

Final Order No. BPR-2008-05040 Date: 6-16-08

FILED

Department of Business and Professional Regulation

AGENCY CLERK

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By

Brandon M. Nichols

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DIVISION OF
ADMINISTRATIVE
HEARINGS

STATE OF FLORIDA
CONSTRUCTION INDUSTRY LICENSING BOARD

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
Petitioner,

vs.

CASE NO.: 2006-007992
LICENSE NO.: CRC 057409

MICHAEL HILL,
Respondent.

FINAL ORDER

THIS MATTER came before the Construction Industry Licensing Board (hereinafter referred to as the "Board") pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on February 14, 2008, in Tampa, Florida, for consideration of the Recommended Order entered in this case by Jeff B. Clark, Administrative Law Judge, dated October 12, 2007. The Board considered the document entitled "Respondent's Exceptions to Recommended Order Or, In The Alternative Request for Entry of Stipulation . . ." as a motion to modify recommended penalty, as the document did not meet the form requirements for exceptions, nor did it appear to dispute the findings of fact or conclusions of law contained in the Recommended Order.

After reviewing the record, the Board hereby denies Respondent's motion. The Board adopts the findings of fact, paragraphs 1-17, conclusions of law, paragraphs 18-37, and the recommendation contained in the Recommended Order. A copy of the Recommended Order, attached to and made a part hereof, is hereby adopted in full and

becomes the Final Order of the Board.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. Respondent's license, CRC 057409, is hereby **REVOKED**.

Respondent shall immediately surrender or mail all evidence of his license to the Executive Director, Construction Industry Licensing Board, Department of Business and Professional Regulation, 1940 North Monroe Street, MS#N14, Tallahassee, Florida 32399-1039.

2. Respondent shall pay an administrative fine in the amount of \$12,500.00 and costs in the amount of \$439.79. Said fine and costs shall be paid within thirty (30) days after the date of filing of the Final Order.

In addition, the Respondent is required to pay interest on the fine due to the Board at a rate of 18% per annum, beginning on the thirty-first (31st) day after the issuance of the Final Order.

3. Respondent shall pay restitution in the amount of: \$24,090.00 to Ken and Aldith Rose Farquharson. Proof of restitution, or acknowledgment of satisfaction must be provided to the Executive Director of the Construction Industry Licensing Board, at 1940 N. Monroe Street MS# N14, Tallahassee, FL 32399-1039 within thirty (30) days of the date of the filing of the Final Order.

4. A change in licensure status, including the suspension, revocation, voluntary relinquishment, or involuntary relinquishment of license does not relieve Respondent of the obligation to pay any fines, costs, interest or restitution imposed in this Order.

This Final Order shall become effective upon filing with the Clerk of the

Department of Business and Professional Regulation.

DONE AND ORDERED this 25th day of May, 2008.


RAYMOND R. HOLLOWAY, Chair
Construction Industry Licensing Board

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by Certified Mail to: Michael Hill, 1520 Sakonnet Court, Brandon, Florida 33511; and Spiro T. Komninos, 5225 8th Street, Zephyrhills, Florida 33542 ; and by hand/interoffice delivery to the Construction Industry Licensing Board, 1940 N. Monroe Street MS#N14, Tallahassee, Florida 32399-1039; Jeff Kelly, Esq., Chief Construction Attorney, Office of the General Counsel, 1940 N. Monroe St., Ste. 60, Tallahassee, Florida 32399-2202, and Daniel Biggins, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on or before 5:00 p.m., this 16th day of June, 2008.

Brandon M. Nichols

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION)
CONSTRUCTION INDUSTRY)
LICENSING BOARD,)

Petitioner)

vs.

MICHAEL HILL,)

Respondent)

FILED
Department of Business and Professional Regulation
DEPUTY CLERK

CLERK *Brandon M. Nichols*
DATE 11-8-2007

Case No. 07-3123PL

**RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER OR, IN THE
ALTERNATIVE, REQUEST FOR ENTRY OF STIPULATION PURSUANT TO F.A.C.
RULE 61G4-17.008 AND FLORIDA STATUTE § 120.57(3) WITH REGARD TO
RECOMMENDATION NINE (9) OF RECOMMENDED ORDER**

COMES NOW, Respondent, Michael Hill, by and through his undersigned counsel hereby files Exception to Recommended Order, or in the Alternative, Request for Entry of Stipulation Pursuant to F.A.C. Rule 61G4-17.008 and Florida Statute § 120.57(3) with Regard to Recommendation Nine (9) of the Recommended Order issued by the Honorable Jeff B. Clark, Administrative Law Judge, and in support thereof states the following:

A. Procedural/background statement

1. On March 21, 2007, Petitioner, Department of Business and Professional Regulation, Construction Industry Licensing Board filed an Administrative Complaint against Respondent, Michael Hill.

2. The Administrative Complaint charges Mr. Hill with violating the following laws, rules or regulations relating to his professional activities as a certified contractor in the

State of Florida:

a. Florida Statute § 489.129 (1) (i), for failing to apply for a Certificate of Authority for Michael Hill Homes, Inc., as a qualified business organization, in violation of Florida Statute § 489.119 (2) (Recommended Order, Pg. 2, 10-13) (hereinafter referred to as "Charge 1");

b. Florida Statute § 489.129 (1) (i), for failing to apply for the necessary permits after receiving, as initial payment, money totaling more than ten percent (10%) of the contract price for repair, restoration, improvement, or construction to residential real property, in violation of Florida Statute § 489.126 (2) (a) (Recommended Order, Pg. 2, 13-19) (hereinafter referred to as "Charge 2");

c. Florida Statutes § 489.129 (1) (g) and (2), for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer, which occurs when the contractor has abandoned a customer's job and the percentage of completion is less than the percentage of total contract price paid to the contractor as of the time of abandonment, violating Florida Statute § 489.126 (1) (j), by abandoning a construction project in which the contractor is engaged or under contract as a contractor (Recommended Order, Pg. 2, Lines 19-24, Pg. 3, 1-6) (hereinafter referred to as "Charge 3");

d. Florida Statute § 489.129 (1) (o), for proceeding on a job without obtaining local building department permits and inspections (Recommended Order, Pg. 3, 7-9) (hereinafter referred to as "Charge 4"); and

e. Florida Statute § 489.129 (1) (m), for committing incompetency or misconduct in the practice of contracting (Recommended Order, Pg. 3, 9-11) (hereinafter referred to as "Charge 5").

3. Mr. Hill submitted an Answer to the Administrative Complaint, however, no Finding of Facts were made with regard to the facts alleged in his Answer, and no mitigating circumstances pursuant to F.A.C. Rule 61G4-17.002 (1-10) appear to have been applied by the Honorable Jeff B. Clark, Administrative Law Judge, when rendering his Recommended Order. In this regard, attached and incorporated by reference hereto as "Supportive Document #1", please find Mr. Hill's Sworn Affidavit In Support of Exceptions (hereinafter referred to as "Mr. Hill's Sworn Affidavit").

4. Final Hearing occurred on August 30, 2007.

5. No appearance was made by Mr. Hill or his legal counsel, Albert S. Lagano (hereinafter referred to as "Mr. Lagano") at Final Hearing.

6. Mr. Hill's failure to appear at Final Hearing was neither intentional, nor completely unjustified.

7. Mr. Hill failed to appear at Final Hearing because his attorney, Mr. Lagano, was disbarred by the State of Florida by Order of the Supreme Court of Florida sometime in May of 2007.

8. Moreover, Mr. Lagano failed to inform Mr. Hill of his disbarment until some point in time after the scheduled hearing on this matter had already occurred on August 30, 2007.

9. From on or about May of 2007 to the day after Final Hearing, Mr. Lagano always informed Mr. Hill that "all was being taken care of" and to "not worry."

10. Unknowingly, unintentionally, and in reasonable reliance upon the advice of his legal counsel, Mr. Hill accepted Mr. Lagano's assurances to his substantial detriment,¹ all of which directly caused his failure to appear at final hearing.

11. Moreover, Mr. Lagano failed to forward all relevant pleadings to Mr. Hill, and further failed to forward responses to discovery requests propounded upon Mr. Hill.²

12. Based on these facts, Mr. Hill was in essence deprived of his right to counsel which caused him to fail to attend Final Hearing and adequately defend himself in this matter.

13. The Recommended Order at issue is dated October 12, 2007, and was issued by the Honorable Jeff B. Clark, Administrative Law Judge.

14. Such Recommended Order first came into Mr. Hill's possession on Tuesday, October 23, 2007, and was first received by the undersigned counsel on Wednesday, October 24, 2007.

¹ In the interests of full disclosure, however, it does appear from the limited investigation done to date by this Law Group (which has included conferences with Tiffany Harrington, Esquire, trial counsel for the Department and several conferences with the Florida Bar in order to ascertain the whereabouts of Mr. Hill's case file which to this day remains unknown to the Florida Bar and Mr. Hill), that Mr. Hill did receive notice of the Hearing and other pleadings relating to litigation directly by U.S. Mail at all three (3) of his known addresses. It also appears that Mr. Lagano was aware that final hearing was scheduled on August 30, 2007.

² Please see attached "Supportive Document #2", which is a true and correct copy of an envelope post-marked August 31, 2007 (the day after scheduled hearing). Such envelope contains a return address for Mr. Lagano (without specifying his name on the envelope). Inside the envelope, Mr. Lagano placed Petitioner's Unilateral Pre-Hearing Statement (dated, August 20, 2007), Petitioner's Exhibit List (dated, August 20, 2007), Petitioner's Witness List, (dated, August 20, 2007) Petitioner's First Request for Production (dated, July 27, 2007) and Petitioner's First Request for Admissions to Respondent (dated, July 27, 2007).

15. The reason for delay of receipt of the Recommended Order is Mr. Hill's recent change of address and interruption subsequently caused by forwarding of mail.

16. In light of this information, the undersigned counsel immediately contacted the Department in an effort to seek an extension of time, and was informed that all requests for contact with either the Executive Director or General Counsel, must be made by facsimile, and not by telephone.

17. Request for a reasonable extension of time of ten (10) days from the purported due date of Monday, October 29, 2007, to file Exceptions was timely made on October 26, 2007, via facsimile, a true and correct copy of which is attached hereto as "Supportive Document #3."³

18. Respondent does not have possession of the record as of the time of this filing although reasonable attempts have been made to secure same by the undersigned counsel prior to filing this Exception.⁴

19. On Thursday, November 1, 2007, the undersigned counsel fax filed with the Agency a request of extension of time to file exceptions, a true and correct copy of which is attached hereto as "Supportive Document #4."

20. On Thursday, November 1, 2007, the undersigned counsel fax filed with the Agency a request for record via facsimile, a true and correct copy of which is attached hereto as "Supportive Document #5."

21. The undersigned counsel further informed all parties and the Agency via clerk and communications with Tiffany Harrington, Esquire, that Exceptions would be filed no later than Thursday, November 8, 2007.

B. Applicable standard of review

22. Under Florida Statute § 120.57(1)(l), Florida Statutes, an agency may reject or

³ To date, there has been no response of any kind received by Respondent to such request from the Executive Director nor General Counsel, however, Tiffany Harrington, Esquire, has communicated with this Law Group and provided a general number to contact for further questions and/or requests by the undersigned, and has informed that Notice of Final Action Hearing set for January 10, 2008, shall be forwarded to the undersigned counsel on behalf of Mr. Hill.

⁴ In order to secure possession of copies of the record, and in reliance upon the contents to the cover letter to such Recommended Order submitted by the Honorable Jeff B. Clark, Administrative Law Judge, which states that "the one-volume Transcript, together with the Petitioner's Exhibits 1-7" were enclosed with the Recommended Order, the undersigned counsel forwarded a facsimile, dated October 29, 2007. To date, there has been no response of any kind received by Respondent to such request from the Executive Director nor General Counsel, however, Tiffany Harrington, Esquire, has communicated with this Law Group and provided a general number to contact for further questions and/or requests by the undersigned, and has informed that Notice of Final Action Hearing set for January 10, 2008, shall be forwarded to the undersigned counsel on behalf of Mr. Hill.

modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

23. While an agency must state 'with particularity' why it is modifying or rejecting a hearing officer's findings of fact, no similar obligation exists with regard to conclusions of law. Munch v. Dep't of Prof'l Reg., 592 So. 2d 1136, 1142 (Fla. 1st DCA 1992); Accord, Fla. Pub. Employees Council 79, AFSCME v. Daniels, 646 So. 2d 813, 815-16 (Fla. 1st DCA 1994); Harloff v. City of Sarasota, 575 So. 2d 1324, 1327 (Fla. 2d DCA 1991).

24. Moreover, where the Department proposes to take punitive action against a licensee, it must establish grounds for disciplinary action by clear and convincing evidence. Florida Statute § 120.57(1)(h), and Department of Banking and Finance v. Osborne Sterne and Co., 670 So. 2d 932 (Fla. 1996). That standard requires that "the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony 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 a firm belief or 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).

25. Regardless of the disciplinary action sought to be taken, it may be based only upon the offenses specifically alleged in the Administrative Complaint. See Kinney v. Department of State, 501 So. 2d 129 (Fla. 5th DCA 1987); Sternberg v. Department of Professional Regulation, Board of Medical Examiners, 465 So. 2d 1324 (Fla. 1st DCA 1985); and Hunter v. Department of Professional Regulation, 458 So. 2d 844 (Fla. 2d DCA 1984). Moreover, in determining whether Respondent violated the provisions of law, as alleged in the Administrative Complaint, one "must bear in mind that it is, in effect, a penal statute. . . . This being true, the statute must be strictly construed and no conduct is to be regarded as included within it that is not reasonably proscribed by it." Lester v. Department of Professional and Occupational Regulations, 348 So. 2d 923, 925 (Fla. 1st DCA 1977).

26. It is well-settled that decisions by administrative bodies, if made within their realm of authority, will be upheld if factually correct, absent some compelling circumstance, clear error or overriding legal basis. City of Hollywood v. Florida Public Employees Relations Commission, 476 So.2d 1340, 1342 (Fla. 1st DCA 1985). There is no challenge posed to the administrative bodies realm of authority, however, there are issues of compelling circumstances, clear errors or overriding legal basis' to consider departure from the Recommended Order and the granting of Petitioner's Exceptions.

27. While administrative bodies are afforded wide discretion in interpreting statutes and rules they are charged with enforcing, their interpretation should be overturned if clearly erroneous, or where the record discloses an abuse of discretion, a violation of law or

that the action was arbitrary and capricious. Department of Business Regulation v. Martin County Liquors, Inc., 574 So.2d 170, 174-175 (Fla. 1st DCA 1991); Natelson v. Department of Insurance, 454 So.2d. 31, 32 (Fla. 1st DCA 1984); Cohen v. School Board of Dade County, 450 So. 2d 1238, 1241 (Fla. 3rd DCA 1984).

28. Accordingly, for the reasons herein contained in this Exception, and based upon applicable laws, rules, decisions, and regulations, it is Respondent's position that the decision to recommend permanent license revocation is clearly erroneous, is an abuse of discretion, a violation of law, and that such action is arbitrary and capricious. More specifically, there exist compelling circumstances or overriding legal basis' with regard to improper application of the disciplinary penalty guidelines, failure to apply mitigating circumstances, and failure to assess relevant administrative law decisions, that would warrant Respondent's Exceptions to the Recommended Order being granted. Such compelling circumstances are delineated more specifically below.

29. Based upon Respondent's lack of appearance at Final Hearing, his lack of actual legal representation during the Administrative Hearing and related process, the exigent need to file Exceptions, and without the record in his possession in order to except to, or accept, the Findings of Fact/Conclusions of Law contained in the Recommended Order, Respondent poses the following Exceptions to Recommendation Nine (9) of the Recommended Order issued by the Honorable Jeff B. Clark, Administrative Law Judge.⁵

C. The disciplinary penalty guidelines were erroneously, arbitrarily and capriciously applied

30. Conclusion of Law, Paragraph Thirty Seven (37), Page Sixteen (16) of the Recommended Order states: "There is no evidence that Respondent has been previously disciplined for any violations under Chapter 489, Florida Statutes, therefore the guidelines that should be used are for the first violation."

31. A such, the disciplinary penalty guidelines that should have been applied are for first violation. Instead, it appears that the disciplinary penalty guidelines that were applied were for repeat violation.

32. However, as acknowledged in Conclusion of Law, Paragraph Thirty Seven (37), Page Sixteen (16) of the Recommended Order, and as in fact the case, "there is no evidence that Respondent has been previously disciplined for any violations under Chapter 489, Florida Statutes."

⁵ To the maximum extent permitted, Respondent also reserves the right to amend exceptions and the ability to make issue of same on appeal, if necessary, and hereby offers the following statements and legal authority, to be read with Respondent's Answer, which were not considered at Final Hearing. Such statements and legal authority below seeks to contradict and/or clarify the Conclusions of Law and Recommendation as contained in the Recommended Order.

33. Indeed, Conclusion of Law, Paragraph Thirty Seven (37), Page (16) of the Recommended Order cannot, and should not support, Recommendation, Paragraph Nine (9), Page Seventeen (17) of the Recommended Order, which recommends: "Permanently revoking Respondent's license as a result of the numerous violations and the financial harm sustained by Kenneth and Aldith Farquharson." (emphasis added)

34. The decision to recommend permanent license revocation is erroneous, arbitrary and capricious in that Conclusion of Law, Paragraph Thirty Seven (37), Page Sixteen (16) of the Recommended Order states: "There is no evidence that Respondent has been previously disciplined for any violations under Chapter 489, Florida Statutes, therefore the guidelines that should be used are for the first violation."

35. The decision to recommend permanent license revocation is erroneous, arbitrary and capricious in that pursuant to F.A.C. 61G4-17.003 (1), a "repeat violation" is any violation on which disciplinary action is being taken where the same licensee had previously had disciplinary action taken against him or received a letter of guidance in a prior case; and said definition is to apply regardless of whether the violations in the present and prior disciplinary actions are of the same or different subsections of the disciplinary statutes.

36. Moreover, the decision to recommend permanent license revocation is not supported by proper application of the disciplinary penalty guidelines to each charge.

37. Charge 1 states that Michael Hill failed to apply for a Certificate of Authority for Michael Hill Homes, Inc. Respondent poses no direct challenge to Charge 1 other than as described in Mr. Hill's Sworn Affidavit.

38. However, even if Michael Hill failed to apply for a Certificate of Authority for Michael Hill Homes, Inc., permanent revocation of license is not an appropriate, permitted nor contemplated sanction/penalty for violation of Florida Statute § 489.129 (1) (i) or Florida Statute § 489.119 (2) pursuant to proper application of the disciplinary penalty guidelines.

39. With regard to Florida Statute § 489.129 (1) (i), the corresponding penalty range applicable pursuant to F.A.C. Rule 61G4-17.001 (1) (i) is a "penalty herein listed for the violation most closely resembling the act underlying the local discipline. Such penalty guideline standard applies equally for both minimum and maximum penalty ranges. Pursuant to F.A.C. Rule 61G4-17.001, et. seq., "the guideline penalty for the offense most closely resembling the omitted violation shall apply." The applicable corresponding penalty range for violation of Florida Statute § 489.119, pursuant to F.A.C. Rule 61G4-17.001 (1) 8 for FIRST OFFENSE is a minimum of a \$250 fine and for maximum a \$1,000 fine and/or probation or suspension. For SECOND OFFENSE, a minimum of \$500 fine and a maximum of \$2,000 fine and/or probation or suspension are proscribed.

40. As such, permanent revocation of license, for a FIRST OR SECOND OFFENSE, is not contemplated by the disciplinary penalty guidelines, proper application of mitigating

circumstances as detailed below in Section D, or relevant Department administrative rulings as detailed below in Section E.

41. **Charge 2** states that Michael Hill failed to apply for the necessary permits after receiving, as initial payment, money totaling more than ten percent (10%) of the contract price.

42. Respondent poses no direct challenge to Charge 2 other than as described in Mr. Hill's Sworn Affidavit.

43. With regard to Florida Statute § 489.129 (1) (i), the corresponding penalty range applicable pursuant to F.A.C. Rule 61G4-17.001 (1) (i) is a "penalty herein listed for the violation most closely resembling the act underlying the local discipline. Such penalty guideline standard applies equally for both minimum and maximum penalty ranges. Pursuant to F.A.C. Rule 61G4-17.001, et. seq., "the guideline penalty for the offense most closely resembling the omitted violation shall apply." The applicable corresponding penalty range for violation of Florida Statute § 489.126 (2) (a), pursuant to F.A.C. Rule 61G4-17.001 (1) 8 for FIRST OFFENSE is a minimum of \$250 fine and for maximum a \$1,000 fine and/or probation or suspension. For SECOND OFFENSE, a minimum of \$500 fine and a maximum of \$2,000 fine and/or probation or suspension are proscribed.

43. However, even if Michael Hill failed to apply for necessary permits, permanent revocation of his license is not an appropriate, permitted nor contemplated sanction/penalty for violation of Florida Statute § 489.129 (1) (i) or Florida Statute § 489.126 (2) (a), pursuant to proper application of the disciplinary guidelines, application of mitigating circumstances as detailed below in Section D, or relevant Department administrative rulings as detailed below in Section E.

44. **Charge 3** states that Michael Hill committed mismanagement or misconduct in the practice of contracting that caused financial harm to a customer on account of abandonment of a customer's job prior when the percentage of completion was less than the percentage of total contract price paid to the contractor as of the time of abandonment to a customer's job.

45. Respondent poses direct no challenge to Charge 3 other than as described in Mr. Hill's Sworn Affidavit.

46. With regard to Florida Statute § 489.129 (1) (g), the corresponding penalty range applicable pursuant to F.A.C. Rule 61G4-17.001 (1) (g) for FIRST OFFENSE is a minimum of \$1500 fine and/or probation or suspension and for maximum a \$5,000 fine and/or probation or suspension. For SECOND OFFENSE, a minimum of \$2,500 fine and/or probation or suspension and for a maximum of \$10,000 fine and revocation is proscribed.

47. Because this is a first violation, and not a SECOND OFFENSE, the decision to recommend permanent license revocation is not supported by proper application of the disciplinary penalty guidelines.

48. The applicable corresponding penalty range for violation of Florida Statute § 489.129 (2), pursuant to F.A.C. Rule 61G4-17.001 (1) (g) is for FIRST OFFENSE a minimum of \$1500 fine and/or probation or suspension and for maximum a \$5,000 fine and/or probation or suspension. For SECOND OFFENSE, a minimum of \$2,500 fine and/or probation or suspension and for a maximum of \$10,000 fine and revocation is proscribed.

49. The applicable corresponding penalty range for violation of Florida Statute § 489.129 (2), pursuant to F.A.C. Rule 61G4-17.001 (2) is a minimum of \$2500 fine and/or probation or suspension and for maximum a \$10,000 fine and revocation is proscribed.

50. Once again, because this is a first violation, and not a SECOND OFFENSE, the decision to recommend permanent license revocation is not supported by proper application of the disciplinary penalty guidelines.

51. Moreover, proper application of mitigating circumstances as detailed below in Section D, or relevant Department administrative rulings as detailed below in Section E, would reasonably justify some penalty below revocation, and adoption of same by the Agency in its Final Order would be manifestly unfair to Mr. Hill and unduly oppressive or exceedingly harsh in nature given the circumstances.

52. The applicable corresponding penalty range for violation of Florida Statute § 489.126 (1) (j), pursuant to F.A.C. Rule 61G4-17.001 (1) (j) is for FIRST OFFENSE a minimum of \$2500 fine and/or probation or suspension and for maximum a \$7,500 fine and/or probation or suspension. For SECOND OFFENSE, a minimum of \$5,000 fine and/or probation or suspension and for a maximum of \$10,000 fine and revocation is proscribed.

53. However, even if Michael Hill committed mismanagement or misconduct in the practice of contracting that caused financial harm to a customer by virtue of abandonment, permanent revocation of licensure is not an appropriate, permitted nor contemplated sanction/penalty for violation of Florida Statute § 489.129 (1) (g) (i) or Florida Statute § 489.126 (1) (j), for a FIRST OFFENSE pursuant to proper application of the disciplinary guidelines.

54. Charge 4 states that Michael Hill proceeded on a job without obtaining local building department permits and inspections.

55. Respondent poses no direct challenge to Charge 4 other than as described in Mr. Hill's Sworn Affidavit.

56. With regard to Florida Statute § 489.129 (1) (o), the corresponding penalty range applicable pursuant to F.A.C. Rule 61G4-17.001 (1) (o) is not stated for either minimum or maximum penalty range. As such, pursuant to F.A.C. Rule 61G4-17.001, et. seq., "the guideline penalty for the offense most closely resembling the omitted violation shall apply."

57. However, even if Michael Hill proceeded on a job without obtaining local

building department permits and inspections, permanent revocation of licensure is not an appropriate, permitted nor contemplated sanction/penalty for violation of Florida Statute § 489.129 (1) (o) pursuant to proper application of the disciplinary guidelines.

58. **Charge 5** states that Michael Hill committed incompetency or misconduct in the practice of contracting.

59. Respondent poses no direct challenge to Charge 5 other than as described in Mr. Hill's Sworn Affidavit.

60. With regard to Florida Statute § 489.129 (1) (m) the corresponding penalty range applicable pursuant to F.A.C. Rule 61G4-17.001 (1) (m) 2, is for FIRST OFFENSE a minimum of \$1,000 fine and/or probation or suspension and for maximum a \$2,500 fine and/or probation or suspension. For SECOND OFFENSE, a minimum of \$2,500 fine and/or probation or suspension and for a maximum of \$10,000 fine and revocation is proscribed.

61. However, even if Michael Hill committed incompetency or misconduct in the practice of contracting, permanent revocation of licensure is not an appropriate, permitted nor contemplated sanction/penalty for violation of Florida Statute § 489.129 (1) (m) pursuant to proper application of the disciplinary guidelines.

62. Thus, it appears that a "repeat violations" or "repeat offenses" standard was misused or misapplied when formulating Recommendation Nine (9), Page Seventeen (17) of the Recommended Order. As such, Recommendation Nine (9), Page Seventeen (17) of the Recommended Order is "Clearly Erroneous", "Arbitrary and Capricious" and/or "Departs From the Essential Requirement of Law" and adoption of same by the Agency in its Final Order would be manifestly unfair to Mr. Hill and unduly oppressive or exceedingly harsh in nature since it would wrongfully deprive Mr. Hill of a valuable property right (General Contactor License) and his ability to continue to earn a living in his chosen profession.

D. Failure to apply "mitigating circumstances" pursuant to F.A.C. Rule 61G4-17.002 (1-10)

63. Pursuant to F.A.C. Rule 61G4-17.002 (1-10), circumstances which may be considered for the purposes of mitigation or aggravation of penalty shall include, but are not limited to, the following:

(1) Monetary or other damage to the licensee's customer, in any way associated with the violation, which damage the licensee has not relieved, as of the time the penalty is to be assessed. (This provision shall not be given effect to the extent it would contravene federal bankruptcy law.)

(2) Actual job-site violations of building codes, or conditions exhibiting gross negligence, incompetence, or misconduct by the licensee, which have not been corrected as of the time the penalty is being assessed.

(3) The danger to the public.

(4) The number of complaints filed against the licensee.

- (5) The length of time the licensee has practiced.
- (6) The actual damage, physical or otherwise, to the licensee's customer.
- (7) The deterrent effect of the penalty imposed.
- (8) The effect of the penalty upon the licensee's livelihood.
- (9) Any efforts at rehabilitation.
- (10) Any other mitigating or aggravating circumstances.

64. A review of Mr. Hill's Sworn Affidavit and Mr. Hill's Answers to Administrative Complaint establish that the following mitigating factors were not appropriately considered or applied:

- (1) Monetary Damages. Actual damage, physical or otherwise, to the licensee's customer; Certainly, it is Respondent's position that Kenneth and Aldith Farquharson (the licensee's customers) suffered monetary damages. The amount of monetary damages, however, is less than found to exist. In fact, while Finding of Fact, Paragraph Six (6), Page Five (5), of the Recommended order states: "On June 19, 2005, Farquharson paid a total of \$28,590 to Respondent", Finding of Fact, Paragraph Sixteen (16), Page Six (6) of the Recommended Order also states that: "The amount of actual damages that Respondent caused Farquharson suffered" is \$24,090. Mr. Hill's Sworn Affidavit establishes that significant work was done and performed on behalf of the Farquharsons above and beyond those considered in the Finding of Facts. Mr. Hill in his Sworn Affidavit states that the total amount of credit due the Farquharsons was \$6,350. Given that there was work performed, and benefits derived by the Farquharsons in their dealings with Respondent, and the fact that other unfortunate circumstances existed such as the passage of four (4) hurricanes in Palm Bay, tripling or quadrupling labor and material costs, and that the Farquharsons were offered a refund of their deposit, but did not accept same, Circumstance One (1) of F.A.C. Rule 61G4-17.002 more reasonably should have been applied as a mitigating factor rather than an aggravating one. Moreover, it should not have served as one of two justifications for aggravation (i.e., "numerous violations" and "financial harm" sustained by the Farquharsons), as contained in Recommendation Nine (9), Page Seventeen (17) of the Recommended Order.
- (2) Actual job-site violations of building codes, or conditions exhibiting gross negligence, incompetence, or misconduct by the licensee, which have not been corrected as of the time the penalty is being assessed. No actual job-site violations of building codes were contained in any Finding of Fact in the Recommended Order. No Finding of Fact in the Recommended Order concern "gross negligence." To the extent that "incompetence or misconduct by the licensee" was found to exist, it should have been balanced against the

other factors all others of which tend to exhibit circumstances which are mitigating, rather than aggravating, in nature.

- (3) The danger to the public. The number of complaints filed against the licensee. The length of time the licensee has practiced. Given that Mr. Hill has professionally and competently worked on hundreds of construction projects since the age of seventeen (17) in both the State of New Jersey and the State of Florida, without administrative complaints, lawsuits or other negative incident or inference, Mr. Hill is not a danger to the public. Please refer to "Supportive Document #1", Mr. Hill's Sworn Affidavit, for further clarification of these circumstances which should have been balanced against the other factors all others of which (with the potential exception of "incompetence or misconduct by the licensee") tend to exhibit circumstances which are mitigating, rather than aggravating, in nature.
- (4) The deterrent effect of the penalty imposed. The effect of the penalty upon the licensee's livelihood. Any efforts at rehabilitation. While the "deterrent effect of the penalty imposed" (permanent license revocation) would have the effect of completely deterring Mr. Hill from practicing in his chosen profession, for the disciplinary penalty guidelines to have any legal significance to be uniformly and justly applied, such effect must be balanced against the extremely harsh "effect of the penalty upon the licensee's livelihood", and the fact that Mr. Hill is willing to engage in any reasonable "efforts at rehabilitation" imposed on him by the Agency that may involve further continuing education, probation, or temporary suspension.
- (5) Any other mitigating or aggravating circumstances. Please refer to "Supportive Document #1", Mr. Hill's Sworn Affidavit, for further clarification of these circumstances which should have been balanced against the other factors all others of which (with the potential exception of "incompetence or misconduct by the licensee") tend to exhibit circumstances which are mitigating, rather than aggravating, in nature.

65. As such, adoption of Recommendation Nine (9) of the Recommended Order) by the Agency in its Final Order would substantially and unjustly deprive Mr. Hill of a valuable property right (General Contactor License) and the ability to earn a living in his chosen profession.

E. Adoption of Recommendation Nine (9) of the Recommended Order by the Agency in its Final Order would not comport with the Agency's own internal rulings including, inter alia, the decision in Golfman.

66. In Department of Business and Professional Regulation, Construction Industry

Licensing Board v. Richard M. Golfman, DOAH Case Nos. 00-0599 and 00-0600, Recommended Order dated June 22, 2000, adopted in toto by Agency Final Order in Case No. 98-23264, entered August 28, 2000, a building contractor who was the subject of two (2) prior disciplinary Final Orders was found guilty of multiple violations of Florida Statutes § 489.129(1), including § 489.129(1)(c), (g), (h), (j), and (k). Such building contractor, who failed to appear at hearing, was subjected to permanent license revocation but not without proper application and consideration of the disciplinary penalty guidelines and aggravating and mitigating circumstances such as Findings of Facts concerning previous disciplinary actions.

67. Finding of Fact #13 in such Recommended Order adopted by the Agency's Final Order in *Golfman* states:

"Previous disciplinary action

13. At hearing, the Department offered proof that, on two prior occasions, Respondent had been subjected to disciplinary action by the Construction Industry Licensing Board (the Board). (Petitioner's Exhibit 2.) The first occasion is reflected in the terms of a Final Order of the Board, dated August 4, 1987, which found Respondent guilty of the violations alleged in the Administrative Complaint (which were not revealed at hearing beyond what may be inferred from the terms of the Final Order), and resolved that Respondent suffer the following penalty:

Respondent's licensure is hereby suspended for ten (10) years. Provided, Respondent may obtain termination of said suspension at anytime, without further action by the Board, upon providing the Board's Executive Director with a certified bank check in an amount sufficient to cover and pay a fine of five hundred dollars (\$500), and the bad check alleged in the Administrative Complaint, and all service charges in connection therewith, and all other fees accruing as of the date Respondent seeks said termination of supervision.

The second occasion Respondent was subjected to disciplinary action is reflected in the terms of a Final Order of the Board, dated July 18, 1997, which approved a stipulated settlement of certain complaints then pending before the Board. That Final Order approved the dismissal of a number of counts contained in five Administrative Complaints then pending before the Board and, as to the remaining counts, agreed (without Respondent admitting or denying the allegations of fact contained in the Administrative Complaints) to the following penalty:

3. FINE AND COSTS: Respondent shall pay a fine of Nine Hundred dollars (\$900.00) and costs of Eight Hundred fifty One dollars (\$851) to the Board within thirty (30) days of the filing of the Final Order. Said payment shall be in the form of a cashier's or certified check and shall be made payable to the "Construction

Industry Licensing Board."

To assure payment of the fine and costs, it is further ordered that all of Respondent's licensure to practice contracting shall be suspended with the imposition of the suspension being stayed for thirty (30) days. If the ordered fine and costs are paid in compliance with the terms set forth above, the suspension imposed shall not take effect. However, should payment not be timely made, the stay shall be lifted and Respondent's license shall be immediately suspended. Upon payment of the fine and costs in full, the suspension imposed shall be lifted."

68. The first of the consolidated Administrative Complaints contains in the Recommended Order a finding that Mr. Golfman: "violated Section 489.129(1)(k), Florida Statutes (1997) by abandoning a construction project in which the contractor is engaged or under contract" (Count I); "violated Section 489.129(1)(h)(2), Florida Statutes (1997) by committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer (Count II) . . ." ⁶ Such charges are similar in nature to those alleged in the case at bar against Mr. Hill.

69. The second of the consolidated Administrative Complaints contains in the Recommended Order a finding that Mr. Golfman: ". . . violated Section 489.129(1)(n), Florida Statutes (1997) by committing incompetency or misconduct in the practice of contracting" (Count V)."⁷ Such charge is similar in nature to that alleged in the case at bar against Mr. Hill.

70. Significantly, and completely unlike the case at hand where Mr. Hill has never been the subject of any administrative complaint or lawsuit other the case at bar; only after duly considering the disciplinary penalty guidelines, aggravating and mitigating circumstances such as previous disciplinary actions, the charges against Golfman, did Mr. Golfman have his license permanently revoked.

F. Conclusion

71. Accordingly, for the reasons herein contained in this Exception, and based upon applicable laws, rules, decisions, and regulations, it is Respondent's position that the decision to recommend permanent license revocation is clearly erroneous, is an abuse of discretion, a violation of law, and that such action is arbitrary and capricious. More specifically, there exist compelling circumstances or overriding legal basis' with regard to improper application of the disciplinary penalty guidelines, failure to apply mitigating circumstances, and failure

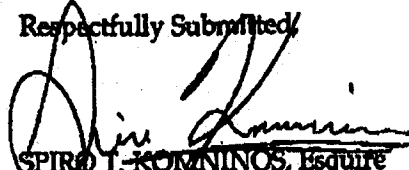
⁶ Other charges against Golfman have been omitted by the undersigned since they do not coincide or correlate with the charges at bar against Mr. Hill.

⁷ Other charges against Golfman have been omitted by the undersigned since they do not coincide or correlate with the charges at bar against Mr. Hill.

to assess relevant administrative law decisions, that do warrant Respondent's Exceptions to the Recommended Order being granted or, in the alternative, entry of stipulation pursuant to F.A.C. Rule 61G4-17.008 and Florida Statute § 120.57(3).

Dated/Filed: November 8, 2007.

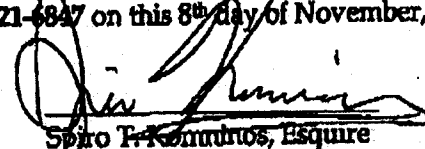
Respectfully Submitted/



SPIRO T. KOMNINOS, Esquire
Florida Bar No. 278660
Komninos Law Group, LLC
Attorneys at Law
Telephone: (813) 251-3444
Facsimile: (813) 251-3445
5225 8th Street
Zephyrhills, Florida 33542
(Main Office/Mailing Address)
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Facsimile to G. W. Harrell, Executive Director (850)-921-4216, Ned Lucynski, General Counsel (850)-488-1830, and Filing (850)-921-6847 on this 8th day of November, 2007.



Spiro T. Komninos, Esquire

SUPPORTIVE DOCUMENT

#1

NOV-08-2007 04:48 From:

To:8132513445

P.1/4

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION)
CONSTRUCTION INDUSTRY)
LICENSING BOARD,)

Petitioner

vs.

Case No. 07-3123PL

MICHAEL HILL,)

Respondent)

SWORN AFFIDAVIT OF MICHAEL HILL IN SUPPORT OF EXCEPTIONS

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

KNOW ALL YE MEN BY THESE PRESENTS:

BEFORE ME, the undersigned personally appeared, Michael Hill, being first duly sworn deposes and says:

1. I have personal knowledge of each of the facts set forth in this Affidavit and provide this Affidavit in support of Exception from Recommendation Nine (9) of the Recommended Order issued by the Honorable Jeff B. Clark, Administrative Law Judge and hope to preserve my general contractor's license #CR C057409.
2. I am over eighteen (18) years of age and I am competent to testify as to the matters set forth herein.
3. I have been engaged in the construction business since the age of seventeen (17), when in 1974 I began my career in New Jersey working for an excavating contractor.
4. During 1996, while working as a framer during the day, I purchased contractor books and home study materials, and studied during the evenings in order to receive my residential contractor's license.
5. During the past ten (10) years, I have professionally and compassionately worked as a contractor undertaking a variety of projects including framing, construction of new town homes, remodeling, and serving as a

NOV-08-2007 04:48 From:

To: 8132513445

P.2/4

Project Manager and/or builder of single family homes and other residential dwellings.

6. Significantly, during the entirety of my professional career as a licensed contractor, and prior to the Administrative Complaint at issue, I have never been a party to any administrative complaints or lawsuit of any kind against me in the State of Florida, or any other state.

7. I have never been previously disciplined for any violations under Chapter 489, Florida Statutes.

8. No appearance was made by me or my legal counsel, Albert S. Lagano (hereinafter referred to as "Mr. Lagano") at Final Hearing.

9. My failure to appear at Final Hearing was neither intentional, nor completely unjustified.

10. I failed to appear at Final Hearing because my attorney, Mr. Lagano, was disbarred by the State of Florida by Order of the Supreme Court of Florida sometime in May of 2007.

11. Moreover, Mr. Lagano failed to inform me of his disbarment until some point in time after the scheduled hearing, on this matter had already occurred on August 30, 2007.

12. From (on or about) May of 2007 to the day after Final Hearing, Mr. Lagano always informed me that "all was being taken care of" and to "not worry."

13. Unknowingly, unintentionally, and in reasonable reliance upon the advice of my legal counsel, I accepted Mr. Lagano's assurances to my substantial detriment, all of which directly caused his failure to appear at final hearing.

14. The following is a partial list of projects that I have dutifully worked on, without negative incident or inference, during my long-standing career as a contractor:

- a. New Jersey - Project Manager, LA Wicks Organization/Mill Creek Island - 144 Town Homes.
- b. New Jersey - Project Manager, Jenco Builders/Poppy Court - 16 luxury Single Family Homes.
- c. New Jersey - Project Manager, Kara Homes/Trade Winds - 16 luxury homes prices ranging from \$2.5 million to \$6 million dollars.
- d. Florida - Project Manager, Zizzo Construction.
- e. Florida - Anchor Village, 74 Town Homes.
- f. Florida - Florida Park Way Drive - 6 Town Homes.
- g. Florida - Coquina Palms - 68 Town Homes.
- h. Florida - Manatee Point - 60 Town Homes.

15. I am an active participant in every community in which I have resided having volunteered hundreds of hours of time to my church as a choir singer, and as a Little League coach of numerous baseball, soccer, and basketball teams.

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To: 8132513445

P. 3/4

16. I have been married for twenty two (22) years and the proud father of two (2) children.

17. With regard to Charge 1 contained in the Recommended Order, for failing to apply for a Certificate of Authority for Michael Hill Homes, Inc., as a qualified business organization, I pose no objection to this other than to state that since my license is in my personal name as well as my business name, I assumed that my business was qualified under my name.

18. With regard to Charge 2 for failing to apply for the necessary permits after receiving, as initial payment, money totaling more than ten percent (10%) of the contract price, Charge 3 for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer, on account of abandonment, Charge 4 for proceeding on a job without obtaining local building department permits and inspections, and Charge 5 for committing incompetency or misconduct in the practice of contracting I state the following:

- a. I applied for and received a driveway permit which is the first thing that is necessary to obtain according to the Palm Bay DOT.
- b. I also received health code approval for water and sewer hookup.
- c. However, due to the four (4) hurricanes that impacted the area, and the high volume of backlog of Building Permit Applications in the city of Palm Bay (it was taking up to six (6) months to apply for and obtain building permits) and as a direct consequence labor and material costs tripling and, in some case, quadrupling, written notice was given to Kenneth and Aldith Farquharson (hereinafter referred to collectively as the "Farquharsons"), by and through my legal counsel at the time, Albert S. Lagano, that the home could be completed for an increase of thirty percent (30%) from the sales price pursuant to the weather contingency clause contained in the contract or, alternatively, that they could elect to receive a refund of the portion of balance of deposit paid in of \$28,590, or \$6,340, for work completed on their behalf to date.
- d. At that time, the work completed included: (1) costs of application for permits/inspection; (2) time for travel to obtain applications, permits and inspections; (3) on site visits to the property; (4) filing of Notice of Commencement; (5) at least four (4) meetings each with: (a) the Farquharsons; (b) AAT Land Surveying Services, Inc. (the Farquharsons' surveyor); (c) the Farquharsons' architect; (d) the Farquharsons' residential designer; and (e) the Farquharsons' engineer; (5) placing the footprint of the home on the boundary survey including septic

and drainfield specifications; (6) staking out of property; and (7) paying for 55 lots of fill and tractor rental with regard to same.

e. As such, permits were applied for, but before they could be obtained, as I was out of business, and the Farquharsons' did not ever elect to be charged an increase in price for the home or to have the balance of the deposit paid back to them.

f. I did not intentionally abandon the Farquharsons' job, rather, I was unfortunately forced out of business as a direct result of unavoidable conditions, i.e., four (4) hurricanes and substantially increased labor and material costs.

19. I have lost my home, my business equipment and vehicles, and my wife's business has been substantially impacted in order to pay back our outstanding bills.

20. Should my license be taken away, I will have no reasonable way of paying back the fines and restitution imposed on me by the Recommended Order, which I most certainly intend on doing.

21. I am intensely troubled by the entire incident, and the unfortunate circumstances which led to any damages being suffered by the Farquharsons.

22. I hope that I will be given a chance to redeem myself and make do on the financial and emotional difficulties imposed upon the Farquharsons' by either my direct or indirect actions or circumstances that were beyond my control.

23. In this regard, I am willing to submit to any reasonable further conditions that may be placed upon me that are non-financial and rehabilitative in nature, so that I may be able to continue to practice and earn a living in my chosen profession.

FURTHER AFFIANT SAYETH NOT.

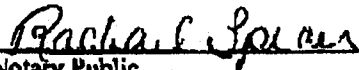

AFFIANT'S SIGNATURE

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing Affidavit of Michael Hill was sworn to and subscribed before me and stated to be true and correct by Michael Hill to me this 8th day of November, 2007, by Michael Hill who is:

Personally known to me or who
Produced Identification FE EXHIBITS LLC.
Type of Identification Produced FE EXHIBITS LLC.

RACHAEL SPOON
Notary Public, State of Florida
My Comm. Expires May 2, 2008
No. DD318348


Notary Public
(Signature)

SUPPORTIVE DOCUMENT

#2

1015 Atz Road
Muklesia, FL
32950



Muki Hill
1520 Sakemist Ct.
Bundary, FL
33571



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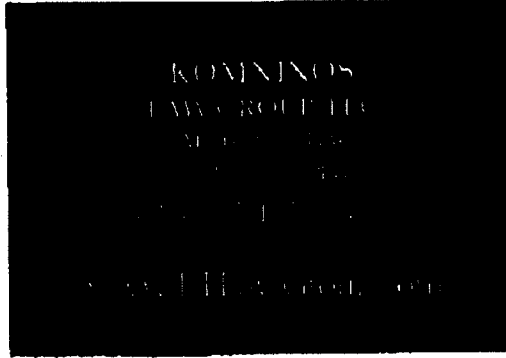
SUPPORTIVE DOCUMENT

#3

5225 8th Street
Zephyrhills, Florida 33542
(Main Office/Mailing Address)

8270 Woodland Center Boulevard
Tampa, Florida 33614
(Central Tampa Office)

7320 East Fletcher Avenue
Tampa, Florida 33637
(North Tampa Office)



Fax

To: G. W. Harrell, Executive Director
Construction Industry Licensing
Board Department of Business and
Professional Regulation

From: Spiro T. Kominos, Esquire

Ned Luczynski, General Counsel
Department of Business and
Professional Regulation

Time SENSITIVE MATERIAL!

Fax: (850) 921-4216
(850) 488-1830

Pages: 6 (including cover)

Phone:

Date: 10-26-07

Re: DBPR (Construction Board) vs.
Michael Hill
DOAH Case # No. 073123PL

cc:

Urgent For Review Please Comment Please Reply

Dear Messrs. Executive Director and General Counsel:

Please be informed that Mr. Michael Hill (hereinafter referred to as "Mr. Hill"), License #CR 0057409, recently retained this Law Group to submit Exceptions to the Recommended Order submitted by the Honorable Jeff B. Clark, Administrative Law

October 26, 2007

Judge.¹ The Recommended Order is dated October 12, 2007. However, such Recommended Order first came into Mr. Hill's possession on Tuesday, October 23, 2007, and was first received by this Law Group on Wednesday, October 24, 2007. The apparent reason for delay of receipt of the Recommended Order is Mr. Hill's recent change of address, and the subsequent interruption caused by forwarding of mail. In light of this information, I contacted the Department in an effort to seek an extension of time and was informed that all requests for contact with either of you must be made by facsimile, and not by telephone.

As it stands, the current deadline for submitting Exceptions falls on Saturday, October 27, 2007, meaning that exceptions should be placed in the mail to you on or before, Monday, October 29, 2007. Unfortunately, this cannot reasonably be accomplished by this Law Group in the proscribed time period given the aforementioned circumstances, today's date, and Mr. Hill's desire to provide a sufficient and adequate request for Exception for due consideration. As such, we respectfully request a reasonable extension of time of ten (10) days from the current due date in order that Mr. Hill may be able to submit legally cogent exceptions to Recommendation Nine (9) (Page Seventeen (17)) of the Recommended Order. Should our request for extension of time be graciously granted, you shall receive Mr. Hill's Exceptions on or before, Thursday, November 8, 2007. Should our request for extension of time be denied, then we respectfully request that Mr. Hill be granted the opportunity to inform you, in writing, of all relevant facts and law applicable to his matter at some point in time prior to Thursday, November 8, 2007, but before the Agency Final Order is rendered.

When considering whether to grant our request, please kindly reflect upon the following:

1. Mr. Hill's former legal counsel, Albert S. Lagano (hereinafter referred to as "Mr. Lagano") was disbarred by the State of Florida by Order of the Supreme Court of Florida sometime in May of 2007. However, Mr. Lagano failed to inform Mr. Hill of his disbarment until some point in time after the scheduled hearing on this matter had already occurred on August 30, 2007. Mr. Lagano failed to forward all relevant pleadings to Mr. Hill and further

¹ This request is being made pursuant to the Notice of Right to Submit Exceptions contained on the face of the Recommended Order and Florida case law holding that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See *Couch v. Commission on Ethics*, 617 So.2d 1119, 1124 (Fla. 5th DCA 1993); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987).

October 26, 2007

failed to extract responses by Mr. Hill.² In fact, Mr. Lagano informed Mr. Hill on numerous occasions prior to hearing that "all was being taken care of" and to "not worry." Unknowingly, unintentionally, and in reasonable reliance upon the advice of his legal counsel, Mr. Hill accepted Mr. Lagano's assurances to his substantial detriment,³ all of which directly caused his failure to appear at final hearing.

2. Mr. Hill has been engaged in the construction business since the age of seventeen (17), when in 1974 he began his career in New Jersey working for an excavating contractor. During the past ten (10) years, Mr. Hill has professionally and compassionately worked as a contractor undertaking a variety of projects including framing, construction of new town homes, remodeling, and serving as a Project Manager and/or builder of single family homes and other residential dwellings. Significantly, during the entirety of his professional career as a licensed contractor, and prior to the Administrative Complaint at issue, Mr. Hill was never a party to any administrative complaints or lawsuit of any kind against him in the State of Florida, or any other state.
3. The following is a partial list of projects that Mr. Hill has dutifully worked on, without negative incident nor inference, during his long-standing career as a contractor:
 - a. New Jersey - Project Manager, LA Wicks Organization/Mill Creek Island - 144 Town Homes.
 - b. New Jersey - Project Manager, Jenco Builders/Poppy Court - 16 luxury Single Family Homes.

² Please see attached true and correct copy of an envelope post-marked August 31, 2007 (the day after scheduled hearing). Such envelope contains a return address for Mr. Lagano (without specifying his name on the envelope). Inside the envelope, Mr. Lagano placed Petitioner's Unilateral Pre-Hearing Statement (dated, August 20, 2007), Petitioner's Exhibit List (dated, August 20, 2007), Petitioner's Witness List (dated, August 20, 2007) Petitioner's First Request for Production (dated, July 27, 2007) and Petitioner's First Request for Admissions to Respondent (dated, July 27, 2007).

³ In the interests of full disclosure and fairness, however, it does appear from the limited investigation done to date by this Law Group (which has included one (1) conference with Tiffany Harrington, trial counsel for the Department and several conferences with the Florida Bar in order to ascertain the whereabouts of Mr. Hill's case file which to this day remains unknown to the Florida Bar and Mr. Hill), that Mr. Hill did receive notice of the Hearing and other pleadings relating to litigation directly by U.S. Mail at all three (3) of his known addresses. It also appears that Mr. Lagano was aware that final hearing was scheduled on August 30, 2007.

October 25, 2007

- c. New Jersey - Project Manager, Kara Homes/Trade Winds - 16 luxury homes prices ranging from \$2.5 million to \$6 million dollars.
- d. Florida - Project Manager, Zizzo Construction.
- e. Florida - Anchor Village, 74 Town Homes.
- f. Florida - Florida Park Way Drive - 6 Town Homes.
- g. Florida - Coquina Palms - 68 Town Homes.
- h. Florida - Manatee Point - 60 Town Homes.

4. Mr. Hill is married, the father of two (2) children, an active participant in every community in which he has resided having volunteered hundreds of hours of time to his church as a choir singer, and as a Little League coach of numerous baseball, soccer, and basketball teams.

5. For the sake of brevity, and given the exigent circumstances surrounding this request, please consider the following partial reasons (the applicability of which will be more fully addressed in our proposed Exceptions), prior to issuing the Agency Final Order:

- a. Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) is "Arbitrary and Capricious."
- b. Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) is "Clearly Erroneous."
- c. Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) "Departs From the Essential Requirement of Law."
- d. Adoption of Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) by the Agency in its Final Order would be manifestly unfair and/or be oppressive in nature under the circumstances since its adoption would substantially and unjustly deprive Mr. Hill of a valuable privilege (General Contactor License) and the ability to earn a living in his chosen profession.
- e. Adoption of Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) by the Agency in its Final Order does not comport with the Agency's own Internal Rulings including, *inter alia*, the decision in *Golfman*.⁴

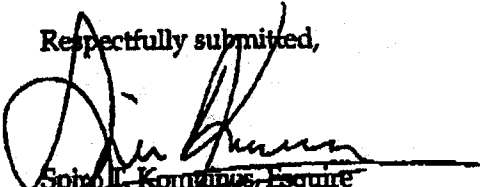
⁴ Department of Business and Professional Regulation, Construction Industry Licensing Board v. Richard M. Golfman, DOAH Case Nos. 00-0599 and 00-0600, Recommended Order dated June 22, 2000, adopted in toto by Agency Final Order in Case No. 98-23264, entered August 28, 2000.

October 28, 2007

f. Regardless of the disciplinary action sought to be taken, it may be based only upon the offenses specifically alleged in the Administrative Complaints. See Kinney v. Department of State, 501 So. 2d 129 (Fla. 5th DCA 1987); Sternberg v. Department of Professional Regulation, Board of Medical Examiners, 465 So. 2d 1324 (Fla. 1st DCA 1985); and Hunter v. Department of Professional Regulation, 458 So. 2d 844 (Fla. 2d DCA 1984). Moreover, in determining whether Respondent violated the provisions of law, as alleged in the Administrative Complaint, one "must bear in mind that it is, in effect, a penal statute. . . . This being true, the statute must be strictly construed and no conduct is to be regarded as included within it that is not reasonably proscribed by it." Lester v. Department of Professional and Occupational Regulations, 348 So. 2d 923, 925 (Fla. 1st DCA 1977).

Please contact me at your earliest convenience (preferably today) at (813) 251-3444 (Office Phone) or, alternatively, if so desired, anytime over the weekend, at (813) 326-7610 (Cell Phone), in order that we may discuss the granting or denial of our request for extension of time, or the possibility of being placed on the agenda for the January 2008 (or earlier) meeting in front of the Board.

Respectfully submitted,



Spiro L. Komninos, Esquire
For Michael Hill

IMPORTANT: This facsimile, and any attachment(s) thereto, is a private communication sent by a lawyer with the law firm of Komninos Law Group, LLC ("Law Group"). This facsimile, and any attachment(s) thereto, may contain confidential, legally privileged information meant solely for the intended recipient(s). If you are not the intended recipient(s) please: (1) be informed and notified that any use, dissemination, distribution or copying of this communication is strictly prohibited; (2) notify the Law Group immediately upon your inadvertent receipt of a facsimile from the Law Group; and (3) kindly destroy the facsimile, and any attachments thereto.

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32950



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1520 Sakemiet Ct.
Bundara, FL
33511



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: Balch
 M : Memory
 S : Standard
) : Reduction
 Q : RX Notice Rec.

C : Confidential
 L : Send later
 D : Detail
 H : Stored/D. Server
 A : RX Notice

S : Transfer
 @ : Forwarding
 F : Fine
 * : LAN-Fax

P : Polling
 E : ECM
 U : Super Fine
 + : Delivery

* * * Immediate TX Result Report (Oct. 26. 2007 12:34PM) * * *

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Date	Time	Destination	Mode	TXtime	Page	Result	User Name	File No.
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: Batch
M : Memory
S : Standard
Y : Reduction
Q : RX Notice Rec.

C : Confidential
L : Send later
D : Detail
H : Stored on Server
A : RX Notice

S : Transfer
@ : Forwarding
F : Fine
* : LAN-Fax

P : Polling
E : ECM
U : Super Fine
v : Delivery

SUPPORTIVE DOCUMENT

#4

5225 8th Street
Zephyrhills, Florida 33542
(Main Office/Mailing Address)

8270 Woodland Center Boulevard
Tampa, Florida 33614
(Central Tampa Office)

7320 East Fletcher Avenue
Tampa, Florida 33637
(North Tampa Office)

KOMNINOS
LAW GROUP, LLC
Attorneys at Law
1125 N. HIGHLAND AVENUE
SUITE 1000 TAMPA, FL 33606
www.kslawgroup.com

Fax

To: State of Florida Division of Administrative Hearings
(Attn: Fax Filing)

From: Spiro T. Komninos, Esquire

Fax: (850) 921-6847 Pages: 8 (including cover)

Phone: Date: 11-1-07

Re: DBHR (Construction Board) vs. Michael Hill
DOAH Case # No. 073123PL

CC:

Urgent For Review Please Comment Please Reply Please Recycle

TIME SENSITIVE MATERIAL

Dear Filing:

Attached hereto please find correspondence sent by our Law Group on behalf of Mr. Michael Hill (hereinafter referred to as "Mr. Hill"), License #CR C057409. The document attached was submitted on, October 26, 2007, via facsimile to, G.W. Harrell, Executive Director (fax # (850) 921-4216) and Ned Luczynski, General Counsel (fax # (850) 488-1830). Thank you for your prompt attention to this matter.

 *** FAX ACTIVITY REPORT TX/RX ***

ST. TIME	DISTINATION ADDRESS	NO.	MODE	PGS.	RESULT
*10/22 15:11		19544530365 1617	TX	0	NG 00' 27 0 STOP
*10/22 15:15		19547724132 1619	TX	1	OK 00' 36
*10/22 15:24		9547724132 1618	TX	0	NG 00' 00 0 #018
*10/23 10:17		7036987003 6613	AUTO RX	39	OK 10' 36
*10/23 15:16		9043714414 6614	AUTO RX	1	NG 00' 31 1
*10/23 15:18		9043714414 6615	AUTO RX	2	NG 00' 51 2
*10/23 15:27		9043714414 6616	AUTO RX	2	OK 01' 06
10/24 09:55		727 6617	AUTO RX	1	OK 00' 16
10/24 10:50	UNKNOWN	6618	AUTO RX	5	OK 01' 29
10/24 12:16		8137693534 1620	TX	1	OK 00' 20
10/24 13:36		8133491317 1621	TX	1	OK 00' 52
10/24 15:21		8138019091 1622	TX	1	OK 00' 42
10/24 15:33		8137693534 1623	TX	1	OK 00' 17
10/25 12:21		8138844144 6619	AUTO RX	1	OK 00' 22
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11/01 13:28		17278469488 1637	TX	11	OK 01' 48
11/01 15:50		18509216847 1638	TX	2	OK 00' 48

SUPPORTIVE DOCUMENT

#5

5225 8th Street
Zephyrhills, Florida 33542
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8270 Woodland Center Boulevard
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Fax

To: State of Florida Division of
Administrative Hearings
(Attn: Fax Filing)

From: Spiro T. Komninos, Esquire

Fax: (850) 921-6847

Pages: 2 (including cover)

Phone:

Date: 11-1-07

Re: DBHR (Construction Board) vs.
Michael Hill
DOAH Case # No. 073123PL

CC:

Urgent For Review Please Comment Please Reply Please Recycle

TIME SENSITIVE MATERIAL

Dear Filing:

The information below contained in this fax was originally sent on October 29, 2007, to G.W. Harrell, Executive Director (fax # (850) 921-4216) and Ned Luczynski, General Counsel (fax # (850) 488-1830). This fax contains the same information as the prior fax, but is served upon the Department for filing since there has been no response to the prior fax.

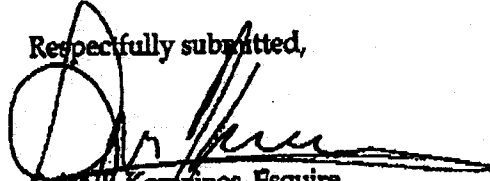
November 1, 2007

As you know, Mr. Michael Hill (hereinafter referred to as "Mr. Hill"); License #CR C057409, recently retained this Law Group to submit Exceptions to the Recommended Order submitted by the Honorable Jeff B. Clark, Administrative Law Judge.¹ However, the cover letter to such Recommended Order submitted by the Honorable Jeff B. Clark, Administrative Law Judge, states that "the one-volume Transcript, together with the Petitioner's Exhibits 1-7" was enclosed with the Recommended Order. Copies of "the one-volume Transcript, together with the Petitioner's Exhibits 1-7" were not forwarded to or ever received by Mr. Hill.

In order to submit Exceptions that properly cite to, and reference the record, please forward such documents to my Law Group as soon as possible.

Please forward invoice for costs (copying and mailing (preferably by Express Overnight Mail), to my Law Group so that we can promptly issue payment.

Respectfully submitted,



Spiro V. Konrinos, Esquire
For Michael Hill

IMPORTANT: This facsimile, and any attachment(s) thereto, is a private communication sent by a lawyer with the law firm of Konrinos Law Group, LLC ("Law Group"). This facsimile, and any attachment(s) thereto, may contain confidential, legally privileged information meant solely for the intended recipient(s). If you are not the intended recipient(s) please: (1) be informed and notified that any use, dissemination, distribution or copying of this communication is strictly prohibited; (2) notify the Law Group immediately upon your inadvertent receipt of a facsimile from the Law Group; and (3) kindly destroy the facsimile, and any attachments thereto.

¹ This request is being made pursuant to the Notice of Right to Submit Exceptions contained on the face of the Recommended Order and Florida case law holding that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See Couch v. Commission on Ethics, 617 So.2d 1119, 1124 (Fla. 5th DCA 1993); Florida Dept. of Corrections v. Bradley, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987).

November 1, 2007

IMPORTANT: This facsimile, and any attachment(s) thereto, is a private communication sent by a lawyer with the law firm of Konrinos Law Group, LLC ("Law Group"). This facsimile, and any attachment(s) thereto, may contain confidential, legally privileged information meant solely for the intended recipient(s). If you are not the intended recipient(s) please (1) be informed and notified that any use, dissemination, distribution or copying of this communication is strictly prohibited; (2) notify the Law Group immediately upon your inadvertent receipt of a facsimile from the Law Group; and (3) kindly destroy the facsimile, and any attachments thereto.

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**KOMNINOS
LAW GROUP, LLC**
Attorneys at Law
(813) 251-3114 (Phone)
(813) 251-3115 (Facsimile)

www.KFLawGroup.com

Fax

To: G. W. Harrell, Executive Director
Construction Industry Licensing
Board Department of Business and
Professional Regulation

From: Spiro T. Komrinos, Esquire

Ned Luczynski, General Counsel
Department of Business and
Professional Regulation

Time Sensitive
Material!

Fax: (850) 921-4216
(850) 488-1830

Pages: 6 (including cover)

Phone:

Date: 10-26-07

Re: DBPR (Construction Board) vs.
Michael Hill
DOAH Case # No. 073123PL

CC:

Urgent For Review Please Comment Please Reply

Dear Messrs. Executive Director and General Counsel:

Please be informed that Mr. Michael Hill (hereinafter referred to as "Mr. Hill"), License #CR C057409, recently retained this Law Group to submit Exceptions to the Recommended Order submitted by the Honorable Jeff B. Clark, Administrative Law

October 26, 2007

Judge.¹ The Recommended Order is dated October 12, 2007. However, such Recommended Order first came into Mr. Hill's possession on Tuesday, October 23, 2007, and was first received by this Law Group on Wednesday, October 24, 2007. The apparent reason for delay of receipt of the Recommended Order is Mr. Hill's recent change of address, and the subsequent interruption caused by forwarding of mail. In light of this information, I contacted the Department in an effort to seek an extension of time and was informed that all requests for contact with either of you must be made by facsimile, and not by telephone.

As it stands, the current deadline for submitting Exceptions falls on Saturday, October 27, 2007, meaning that exceptions should be placed in the mail to you on or before, Monday, October 29, 2007. Unfortunately, this cannot reasonably be accomplished by this Law Group in the proscribed time period given the aforementioned circumstances, today's date, and Mr. Hill's desire to provide a sufficient and adequate request for Exception for due consideration. As such, we respectfully request a reasonable extension of time of ten (10) days from the current due date in order that Mr. Hill may be able to submit legally cogent exceptions to Recommendation Nine (9) (Page Seventeen (17)) of the Recommended Order. Should our request for extension of time be graciously granted, you shall receive Mr. Hill's Exceptions on or before, Thursday, November 8, 2007. Should our request for extension of time be denied, then we respectfully request that Mr. Hill be granted the opportunity to inform you, in writing, of all relevant facts and law applicable to his matter at some point in time prior to Thursday, November 8, 2007, but before the Agency Final Order is rendered.

When considering whether to grant our request, please kindly reflect upon the following:

1. Mr. Hill's former legal counsel, Albert S. Lagano (hereinafter referred to as "Mr. Lagano") was disbarred by the State of Florida by Order of the Supreme Court of Florida sometime in May of 2007. However, Mr. Lagano failed to inform Mr. Hill of his disbarment until some point in time after the scheduled hearing on this matter had already occurred on August 30, 2007. Mr. Lagano failed to forward all relevant pleadings to Mr. Hill and further

¹ This request is being made pursuant to the Notice of Right to Submit Exceptions contained on the face of the Recommended Order and Florida case law holding that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See *Couch v. Commission on Ethics*, 617 So.2d 1119, 1124 (Fla. 5th DCA 1993); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987).

October 26, 2007

failed to extract responses by Mr. Hill.² In fact, Mr. Lagano informed Mr. Hill on numerous occasions prior to hearing that "all was being taken care of" and to "not worry." Unknowingly, unintentionally, and in reasonable reliance upon the advice of his legal counsel, Mr. Hill accepted Mr. Lagano's assurances to his substantial detriment,³ all of which directly caused his failure to appear at final hearing.

2. Mr. Hill has been engaged in the construction business since the age of seventeen (17), when in 1974 he began his career in New Jersey working for an excavating contractor. During the past ten (10) years, Mr. Hill has professionally and compassionately worked as a contractor undertaking a variety of projects including framing, construction of new town homes, remodeling, and serving as a Project Manager and/or builder of single family homes and other residential dwellings. Significantly, during the entirety of his professional career as a licensed contractor, and prior to the Administrative Complaint at issue, Mr. Hill was never a party to any administrative complaints or lawsuit of any kind against him in the State of Florida, or any other state.
3. The following is a partial list of projects that Mr. Hill has dutifully worked on, without negative incident nor inference, during his long-standing career as a contractor:
 - a. New Jersey - Project Manager, LA Wicks Organization/Mill Creek Island - 144 Town Homes.
 - b. New Jersey - Project Manager, Jenco Builders/Poppy Court - 16 luxury Single Family Homes.

² Please see attached true and correct copy of an envelope post-marked August 31, 2007 (the day after scheduled hearing). Such envelope contains a return address for Mr. Lagano (without specifying his name on the envelope). Inside the envelope, Mr. Lagano placed Petitioner's Unilateral Pre-Hearing Statement (dated, August 20, 2007), Petitioner's Exhibit List (dated, August 20, 2007), Petitioner's Witness List, (dated, August 20, 2007) Petitioner's First Request for Production (dated, July 27, 2007) and Petitioner's First Request for Admissions to Respondent (dated, July 27, 2007).

³ In the interests of full disclosure and fairness, however, it does appear from the limited investigation done to date by this Law Group (which has included one (1) conference with Tiffany Harrington, trial counsel for the Department and several conferences with the Florida Bar in order to ascertain the whereabouts of Mr. Hill's case file which to this day remains unknown to the Florida Bar and Mr. Hill), that Mr. Hill did receive notice of the Hearing and other pleadings relating to litigation directly by U.S. Mail at all three (3) of his known addresses. It also appears that Mr. Lagano was aware that final hearing was scheduled on August 30, 2007.

October 28, 2007

- c. New Jersey - Project Manager, Kara Homes/Trade Winds - 16 luxury homes prices ranging from \$2.5 million to \$6 million dollars.
- d. Florida - Project Manager, Zizzo Construction.
- e. Florida - Anchor Village, 74 Town Homes.
- f. Florida - Florida Park Way Drive - 6 Town Homes.
- g. Florida - Coquina Palms - 68 Town Homes.
- h. Florida - Manatee Point - 60 Town Homes.

4. Mr. Hill is married, the father of two (2) children, an active participant in every community in which he has resided having volunteered hundreds of hours of time to his church as a choir singer, and as a Little League coach of numerous baseball, soccer, and basketball teams.

5. For the sake of brevity, and given the exigent circumstances surrounding this request, please consider the following partial reasons (the applicability of which will be more fully addressed in our proposed Exceptions), prior to issuing the Agency Final Order:

a. Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) is "Arbitrary and Capricious."

b. Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) is "Clearly Erroneous."

c. Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) "Departs From the Essential Requirement of Law."

d. Adoption of Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) by the Agency in its Final Order would be manifestly unfair and/or be oppressive in nature under the circumstances since its adoption would substantially and unjustly deprive Mr. Hill of a valuable privilege (General Contactor License) and the ability to earn a living in his chosen profession.

e. Adoption of Recommendation Nine (9) (Page Seventeen (17) of the Recommended Order) by the Agency in its Final Order does not comport with the Agency's own Internal Rulings including, *inter alia*, the decision in *Golfman*.⁴

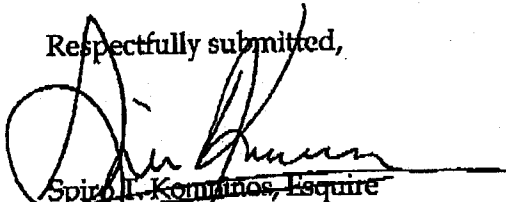
⁴ Department of Business and Professional Regulation, Construction Industry Licensing Board v. Richard M. Golfman, DOAH Case Nos. 00-0599 and 00-0600, Recommended Order dated June 22, 2000, adopted in toto by Agency Final Order in Case No. 98-23264, entered August 28, 2000.

October 26, 2007

f. Regardless of the disciplinary action sought to be taken, it may be based only upon the offenses specifically alleged in the Administrative Complaints. See Kinney v. Department of State, 501 So. 2d 129 (Fla. 5th DCA 1987); Sternberg v. Department of Professional Regulation, Board of Medical Examiners, 465 So. 2d 1324 (Fla. 1st DCA 1985); and Hunter v. Department of Professional Regulation, 458 So. 2d 844 (Fla. 2d DCA 1984). Moreover, in determining whether Respondent violated the provisions of law, as alleged in the Administrative Complaint, one "must bear in mind that it is, in effect, a penal statute. . . . This being true, the statute must be strictly construed and no conduct is to be regarded as included within it that is not reasonably proscribed by it." Lester v. Department of Professional and Occupational Regulations, 348 So. 2d 923, 925 (Fla. 1st DCA 1977).

Please contact me at your earliest convenience (preferably today) at (813) 251-3444 (Office Phone) or, alternatively, if so desired, anytime over the weekend, at (813) 326-7610 (Cell Phone), in order that we may discuss the granting or denial of our request for extension of time, or the possibility of being placed on the agenda for the January 2008 (or earlier) meeting in front of the Board.

Respectfully submitted,



Spiros L. Komminos, Esquire
For Michael Hill

IMPORTANT: This facsimile, and any attachment(s) thereto, is a private communication sent by a lawyer with the law firm of Komminos Law Group, LLC ("Law Group"). This facsimile, and any attachment(s) thereto, may contain confidential, legally privileged information meant solely for the intended recipient(s). If you are not the intended recipient(s) please: (1) be informed and notified that any use, dissemination, distribution or copying of this communication is strictly prohibited; (2) notify the Law Group immediately upon your inadvertent receipt of a facsimile from the Law Group; and (3) kindly destroy the facsimile, and any attachments thereto.

1015 Fitz Road
Malabar, FL
32950



Mike Hill
1520 Sakemiet Ct.
Brandon, FL
33511

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 00858582-48

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD
DIVISION I

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

Case No. 2006-007992

v.

MICHAEL HILL,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, ("Petitioner"), files this Administrative Complaint before the Construction Industry Licensing Board, against MICHAEL HILL, ("Respondent"), and says:

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 is, and has been at all times material hereto, a Certified Residential Contractor in the State of Florida, having been issued license number CRC 057409.
3. Respondent's last known addresses of record are 1520 Sakonnet Court, Brandon, FL, 33511; P. O. Box 33309, Indialantic, FL 32903; and, 229 Sand Dollar Road, Indialantic, FL 32903.
4. At all times material hereto, Respondent was the primary qualifying agent for Michael Hill Homes, Inc. ("MHH"), which has not been qualified or certified as required by law.

5. Section 489.1195(1)(a), Florida Statutes, provides that 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.

6. On or about June 30, 2005, MHH entered into a contract with Rose & Ken Farquharson ("Farquharson") to construct a home for them.

7. The total contract price was \$245,400.00 with all addendums, of which \$44,880.00 was paid to MHH by Farquharson.

8. Respondent failed to apply for any permits or do any work on the lot purchased by Farquharson, despite receiving \$28,590.00 as a deposit and an additional draw of \$16,290.00 from Farquharson.

COUNT I

9. Petitioner realleges and incorporates the allegations set forth in paragraphs 1 through 8 as though fully set forth herein.

10. Section 489.119(2), Florida Statutes, states that a contractor who wishes to do business as a business entity or other than in his own name is required to qualify the business entity with the State of Florida and obtain a certificate of authority for said business. Respondent failed to do that with MHH and engaged in contracting through the business known as MHH.

11. Based on the foregoing, Respondent violated section 489.129(1)(i), Florida Statutes, by failing in any material respect to comply with the provisions of Chapter 489, Part I, Florida Statutes, or violating a rule or lawful order of the board, by having violated section 489.119(2), Florida Statutes.

COUNT II

12. Petitioner realleges and incorporates the allegations set forth in paragraphs 1 through 8 as though fully set forth herein.

13. Section 489.126(2)(a), Florida Statutes, requires a contractor who is paid money totaling more than 10% of the contract on residential property to apply for a permit within thirty (30) days of receipt of such funds. Respondent failed to apply for any permit in relation to the contract between MHH and Farquharson.

14. Based on the foregoing, Respondent violated section 489.129(1)(i), Florida Statutes, by failing in any material respect to comply with the provisions of Chapter 489, Part I, Florida Statutes, or violating a rule or lawful order of the board, by having violated section 489.126(2)(a), Florida Statutes.

COUNT III

15. Petitioner realleges and incorporates the allegations set forth in paragraphs 1 through 8 as though fully set forth herein.

16. Based on the foregoing, Respondent violated section 489.129(1)(g)2, Florida Statutes, by committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when 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 job is abandoned.

COUNT IV

17. Petitioner realleges and incorporates the allegations set forth in paragraphs 1 through 8 as though fully set forth herein.

18. Based on the foregoing, Respondent violated section 489.129(1)(j), Florida Statutes, by abandoning the 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.

COUNT V

19. Petitioner realleges and incorporates the allegations set forth in paragraphs 1 through 8 as though fully set forth herein.

20. Based upon the foregoing, the Respondent violated Section 489.129(1)(o), Florida Statutes, by proceeding on this job without obtaining the appropriate permit or inspections.

COUNT VI

21. Petitioner realleges and incorporates the allegations set forth in paragraphs 1 through 8 as though fully set forth herein.

22. Based on the foregoing, Respondent violated section 489.129(1)(m), Florida Statutes, by committing incompetence or mismanagement in the practice of contracting


WHEREFORE, Petitioner respectfully requests the Construction Industry Licensing Board enter an Order imposing one or more of the following penalties: place on probation, reprimand the licensee, revoke, suspend, deny the issuance or renewal of the certificate or registration, require financial restitution to a consumer, impose an administrative fine not to exceed \$5,000 per violation, require continuing education, assess costs associated with investigation and prosecution, impose any or all penalties delineated within section 455.227(2), Florida Statutes, and/or any other relief that the Board is authorized to impose pursuant to Chapters 489, 455, Florida Statutes, and/or the rules promulgated thereunder.

Signed this 20th day of March, 2007.

PC Found: February 27, 2007
Div. J. Kalmanson & Cox

FILED

Department of Business and Professional Regulation
AGENCY CLERK


By: Matthew D. Morton
Assistant General Counsel

CLERK Sarah L. Washburn
DATE 3-21-2007

COUNSEL FOR DEPARTMENT:

Matthew D. Morton
Assistant General Counsel
Department of Business and
Professional Regulation
Office of the General Counsel
1940 N. Monroe Street, Ste. 42
Tallahassee, FL 32399-2202