

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

|   |   |                  |
|---|---|------------------|
| DEPARTMENT OF BUSINESS AND                | ) |                  |
| PROFESSIONAL REGULATION,                  | ) |                  |
| CONSTRUCTION INDUSTRY LICENSING           | ) |                  |
| BOARD,                                    | ) |                  |
|   | ) |                  |
| Petitioner,                               | ) |                  |
|   | ) |                  |
| vs.                                       | ) | Case No. 08-0721 |
|   | ) |                  |
| JEFFREY J. CLARK, d/b/a JV                | ) |                  |
| CLARK GENERAL CONTRACTORS,                | ) |                  |
| INC.,                                     | ) |                  |
|   | ) |                  |
| Respondent.                               | ) |                  |
| <hr style="width: 40%; margin-left: 0;"/> | ) |                  |

RECOMMENDED ORDER

This cause came on for final hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on June 4, 2008, in Daytona Beach, Florida.

APPEARANCES

For Petitioner: Arthur Barksdale, IV, Esquire  
Wright, Fulford, Moorhead & Brown, P.A.  
145 North Magnolia Avenue  
Orlando, Florida 32801

For Respondent: Jeffrey J. Clark, pro se  
JV Clark General Contractors, Inc.  
2027 South Ridgewood Avenue  
Edgewater, Florida 32132

### STATEMENT OF THE ISSUE

The issue is whether disciplinary action should be taken against the contracting licenses held by Respondent, Jeffrey J. Clark, for the reasons stated in the Administrative Complaint.

### PRELIMINARY STATEMENT

Petitioner, Department of Business and Professional Regulation (Department), filed an Administrative Complaint before the Construction Industry Licensing Board (Board), against Respondent, Jeffrey J. Clark (Mr. Clark), on September 19, 2007. The Administrative Complaint addressed Mr. Clark's license as a certified general contractor and as a certified roofing contractor, and as "qualifying agent" for JV Clark General Contractors, Inc.

The Administrative Complaint alleged as follows:

Count I: that Mr. Clark signed a contract that did not provide a registration or certification number as is required by Subsection 489.119(6)(b), Florida Statutes;

Count II: that Mr. Clark failed to ensure that a contract he entered into for repair, restoration, improvement, or construction to residential real property contained a written statement explaining the consumer's rights under the Construction Industries Recovery Fund (Recovery Fund) as is required by Subsection 489.1425(1), Florida Statutes;

Count III: that Mr. Clark engaged in financial mismanagement as described in Subsection 489.129(1)(g)2., Florida Statutes;

Count IV: that Mr. Clark abandoned a construction project, an act that is prohibited by Subsection 489.129(1)(j), Florida Statutes;

Count V: that Mr. Clark failed to obtain a final inspection on a project as he was required to do under Subsection 489.129(1)(o), Florida Statutes; and

Count VI: that Mr. Clark committed incompetence or misconduct in the practice of contracting as described in Subsection 489.129(1)(m), Florida Statutes.

Mr. Clark filed an Election of Rights on October 8, 2007, that contested the allegations and demanded a hearing. The matter was forwarded to the Division of Administrative Hearings and was filed on February 13, 2008. The final hearing was set for April 15, 2008, in Daytona Beach, Florida. Because of a motion for continuance filed by Petitioner and a conflict experienced by the Administrative Law Judge, the hearing was ultimately held on June 4, 2008.

At the hearing, the Department presented the testimony of three witnesses and offered 14 exhibits. All of the Department's exhibits were accepted into evidence. Mr. Clark testified and had one exhibit accepted into evidence.

The one-volume Transcript was filed June 16, 2008. The Department timely filed a Proposed Recommended Order on June 26, 2008, and it was considered in the preparation of this Recommended Order. Mr. Clark did not file a proposed recommended order.

References to statutes are to Florida Statutes (2004), unless otherwise noted.

#### FINDINGS OF FACT

1. Mr. Clark, doing business as JV Clark General Contractors, Inc., is a Florida State certified general contractor with license number CGC 061010, and his license as of May 2, 2008, was "current, active." He has held this license since November 16, 1999, and there is no evidence of record that any license held by him has been the subject of disciplinary proceedings. In the same capacity Mr. Clark is a Florida State certified roofing contractor, with license number CCC 1327256 and his license as of May 5, 2008, was "current, active."

2. JV Clark General Contractors, Inc., has a Certificate of Authority as a contractor qualified business. Its license number is QB 0018745, and as of May 5, 2008, the license was "current, active." Mr. Clark is the "qualifying agent" for JV Clark General Contractors, Inc.

3. Mr. Clark is the sole owner and is the registered agent of a business named the Affordable Door Company, Inc.

(Affordable Door), which has an address of 2811 South Nova Road, Daytona Beach, Florida.

4. The Department is the state agency charged with providing investigation and prosecutorial services to the Board.

5. On or about August 20, 2004, Affordable Door entered into a written contract with the Sand Dollar Condominium (Sand Dollar). The contract provided that Affordable Door would sell 13 fire doors to Sand Dollar and thereafter would install the doors. In entering into this agreement, Affordable Door was engaged in contracting, as that term is used in Subsection 489.105(6), Florida Statutes.

6. The contract did not include Mr. Clark's license number and did not contain a written notification of the Recovery Fund.

7. The contract required Sand Dollar to pay Affordable Door a total of \$13,374.40. On August 28, 2004, Sand Dollar paid \$2,769 on the contract. On October 12, 2004, Sand Dollar paid \$4,430.40 on the contract, and on February 1, 2005, Sand Dollar paid the balance.

8. On December 6, 2004, Mr. Clark applied to the City of Daytona Beach Shores Building Department for a permit to perform the work contracted by Sand Dollar. The building permit application for the Sand Dollar job was made by JV Clark General Contractors, Inc., and listed an address of 2811 South Nova Road, Daytona Beach, Florida.

9. Mr. Clark's license number, CGC 061010, was provided on the permit application. The permit, number BP2005-41, was issued on December 20, 2004. The permit called for replacing stair doors and frames within Sand Dollar. The permit was signed by Mr. Clark and was notarized.

10. The manufacturer of the doors to be installed required that the doors have their jams filled with grout in order to meet standards set forth in the Daytona Beach Shores Building Code. However, the grouting was not accomplished. As a result, when Daytona Beach Shores Building Inspector Steve Edmunds inspected the job, he found the work to be deficient.

11. Marlene Wuester is the association manager for Sand Dollar. She is responsible for the operation of the 57-unit building. When Ms. Wuester learned that the doors had failed the inspection, she attempted to contact Mr. Clark. She sent a letter dated April 20, 2006, to Mr. Clark at the 2811 South Nova Road address informing him that if he did not cause the doors to meet the required standards that Sand Dollar would hire another contractor to do it, and that Sand Dollar would thereafter seek damages.

12. Mr. Clark did not respond to the letter and did not otherwise respond to Ms. Wuester's efforts to contact him. Ultimately, Sand Dollar paid Flores-Hager and Associates, Inc.,

\$950.00 and General Mechanical Corporation \$3,900.00 to bring the doors into compliance with the applicable code.

13. Mr. Clark testified that Affordable Door was managed by Dave Randolph and that generally the company sold doors to other contractors. The contract with Sand Dollar was exceptional and even though Mr. Clark was the permittee, the installer was a man named Jim St. Louis.

14. Mr. Clark asserted that he did not receive communications from Sand Dollar, and therefore could not respond to Sand Dollar, because his business moved from the 2811 South Nova Road address. However, as the licensed contractor, it was Mr. Clark's duty to see that the job was completed in accordance with the applicable building code.

#### CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat. (2007).

16. The Department has the burden of proving by clear and convincing evidence the allegations against Mr. Clark alleged in the Administrative Complaint. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

17. Subsection 489.129(1), Florida Statutes, provides in pertinent part, as follows:

§ 489.129. Disciplinary proceedings

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate, registration, or certificate of authority, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed \$10,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

\* \* \*

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

\* \* \*

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

\* \* \*

(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.

18. Subsection 489.119(6)(b), Florida Statutes, provides in part as follows:

§ 489.119. Business organizations;  
qualifying agents

\* \* \*

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

19. Subsection 489.1425(1), Florida Statutes, provides in part as follows:

§ 489.1425. Duty of contractor to notify residential property owner of recovery fund

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

FLORIDA HOMEOWNERS' CONSTRUCTION  
RECOVERY FUND

PAYMENT MAY BE AVAILABLE FROM THE  
FLORIDA HOMEOWNERS' CONSTRUCTION  
RECOVERY FUND IF YOU LOSE MONEY ON A  
PROJECT PERFORMED UNDER CONTRACT, WHERE  
THE LOSS RESULTS FROM SPECIFIED  
VIOLATIONS OF FLORIDA LAW BY A LICENSED  
CONTRACTOR. FOR INFORMATION ABOUT THE  
RECOVERY FUND AND FILING A CLAIM,  
CONTACT THE FLORIDA CONSTRUCTION  
INDUSTRY LICENSING BOARD AT THE  
FOLLOWING TELEPHONE NUMBER AND ADDRESS:

The statement shall be immediately followed by the board's address and telephone number as established by board rule.

20. Mr. Clark violated Subsection 489.129(1)(i), Florida Statutes, as alleged in Count I, by failing to have his license number appear on the contract between Affordable Doors and Sand Dollar, as he was required to do by Subsection 489.119(6)(b), Florida Statutes.

21. Mr. Clark violated Subsection 489.129(1)(i), Florida Statutes, as alleged in Count II, by failing to have the language appear on the contract between Affordable Doors and

Sand Dollar, which is required by Subsection 489.1425(1), Florida Statutes.

22. Mr. Clark violated Subsection 489.129(1)(g)2., Florida Statutes, as alleged by Count III, by abandoning the job with Sand Dollar after he had been paid the contract price, which is financial mismanagement.

23. Mr. Clark violated Subsection 489.129(1)(j), Florida Statutes, as alleged by Count IV by abandoning the job, by failing to resolve the issues raised by the final inspection.

24. Although it was alleged by Count V that Mr. Clark violated Subsection 489.129(1)(o), Florida Statutes, by proceeding on a job without obtaining applicable local building department permits and inspections, the alleged subsection does not address the failure to obtain a permit. Accordingly, Count V should be dismissed.

25. Mr. Clark violated Subsection 489.129(1)(m), Florida Statutes, as alleged by Count VI. His work in installing fire doors in accordance with the building permit at the Sand Dollar site was not sufficient to be certified by the Daytona Shores Building Department thereby causing financial harm to a customer.

26. Florida Administrative Code Rule 61G4-17.002 provides matters to be considered in aggravation and mitigation as follows:

61G4-17.002 Aggravating and Mitigating  
Circumstances.

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.

27. Applying the facts of this case to Florida Administrative Code Rule 61G4-17.002, it is determined that Mr. Clark has had a license since November 16, 1999, and he has not been disciplined by the Board. On the other hand, his transgressions are serious in that improperly installed fire doors pose a danger to the public, and his failure to complete the contract caused a monetary loss to the Sand Dollar. Balancing these competing considerations, results in a determination that the penalty should be in the "normal" range.

28. Florida Administrative Code Rule 61G4-17.001 provides in part as follows:

61G4-17.001 Normal Penalty Ranges.

(1) The following guidelines shall be used in disciplinary cases, absent aggravating or mitigating circumstances and subject to other provisions of this chapter.

\* \* \*

(g) Section 489.129(1)(g), F.S.:  
Mismanagement or misconduct causing  
financial harm to the customer.

FIRST OFFENSE

| PENALTY RANGE                                      |   |
|--|---|
| MINIMUM  | MAXIMUM   |
| \$1,500 fine and/or<br>probation, or<br>suspension | \$5,000 fine<br>and/or<br>probation, or<br>suspension |

\* \* \*

(i) Section 489.129(1)(i), F.S.:  
Failing in any material respect to comply

with the provisions of Part I of Chapter 489, F.S.

PENALTY RANGE

MINIMUM

MAXIMUM

Use penalty herein listed for the violation most closely resembling the act underlying the local discipline;

Use penalty herein listed for the violation most closely resembling the act underlying the local discipline

\* \* \*

4. Section 489.1425, F.S.: Failure to notify residential property owner of recovery fund.

FIRST OFFENSE

PENALTY RANGE

MINIMUM

MAXIMUM

\$250 fine

\$500 fine

\* \* \*

9. Section 489.119(6)(b), F.S.: license number not appearing in advertisement.

FIRST OFFENSE

PENALTY RANGE

MINIMUM

MAXIMUM

\$250 fine

\$1,000 fine

\* \* \*

(j) Section 489.129(1)(j), F.S.: Abandonment.

FIRST OFFENSE

PENALTY RANGE

MINIMUM

MAXIMUM

\$2,500 fine and/or probation, or suspension

\$7,500 fine and/or probation, or suspension

\* \* \*

(m) Misconduct or incompetency in the practice of contracting, shall include, but is not limited to:

\* \* \*

2. Violation of any provision of Chapter 61G4, F.A.C., or Chapter 489, Part I., F.S.

FIRST OFFENSE

PENALTY RANGE

| MINIMUM                                      | MAXIMUM                                      |
|--|--|
| \$1,000 fine and/or probation, or suspension | \$2,500 fine and/or probation, or suspension |

\* \* \*

4. The following guidelines shall apply to cases involving misconduct or incompetency in the practice of contracting, absent aggravating or mitigating circumstances:

(n) Section 489.129(1)(n), F. S.: Being found guilty of gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.

FIRST OFFENSE

PENALTY RANGE

| MINIMUM      | MAXIMUM  |
|--------------|--|
| \$1,000 fine | \$3,000 fine and probation, suspension or revocation |

\* \* \*

(o) Section 489.129(1)(o), F.S.: Proceeding on any job without obtaining applicable local building department permits and/or inspections.

\* \* \*

2. Failure to obtain inspections.

FIRST OFFENSE

PENALTY RANGE

MINIMUM

\$250

MAXIMUM

\$1,000 fine  
and/or  
probation, or  
suspension

\* \* \*

(5) In addition, the board shall order the contractor to make restitution in the amount of financial loss suffered by the consumer to the extent that such order does not contravene federal bankruptcy law.


RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Construction Industry Licensing Board enter an order finding that Jeffrey J. Clark, d/b/a JV Clark General Contractors, Inc., is guilty of Counts I through IV and Count VI, and that licenses numbered CGC 061010, CCC 1327256, and QB 0018745 be suspended until such time as Jeffrey J. Clark, d/b/a JV Clark General Contractors, Inc., pays a fine in the amount of \$2,000.00 and makes restitution to the Sand Dollar Condominium Association in the amount of \$4,850.00.



DONE AND ENTERED this 10th day of July, 2008, in  
Tallahassee, Leon County, Florida.



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HARRY L. HOOPER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of July, 2008.

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.