

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 07-3254  
 )  
GEORGE TORRES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On August 19, 2007, a hearing was held in Daytona Beach, Florida, pursuant to the authority set forth in Sections 120.569 and 120.57(1), Florida Statutes. The case was considered by Lisa Shearer Nelson, Administrative Law Judge.

APPEARANCES

For Petitioner: Sorin Ardelean, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: George Torres, pro se  
GT Handy Solution, Inc.  
43 Russo Drive  
Palm Coast, Florida 32164

STATEMENT OF THE ISSUE

Whether Respondent has committed the acts alleged in the Administrative Complaint and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On March 27, 2007, the Department of Business and Professional Regulation (Department or DBPR) filed an Administrative Complaint alleging that Respondent had engaged in electrical contracting without a license in violation of Section 489.531(1), Florida Statutes, and had violated a lawful order of the Department, in violation of Section 455.227(1)(q), Florida Statutes. Respondent disputed the allegations in the Administrative Complaint and requested a hearing pursuant to Section 120.57(1), Florida Statutes. On July 17, 2007, the Department referred the case to the Division of Administrative Hearings (the Division) and requested assignment of an administrative law judge.

The matter was noticed for hearing August 29, 2007, and proceeded as scheduled. Petitioner presented the testimony of three witnesses and Petitioner's Exhibits numbered 1 through 9 were admitted into evidence. Respondent testified on his own behalf, presented the testimony of his wife, Gladys Torres, and Respondent's Exhibits numbered 1 through 4 were admitted. The transcript of the proceeding was filed with the Division September 13, 2007, and the deadline for submitting proposed recommended orders was September 24, 2007. Petitioner timely filed a Proposed Recommended Order that has been carefully considered in the preparation of the Recommended Order.

## FINDINGS OF FACT

1. Petitioner is the state agency charged with the licensing and regulation of contractors in the State of Florida pursuant to Section 20.42 and Chapters 455 and 489, Florida Statutes.

2. Respondent is an officer and registered agent for GT Handy Solutions, Inc. Neither he nor his company is registered or certified to perform electrical contracting in the State of Florida. Respondent holds only an occupational license from the City of Palm Coast.

3. On or about May 17, 2006, in DBPR Case No. 2006-005919, Respondent was issued a Notice to Cease directing Respondent to immediately cease and desist from all unlicensed electrical contracting work.

4. Sometime after that point, the Jacksonville investigative office of DBPR received a tip from the City of Palm Coast that Respondent was still in the area engaging in unlicensed activity. The Department set up a sting operation with the assistance of the Volusia County State Attorney's Office and the Flagler County Sheriff's Office.

5. Leslie Floyd Walker is employed as an investigator in the Volusia County State Attorney's Office. As part of the sting operation, Ms. Walker posed as a homeowner and called unlicensed people asking them to give estimates for electrical work to be performed at 11 Floyd Court, Palm Coast, Florida. The names of

the unlicensed persons to be called were provided by the City of Palm Coast and were persons who advertised in the Palm Coast area or who had been cited previously for performing work without a license.

6. Mr. Torres was one of the unlicensed persons called by Ms. Walker. On January 23, 2007, Mr. Torres was contacted at the telephone number contained in an advertisement in the Service Directory of the Flagler Pennysaver. In response to Ms. Walker's call, Mr. Torres came to the house at 11 Floyd Court, and Ms. Walker told him she wanted to replace three ceiling fans with new ones, and a light fixture, remove an existing light and add a light at the home. Mr. Torres and Ms. Walker's conversation was preserved via videotape.

7. Mr. Torres was concerned about the wiring at the home, and asked to see the attic space. After doing so, he gave Ms. Walker an estimate of \$800 to do the work, indicating that he would have to do some rewiring in order to put in the new ceiling fan she wanted. The estimate contemplated Ms. Walker providing the new ceiling fans.

8. Ms. Walker asked Mr. Torres for a written proposal, which he started to prepare. However, he asked her if it was possible to mail it to her, because he needed to be able to make a copy for himself. He asked her about scheduling for the job, and indicated that he would be available the next week. He also stated that while the fans could be changed out in a few hours,

the wiring would be more extensive and made the job a two-day job.

9. Mr. Torres never provided the written proposal, and when Ms. Walker called and said he could do the work, he did not go back. At hearing, he said that he did not do so because he knew doing the electrical work was beyond the scope of what he was allowed to do. He claimed that he never actually offered to do the work, but instead had merely said that this type of work could be done for \$800.

10. The undersigned has viewed the videotape of Mr. Torres' conversation with Ms. Walker, and carefully listened to the conversation. At no time did he indicate to Ms. Walker that he was unable to perform the work she described. To the contrary, he discussed with her the aspects of the job that would make it more extensive, and what efforts he would have to make regarding the rewiring. While he may have ultimately determined not to perform the work, the evidence is clear that he provided a verbal proposal to perform the work at the time that he met with Ms. Walker at 11 Floyd Court.

11. The Department has incurred investigative costs in the amount of \$164.23.

#### CONCLUSIONS OF LAW

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

action in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

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

14. The Administrative Complaint charges Respondent with violating Sections 455.227(1)(q) and 489.531(1), Florida Statutes. Relevant portions of Section 455.227, Florida Statutes, state the following:

455.227 Grounds for discipline; penalties; enforcement.--

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

\* \* \*

(q) Violating any provision of this chapter, the applicable professional practice act, a rule of the department or the board, or a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.

\* \* \*

15. The Department is granted the authority to enforce notices to cease and desist as follows:

455.228 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of money collected.--

(1) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any

provision of this chapter or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. . . . The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order. In addition to the foregoing remedies, the department may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). If the department is required to seek enforcement of the order for a penalty pursuant to s.120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

16. Section 489.531(1), Florida Statutes, provides:

489.531 Prohibitions; penalties.--

(1) A person may not:

(a) Practice contracting unless the person is certified or registered.

17. Section 489.505, Florida Statutes, provides the following definitions:

(2) "Alarm system contractor" means a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to lay out, fabricate, install, maintain, alter, repair, inspect, replace, or service alarm systems for compensation, including, but not limited to, all types of alarm systems for all purposes. This term also means any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract; that undertakes, offers to undertake, purports to

have the capacity to undertake, and submits a bid to engage in the business of alarm contracting; or that by itself or by or through others engages in the business of alarm contracting.

\* \* \*

(9) "contracting" means, except where exempted in this part, engaging in business as a contractor or performing any electrical work for compensation and includes, but is not limited to, performance of any of the acts found in subsections (2) and (12), which define the services which a contractor is allowed to perform. The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure.

\* \* \*

(12) "Electrical contractor" or "unlimited electrical contractor" means a person who conducts business in the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, transforms, or utilizes electrical energy in any form, . . . . The term means any person, firm, or corporation that engages in the business of electrical contracting under an express or implied contract; or that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to engage in the business of electrical contracting; or that does itself or by or through others engage in the business of electrical contracting.

18. Petitioner has proven by clear and convincing evidence that Respondent violated Section 489.531(1)(a), Florida Statutes, as alleged in Count I of the Administrative Complaint. The tasks



Ms. Walker described to Respondent and for which Respondent gave her an estimate involved the installation, repair, alteration, or addition of electrical wiring and fixtures as defined in Section 489.505(12), Florida Statutes. Respondent represented that he had the ability to undertake those tasks and gave a price to provide electrical contracting services when he met with Ms. Walker at 11 Floyd Court. The fact that he did not fill out and submit a written proposal and ultimately did not follow up on doing the job is irrelevant. There is no requirement in Chapter 489, Florida Statutes, that a bid or offer to perform services be in writing.

19. Moreover, while Respondent claimed that he merely offered an opinion on how much the requested work might cost, his testimony to that effect is not credible. After carefully viewing the videotape, it is clear that Respondent spoke to Ms. Walker as if he would be doing the job. Much of his explanation was personal, i.e., "I would need to run new lines," etc. Similarly, when he asked about scheduling after quoting the price of \$800, he spoke of how the job would fit with his schedule. It is clear that, at least at the time he met with Ms. Walker, he was willing and prepared to perform the tasks for which he had no license.

20. Respondent has also violated Section 455.227(1)(q), Florida Statutes, alleged in Count II of the Administrative Complaint. Respondent admits that he received a Notice to Cease

and Desist from the Department of Business and Professional Regulation in Case No. 2006-005919. By its terms, Section 455.228 refers to a Notice to Cease and Desist as an order. When Respondent offered to perform services requiring a license as an electrical contractor, he violated a lawful order of the Department.

RECOMMENDATION

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

RECOMMENDED:

That a final order be entered finding that Respondent has violated Counts I and II of the Administrative Complaint, assessing an administrative fine in the amount of \$5,000.00 and imposing investigative costs in the amount of \$164.23.

DONE AND ENTERED this 3rd day of October, 2007, in Tallahassee, Leon County, Florida.

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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of October, 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.