

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
CONSTRUCTION INDUSTRY LICENSING )  
BOARD, )  
 )  
Petitioner, )  
 )  
vs. ) Case Nos. 07-4376PL  
 ) 07-4377PL  
GREG ALAN ROACH, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this consolidated case on February 5, 2008, in Orlando, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Collin W. L. Mcleod, Esquire  
Wright, Fulford, Moorhead & Brown, P.A.  
145 North Magnolia Avenue  
Orlando, Florida 32803

For Respondent: (No appearance)

STATEMENT OF THE ISSUES

The issues in Case No. 07-4376PL are whether Respondent violated Subsections 489.129(1)(i), 489.119(2), 489.126(2)(a), and 489.129(1)(j), (m), and (o), Florida Statutes (2004),<sup>1</sup> and, if so, what discipline should be imposed.

The issues in Case No. 07-4377PL are whether Respondent violated Subsections 489.1425(1), and 489.129(1)(i) and (o), Florida Statutes, and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On March 16, 2006, the Department of Business and Professional Regulation (Department) filed a two-count Administrative Complaint against Respondent, Greg Alan Roach (Mr. Roach), alleging that Mr. Roach violated Subsections 489.129(1)(i), 489.1425(1), and 489.129(1)(o), Florida Statutes.

On June 30, 2006, the Department, filed a five-count Administrative Complaint against Mr. Roach, alleging that Mr. Roach violated Subsections 489.129(1)(i), 489.119(2), 489.126(2)(a), Florida Statutes, and Subsections 489.129(1)(j), (m), and (o), Florida Statutes.

In both instances, Mr. Roach requested an administrative hearing, and the cases were forwarded to DOAH on September 20, 2007, for assignment to an Administrative Law Judge. The cases were originally assigned to Administrative Law Judge, Charles C. Adams. The cases were transferred to the undersigned Administrative Law Judge on October 9, 2007. For Case No. 07-4376PL, a final hearing was initially scheduled for December 4, 2007, and for Case No. 07-4377PL, a final hearing was initially scheduled for December 11, 2007.

In both cases, a Motion for Substitution of Counsel was filed by the Department on October 25, 2007, to request the substitution of its counsel, and the requests were granted. On November 15, 2007, a Motion to Consolidate and Continue Hearings was filed by the Department. A motion hearing was held by telephonic conference, and ultimately, on November 21, 2007, two orders were issued granting the requests set forth in the Department's motion. The first order consolidated Case Nos. 07-4376PL and 07-4377PL; the second order granted a continuance to the parties and re-scheduled the final hearing to February 5, 2008.

On January 16, 2008, the Department filed a Motion for Summary Final Order, or in the Alternative Petitioner's Motion to Relinquish Jurisdiction. A motion hearing was held by telephonic conference, and both of the requests set forth in the Department's motion were denied.

On February 5, 2008, in Orlando, Florida, the final hearing was scheduled to commence at 9:00 a.m. Neither the Respondent, Mr. Roach, nor a party acting as his representative appeared at the scheduled time. The commencement of the final hearing was delayed 20 minutes to allow Mr. Roach time to attend the final hearing. The undersigned contacted DOAH, but Mr. Roach had not contacted DOAH to advise as to why he had not appeared. The

final hearing commenced at 9:20 a.m., and neither Mr. Roach nor a representative of Mr. Roach appeared at the final hearing.

As a preliminary matter, the requests for admissions contained in both of Petitioner's First Requests for Admissions to Respondent were deemed admitted pursuant to Florida Rules of Civil Procedure 1.370(a), and admitted into evidence as Petitioner's Exhibits 1 and 2.

In Case No. 07-4376PL, the Department presented the testimony of one witness, Alywin Pang (Mr. Pang), and Petitioner's Exhibits 1 through 12 were admitted into evidence. In Case No. 07-4377PL, the Department presented the testimony of two witnesses, Nilda Perez (Ms. Perez) and Darlene Talley (Ms. Talley), and Petitioner's Exhibits 13 through 16 were admitted into evidence.

The record was held open to allow the Department to file the final orders in Mr. Roach's prior disciplinary cases. On February 11, 2008, the Department filed the Final Order in DBPR No. 2005-041224. This Final Order is admitted as Petitioner's Exhibit 14.

The Transcript of the final hearing was filed on February 26, 2008. The Department filed its Proposed Recommended Order on March 7, 2008. No proposed recommended order has been filed by Mr. Roach. The Department's Proposed

Recommended Order has been given consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

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

2. Mr. Roach is, and was at all times material to this action, a certified roofing contractor in the State of Florida having been issued License No. CCC1326005.

3. Mr. Roach's Certified Roofing Contractor License No. CCC1326005 is current and active.

4. Mr. Roach's current addresses of record are Post Office Box 345, Orange Springs, Florida, and 22204 U.S. Highway 301, Hawthorne, Florida.

5. At all times material to this action, Mr. Roach was a licensed qualifier for All Florida Roofing Contractors, Inc. (All Florida).

6. There is evidence in the record sufficient to establish that Mr. Roach has been previously disciplined for a violation under Chapter 489, Florida Statutes. Notably, Mr. Roach has been previously disciplined for, among other things, violations of Subsections 489.129(1)(m) and (o), Florida Statutes.

7. Mr. Roach failed to obtain a Certificate of Authority for All Florida, as required by Subsection 489.119(2), Florida Statutes.

8. On or about August 23, 2004, Mr. Pang contracted with Mr. Roach, to remove and replace the hurricane-damaged roof of his hotel property located at 1620 West Vine Street, Kissimmee, Florida.

9. The contract price for the aforementioned project was \$40,000.00. Mr. Pang made an initial payment of \$2,250.00 on August 22, 2004, and another payment of \$20,000.00 on August 23, 2004.

10. As part of the contract, All Florida was required to pull the building permits for the project, and Mr. Roach failed to do this.

11. Mr. Roach commenced work on the project on or about September 7, 2004. On or about late September 2004, he ceased work on the project, and the project remained unfinished.

12. Mr. Pang paid All Florida an additional \$10,000.00 on September 16, 2004.

13. On October 1, 2004, the City of Kissimmee issued a Notice of Violation against Mr. Pang for failure to have a building permit for the work that had been performed by Mr. Roach on the roof.

14. Mr. Roach scheduled repairs on the project, but did not return to the project.

15. Mr. Roach did not have any inspections performed on the roof.

16. Later, another contractor hired by Mr. Pang finished the roofing project at a cost of an additional \$32,975.00.

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17. On or about September 15, 2004, Ms. Perez contracted with Mr. Roach to repair roof damage to her residence at 1502 Golden Poppy Court, Orlando, Florida.

18. The contract price for the aforementioned project was \$7,268.32, of which Mr. Roach was paid \$3,634.16 on September 18, 2004.

19. The contract entered into between Ms. Perez and Mr. Roach failed to inform the homeowner of the Construction Industry Recovery Fund.

20. On or about October 27, 2004, the Orange County Building Department issued Mr. Roach a permit for the aforementioned project (Permit No. T04018050).

21. Mr. Roach did not have any inspections performed on the roof.

22. On September 25, 2004, Ms. Perez paid \$3,614.16 to All Florida, which was the remaining amount of the contract.

23. Another contractor was hired by Ms Perez to correct deficient aspects of Mr. Roach's work on the roof at a cost of \$900.00.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2007).

25. The Department has the burden to establish the allegations in the Administrative Complaints by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996). In Case No. 07-4376PL, the Department alleged that Mr. Roach violated Subsection 489.129(1)(i), Florida Statutes, by failing to comply with Subsection 489.119(2), Florida Statutes, and Subsection 489.126(2)(a), Florida Statutes. The Department also alleged that Mr. Roach violated Subsections 489.129(1)(j), (m), and (o), Florida Statutes.

26. In Case No. 07-4377PL, the Department alleged that Mr. Roach violated Subsection 489.129(1)(i), Florida Statutes, by failing to comply with Subsection 489.1425(1), Florida Statutes. The Department also alleged that Mr. Roach violated Subsection 489.129(1)(o), Florida Statutes.

27. Subsection 489.129(1), Florida Statutes, provides that the following constitutes grounds for disciplinary action:



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

\* \* \*

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

\* \* \*

(m) Committing incompetency or misconduct in the practice of contracting.

\* \* \*

(o) Proceeding on any job without obtaining applicable local building department permits and inspections.

28. Subsection 489.119(2), Florida Statutes, provides:

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

29. Subsection 489.126(2)(a), Florida Statutes, provides:

(2) A contractor who receives, as initial payment, money totaling more than 10 percent of the contract price for repair,

restoration, improvement, or construction to residential real property must:

(a) Apply for permits necessary to do work within 30 days after the date payment is made. . . .

30. Subsection 489.1425(1), Florida Statutes, provides:

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

31. The clear and convincing evidence established that Mr. Roach was the primary qualifying agent for All Florida at all materially relevant times. Subsection 489.1195(1)(a), Florida Statutes, provides:

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

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

As the primary qualifying agent for All Florida, Mr. Roach is jointly and equally responsible for the work that was performed on the roofs of Mr. and Mrs. Pang and Ms. Perez.

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32. In regard to Case No. 07-4376PL, the Department established by clear and convincing evidence that Mr. Roach engaged in the business of contracting via the corporate entity of All Florida without first obtaining a Certificate of Authority, as required by Subsection 489.119(2), Florida Statutes. In so doing, Mr. Roach violated Subsection 489.129(1)(i), Florida Statutes, by failing, in a material respect, to comply with the provisions of Chapter 489, Part I, Florida Statutes.

33. The Department concedes in its Proposed Recommended Order that Subsection 489.126(2)(a) cannot apply to Mr. Roach in this instance.<sup>2</sup>

34. The Department established by clear and convincing evidence that Mr. Roach violated Subsection 489.129(1)(j), Florida Statutes. Mr. Roach abandoned work on the project, in late September 2004, and never returned. The project remained unfinished at that time, with scheduled repairs yet to be completed.

35. The Department established by clear and convincing evidence that Mr. Roach violated Subsection 489.129(1)(o), Florida Statutes, by failing to obtain the appropriate permitting or inspection for the roofing project.

36. The Department established by clear and convincing evidence that Mr. Roach violated Subsection 489.129(1)(m), Florida Statutes, through incompetency and misconduct in the contracting work he performed for Mr. Pang. The record evidences that Mr. Roach failed to pull the proper permits, abandoned the project, and failed to set inspections.

Case No. 07-4377PL

37. In regard to Case No. 07-4377PL, the Department established by clear and convincing evidence that Mr. Roach entered into a contract, exceeding \$2,500, with Ms. Perez that failed to notify her of her rights under the Construction Industry Recovery Fund, as required by Subsection 489.1425(1), Florida Statutes. In so doing, Mr. Roach violated Subsection 489.129(1)(i), Florida Statutes, by failing, in a material respect, to comply with the provisions of Chapter 489, Part I, Florida Statutes.

38. The Department established by clear and convincing evidence that Mr. Roach violated Subsection 489.129(1)(o), Florida Statutes, by failing to obtain the appropriate inspection of the roofing project.

39. The Department has established that Mr. Roach has been previously disciplined for violations under Chapter 489, Florida Statutes, including, but not limited to, violations of Subsections 489.129(1)(i), (m) and (o), Florida Statutes;

Subsection 489.119(3)(a), Florida Statutes; and Subsection 489.1425(1), Florida Statutes (Petitioner's Exhibit 14).

Florida Administrative Code Rule 61G4-17.003 provides:

(1) As used in this rule, 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.

(2) The penalty given in the above list for repeat violations is intended to apply only to situations where the repeat violation is of a different subsection of Chapter 489, F.S., than the first violation. Where, on the other hand, the repeat violation is the very same type of violation as the first violation, the penalty set out above will generally be increased over what is otherwise shown for repeat violations in the above list.

The increased administrative penalties for repeat offenders provided in the guidelines of Rule 61G4-17.001, Florida Administrative Code are applicable when recommending the appropriate penalties for Mr. Roach. Moreover, pursuant to Florida Administrative Code Rule 61G4-17.003(2), the violations of Subsections 489.129(1)(m) and (o) may have their penalties increased over and above those listed in Florida Administrative Code Rule 61G4-17.001, as these are repeat violations of the same subsection.

40. The costs of investigation and prosecution, excluding attorney time, in this consolidated case are to be assessed by the board pursuant to Florida Administrative Code Rule 61G4-17.001(4), (2007), which provides:

(4) In addition, the board shall assess the costs of investigation and prosecution, excluding costs related to attorney time.

However, since no evidence was presented at the final hearing on the Department's costs, no reasonable basis can be formed as to what the costs may have been.

41. The board is required to order Mr. Roach to make restitution to Mr. and Mrs. Pang and Ms. Perez for the financial losses to them suffered as a result of contracting with All Florida to repair their roofs, pursuant to Florida Administrative Code Rule 61G4-17.001(4), which provides:

(4) For any violation occurring after October 1, 1998, the board shall order the contractor to make restitution in the amount of financial loss suffered by the consumer. Such restitution shall be ordered in addition to the penalties provided by these guidelines upon demonstration of aggravating factors set forth in the subsection 61G4-17.002(1), F.A.C., and to the extent that such order does not contravene federal bankruptcy law.

The evidence showed that All Florida was paid a total of \$32,250.00 by Mr. Pang for work that in the end had to be almost entirely redone. After Mr. Roach fled the scene, later corrective work performed on the roof totaled \$32,750. It's

unclear what, if any, work of actual value was provided by Mr. Roach to Mr. Pang, but assuming that what Mr. Pang ultimately received was a \$40,000 roof, then Mr. Pang's economic loss is \$25,000. As for Ms. Perez, the evidence showed that she paid an additional \$900 to another contractor to correct the work Mr. Roach performed on her roof, so that is her economic loss.

42. Florida Administrative Code Rule 61G4-17.002 contains the relevant aggravating and mitigating factors used in determining whether restitution should be given to a wronged consumer and provides,

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.

Of the above, factors (1), (2), and (4) are the most applicable to the facts of these cases. Both the Pangs and Ms. Perez suffered unrelieved money damages. Also, Mr. Pang was issued a Notice of Violation for a lack of permitting on the roof work conducted by Mr. Roach that doubled the fee for obtaining the permit in the future.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered whose outcome is the following:

1. That in Case No. 07-4376PL Respondent violated Subsections 489.129(1)(i), (j), (m) and (o), Florida Statutes;
2. Dismiss Count II of the Administrative Complaint in Case No. 07-4376PL;



3. In Case No. 07-4376PL, imposing an administrative fine of \$1,000.00 for the violation of Subsection 489.129(1)(i), Florida Statutes; imposing an administrative fine of \$5,000.00 for the violation of Subsection 489.129(1)(j), Florida Statutes; imposing an administrative fine of \$2,500 for the violation of Subsection 489.129(1)(o), Florida Statutes; no administrative fine is recommended for the violation of 489.129(1)(m), Florida Statutes, because the violation is included in the violations of Subsections 489.129(1)(j) and (o), Florida Statutes;

4. That in Case No. 07-4377PL, Respondent violated Subsections 489.129(1)(i) and (o), Florida Statutes;

5. In Case No. 07-4377PL, imposing an administrative fine of \$1,000 for the violation of Subsection 489.129(1)(i), Florida Statutes; imposing an administrative fine of \$2,500 for the violation of Subsection 489.129(1)(o), Florida Statutes;

6. Requiring Respondent to make Restitution to Mr. and Mrs. Pang in the amount of \$25,000;

7. Requiring Respondent to make Restitution to Ms. Perez in the amount of \$900; and

8. Revoking Respondent's contractor license.

DONE AND ENTERED this 31st day of March, 2008, in  
Tallahassee, Leon County, Florida.

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SUSAN B. HARRELL  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of March, 2008.

ENDNOTES

<sup>1/</sup> All references to Florida Statutes and Florida Administrative Code are to 2004, unless otherwise indicated.

<sup>2/</sup> Subsection 489.126(a) applies only to residential buildings, whereas this roofing repair was performed on a commercial building.

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.