \$6,989.20. On May 17, 2005, R.S. Rhodes was paid \$6,989.20. On August 5, 2005, R.S. Rhodes was paid \$3,000.00. All checks written were cashed.

27. The May 17, 2005, payment was made prematurely, in that the work called for under the contract had not been performed prior to that payment.

28. The August 5, 2005, \$3,000.00 payment was made after Respondent came back from a trip and promised to return to the job. At that time the exterior of the home was being damaged where work was incomplete. The project was still not on schedule.

29. In this connection, Respondent had not done the things necessary to be paid the fourth draw under the contract.

30. On August 19, 2005, Respondent wrote Mr. Canas concerning the project stating:

This letter is to inform you that due to conditions beyond the control of R.S. Rhodes Construction, Inc. R.S. Rhodes Construction Inc. is no longer doing business in the state of Florida and will not be able to complete your project under existing conditions. New conditions may be arranged as a resolution to this situation to complete your project at a quality level you would expect.

At our last meeting on August 5, 2005, you were informed and verified the financial costs on your project. At that time you were made aware how the project had run into a deficit by approximately \$3000.00 and consequently wrote R.S. Rhodes Construction a check to cover that deficit. All money given to R.S. Rhodes has not made any profit, as that was to come at the end of the project once completed.

Valdan Electric, Inc., and A.J. Morel Plumbing, Inc. are requesting their first draw for the work already completed on your project. Their requests are legitimate and customary to the industry. Both are willing to continue on the project.

I sincerely regret this situation and look forward to discussing and implementing a resolution that will complete our project in a reasonable manner.

31. The Canas project was concluded in October 2006.

32. Arthur Morel as president/owner of A.J. Morel Plumbing, Inc., filed a claim of lien in association with the Canas project. Contrary to the contract entered into with R.S. Rhodes, the unpaid amount upon which the claim of lien was based was \$1,200.00. Mr. Canas had to pay the plumber that amount to satisfy the lien.

33. Mr. Canas had to pay Valdan Electric, Inc., \$1,000.00 in relation to a bill on the project that was not paid by R.S. Rhodes.

34. Mr. Canas had to pay Andre McBride \$650.00 to install windows in the project that were Respondent's obligation for installation under the contract.

35. After the Respondent abandoned the project, Mr. Canas had to pay significant additional costs to conclude the project, in addition to the specific references to additional costs that have been described. Those miscellaneous expenses are reflected in Petitioner's Exhibit numbered A10.

36. The certificate of occupancy for the property at 2528 Ligustrum Road was granted by the Department of Public Works of the City of Jacksonville of Florida, on October 27, 2006.

37. On October 31, 2006, a certification of completion for various forms of activities under permits issued by that agency was provided.

Gumapas Transaction:

38. On November 5, 2004, Respondent came to the Gumapas home at 2242 Antoni Court, Jacksonville, Florida, to give an estimate on construction. He took measurements of the house and determined that the costs would be \$12,000.00 for the work, to include materials. After considering the estimate, Mr. Gumapas agreed to allow Respondent to proceed with the project.

39. On November 9, 2004, Respondent came back to the Gumapas property and there was a verbal agreement to proceed with the construction. Respondent said he needed \$2,000.00 deposit to

do paperwork and that Respondent would draw up a proposal that could be used as a receipt.

40. On November 11, 2004, Mr. Gumapas paid Respondent the \$2,000.00 deposit.

41. Mr. Gumapas asked Respondent when Respondent could commence the project, Respondent replied that he would start on the first week of January 2005, and that the work would be completed in eight weeks.

42. On November 15, 2004, Respondent and Escolatico Gumapas signed a proposal for construction at 2242 Antoni Court in Jacksonville, Florida. The proposal called for a \$2,000.00 down payment in relation to initial drawings and planning to construct a porch on the front of the home. Other terms of the proposal were:

Preliminary drawings will be done before the construction drawings are completed, so as to maintain construction costs within the estimated costs, as discussed in our previous meeting. That estimated costs of construction discussed was approximately \$12,000.00, depending on the final construction drawings.

After construction drawings are complete, a full proposal and cost estimate will then be attached to the contract and submitted for signature. Please sign and return with down payment to schedule commencement.

43. Related to the Gumapas project, the proposal did not contain Respondent's registration or certification number used in the business of contracting.

44. When Respondent failed to commence the project on time, Mr. Gumapas tried to call Respondent, but the call was not returned. Eventually, Mr. Gumapas spoke with Respondent. Respondent said that he was having trouble with the City of Jacksonville zoning department and that Respondent needed to take pictures of the area. Respondent told Mr. Gumapas that there had been changes in relation to the rules pertaining to a variance from the City of Jacksonville, needed to proceed with the project. The details of those changes were not explained by Respondent.

45. After numerous attempts to reach the Respondent, Mr. Rhodes spoke with Respondent in late April 2005, or perhaps in early May 2005. Respondent told Mr. Gumapas that permits had been approved by the zoning department of the City of Jacksonville that needed to be picked up.

46. On May 11, 2005, Mr. Gumapas executed an Agent's Letter of Authorization granting R.S. Rhodes, as represented by Respondent, authorization to act as Mr. Gumapas' agent to apply for a zoning variance with the City of Jacksonville.

47. Respondent had not begun the work by mid-May 2005. Mr. Gumapas again tried to reach the Respondent by telephone.

48. Mr. Gumapas then went to Respondent's home and left a message with a person at the home, to the effect that Mr. Gumapas needed to speak with Respondent about the porch at the Gumapas home.

49. On June 5, 2005, Mr. Gumapas spoke with Respondent and told him that he did not wish Respondent to proceed with the construction based upon the delay. Respondent apologized. Mr. Gumapas asked for his money back. Respondent told Mr. Gumapas that he would pay him back \$1,400.00 because Respondent had already done work. Respondent told Mr. Gumapas that he would get back with the owner with paperwork reflecting by invoice the work that had been done.

50. A month passed and Respondent did not contact Mr. Gumapas. Mr. Gumapas called Respondent.

51. On July 6, 2005, Respondent sent Mr. Gumapas an invoice.

52. Later, Mr. Gumapas found out that the permit for the project had been denied by the City of Jacksonville. Mr. Gumapas tried to call Respondent about the permit denial. Respondent did not return his call.

53. In August 2005, Mr. Gumapas went to talk to the City of Jacksonville building department about the permit denial. Someone there told Mr. Gumapas that R.S. Rhodes had never

requested a permit to build the front porch, as evidenced in Petitioner's Exhibit A14.

54. Mr. Gumapas continued to request the refund of his \$2,000.00 deposit paid by a check that was cashed.

55. In November 2005, Respondent returned \$100.00 paid to R.S. Rhodes. Mr. Gumapas continued to contact Respondent to have the balance of the deposit returned. Eventually, Respondent paid more money for the refund of the deposit. The total amount paid was \$500.00. Mr. Gumapas continues to contact Respondent to retrieve the balance of his deposit.

CONCLUSIONS OF LAW

56. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding in accordance with Sections 120.569, and 120.57(1), Florida Statutes (2006).

57. At times relevant to the case, Respondent was a certified general contractor in Florida, license number CGC062689. § 489.115, Fla. Stat. (2004).

58. Through the Administrative Complaint Respondent has been accused of violations reflected in Counts I through X. Each of those counts shall be discussed.

59. This is a disciplinary case. For that reason, Petitioner bears the burden of proving the accusations against Respondent. The proof must be sufficient to sustain the

allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The term clear and convincing evidence is explained in the case In re: Davey, 645 So. 2d 398 (Fla. 1994), quoting with approval from Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

60. Given the penal nature of this case, Chapter 489, Florida Statutes (2004), has been strictly constructed. Any ambiguity favors the Respondent. See State v. Pattishall, 99 Fla. 296 and 126 So. 147 (Fla. 1930), and Lester v. Department of Professional and Occupational Regulation, State Board of Medical Examiners, 348 So. 2d 923 (Fla. 1st DCA 1977).

61. Count I to the Administrative Complaint refers to Section 489.119(2), Florida Statutes (2004), which states:

Business organizations; qualifying agents.--

* * *

(2) If the applicant proposes to engage in contracting as a business organization, including any partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal names or a fictitious name where the applicant is doing business as a sole proprietorship, the business organization must apply for a certificate of authority through a qualifying agent and under the fictitious name, if any.

62. Section 489.1195(1)(a), Florida Statutes (2004), states:

(1) A qualifying agent is a primary qualifying agent unless he or she is a secondary qualifying agent under this section.

(a) All primary qualifying agents for a business organization are jointly and equally responsible for supervision of all operations of the business organization; for all field work at all sites; and for financial matters, both for the organization in general and for each specific job.

63. Section 489.105(4), Florida Statutes (2004), defines "Primary Qualifying Agent," where it states:

'Primary qualifying agent' means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which he or she is connected; who has the responsibility to supervise, direct, manage, and control construction activities on a job for which he or she has obtained the building permit; and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

64. R.S. Rhodes did not hold a certificate of authority. Nonetheless, Respondent served as it primary qualifying agent and was responsible for the work done on the Canas and Gumapas jobs and for financial matters associated with those jobs.

65. In relation to Respondent's doing business as the primary qualifying agent for R.S. Rhodes, without a certificate

of authority, he is accused of violating Section 489.129(1)(i), Florida Statutes (2004), which states:

Disciplinary proceedings.--

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate, registration, or certificate of authority, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed \$5,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

* * *

(i) Failing in any material respect to comply with the provisions of this part or violating a rule or lawful order of the board.

66. Respondent as the primary qualifying agent for R.S. Rhodes is guilty for R.S. Rhodes' failure to apply for a certificate of authority before engaging in contracting on the Canas and Gumapas jobs under the R.S. Rhodes name. His actions violated Section 489.119(2), Florida Statutes (2004), in violation of Section 489.129(1)(i), Florida Statutes. The violations were proven by clear and convincing evidence.

67. Counts II and VI refer to Section 489.119(6)(b), Florida Statutes (2004), in connection with the Canas and Gumapas jobs respectively. That provision calls for:

The registration or certification number of each contractor or certificate of authority number for each business organization shall appear in each offer of services, business proposal, bid, contract, or advertisement, regardless of medium, as defined by board rule, used by that contractor or business organization in the practice of contracting

68. Respondent's certification number did not appear in the Canas contract nor the Gumapas proposal as required. By violating Section 489.119(6)(b), Florida Statutes (2004), Respondent violated Section 489.129(1)(i), Florida Statutes (2004), as referenced in Counts II and VI to the Administrative Complaint. Clear and convincing evidence was provided as to those violations.

69. Counts III and VII refer to violations of Section 489.1425, Florida Statutes (2004), in relation to the Canas and Gumapas jobs respectively. In pertinent part Section 489.1425(1), Florida Statutes (2004), states:

Duty of contractor to notify residential property owner of recovery fund.--

(1) Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed \$2,500 . . .

70. Respondent failed to include the notification to Mr. Canas and Mr. Gumapas residential property owners by written statement of their rights to recover under the recovery fund, in a setting in which the Canas contract and Gumapas agreement, as to labor and materials exceeded, the \$2,500.00 threshold. Respondent violated Section 489.1425(1), Florida Statutes (2004). Thus he violated Section 489.129(1)(i), Florida Statutes (2004). Clear and convincing evidence was provided to establish these violations.

71. Counts IV and IX refer to Section 489.129(1)(g)2., Florida Statutes (2004), in relation to the Canas and Gumapas jobs respectively. Section 489.129(1)(g)2., Florida Statutes (2004), allows discipline to be taken for:

(g) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

* * *

2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; . .

.

Respondent abandoned the Canas and Gumapas jobs, and the percentage of work completed was less than the percentage of the total contract price paid by Mr. Canas at the time he abandoned

that project. In each instance, Respondent violated Section 489.129(1)(g)2., Florida Statutes (2004). Clear and convincing evidence was provided to establish the violations.

72. Counts V and X refer to the Canas and Gumapas jobs respectively. Section 489.129(1)(m), Florida Statutes (2004), allows the imposition of discipline for "Committing incompetency or misconduct in the practice of contracting." In both jobs Respondent committed misconduct in the practice of contracting in the manner described in the facts. He took money from the customers to accomplish the jobs. The jobs were not completed. He avoided the customers in their attempt to gain his compliance with the terms of their contract or agreement. His conduct led to monetary losses on their part. Respondent violated Section 489.129(1)(m), Florida Statutes (2004), pertaining to Counts V and X. Clear and convincing evidence was provided to establish the violations.

73. Count VIII in relation to the Gumapas job, refers to Section 489.129(1)(j), Florida Statutes (2004). That provision allows discipline for:

Abandoning a construction project in which the contractor is engaged or under contract as a contractor. A project may be presumed abandoned after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

Respondent abandoned the Gumapas construction project in which he was engaged. Within the meaning of that provision he did not have just cause. He did not properly notify Mr. Gumapas, and he had failed to perform on the job for 90 consecutive days.

Respondent violated Section 489.129(1)(j), Florida Statutes (2004). Clear and convincing evidence was provided to establish this violation.

74. When considering the imposition of penalties for the violations established, the Board may act in accordance with the authority set forth in Section 489.129, Florida Statutes (2004), and Section 455.227(2), Florida Statutes (2004). The latter provision reflects a similar approach to discipline compared to the former.

75. Section 455.2273, Florida Statutes (2004), makes it incumbent upon the board to establish rules disciplinary guidelines pertaining to disciplinary matters and obligates the administrative law judge in recommending penalties to follow those penalty guidelines established by the Board.

76. Florida Administrative Code Rule 61G4-17.001 establishes guidance for penalties to be imposed for violations that have been proven in this case. It describes the normal ranges of punishment. Consistent with the discussion reflected in the matrix established by the aforementioned rule for imposition of penalties from a minimum to a maximum and Florida Administrative Code Rule 61G4-17.003, in relation to first offenses and repeat

offenses, the Canas violations are considered first offenses and the Gumapas violations are considered repeat offenses.

Pertaining to Count VIII, the Gumapas job, it is considered a first offense. No administrative fine is recommended that would be in excess of \$5,000.00 per violation as allowed by rule. To do so would be to act contrary to the boundaries established by the Legislature, when at Sections 455.227(2) and 489.129(1), Florida Statutes (2004), it did not allow the imposition of an administrative fine that would exceed \$5,000.00 per violation.

77. According to Petitioner's Exhibit A8, Respondent has been fined before in an unspecified amount. The earlier action taken against Respondent's certificate has been considered in recommending punishment.

78. In determining punishment, resort is made to Florida Administrative Code Rule 61G4-17.002, pertaining to aggravating and mitigating circumstances. Respondent has been fined before. There were monetary damages suffered by the customers that were not satisfied by Respondent. The punishment would affect Respondent's livelihood, assuming that he continues at present to hold his certified general contractor's license.

RECOMMENDATION

Upon consideration of the facts found and the conclusions of law reached, it is indent

RECOMMENDED:

That a final order be entered finding Respondent in violation of those provisions reflected in Counts I through X of the Administrative Complaint; imposing a \$1,000.00 administrative fine for violation of Count I; a \$1,000.00 administrative fine for violation of Count II; a \$1,500.00 administrative fine for violation of Count VI; a \$500.00 administrative fine for violation of Count III; a \$1,000.00 administrative fine for violation of Count VII; a \$1,500.00 administrative fine for violation of Count IV; a \$3,000.00 administrative fine for violation of Count IX; a \$2,500.00 administrative fine for violation of Count V; a \$5,000.00 administrative fine for violation of Count X; and a \$2,500.00 administrative fine for violation of Count VIII; that Respondent be required to make restitution to Mr. Canas and Mr. Gumapas as a consequence of the violations; and that Respondent's certified general contractor certificate/license be revoked, to the extent that it is still in existence.

DONE AND ENTERED this 14th day of August, 2007, in
Tallahassee, Leon County, Florida.

S

CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of August, 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.