

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND	)	
PROFESSIONAL REGULATION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 08-1106
	)	
STIRLYN BOWRIN,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice this cause came on for formal hearing before P. Michael Ruff, a duly-designated Administrative Law Judge of the Division of Administrative Hearings in Tampa, Florida, on May 29, 2008. The appearances were as follows:

APPEARANCES

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

For Respondent: Barry Rigby, Esquire  
Law Offices of Barry Rigby, P.A.  
924 North Magnolia Avenue, Suite 319  
Orlando, Florida 32803

### STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Respondent committed the charged violations of Sections 489.127(1)(f) and 489.531(1), Florida Statutes, as set forth in the Administrative Complaint, and, if so, what if any penalty is warranted.

### PRELIMINARY STATEMENT

This cause arose when an Administrative Complaint was filed against the Respondent on October 11, 2007, charging the Respondent with unlicensed contracting, in violation of the above-referenced provisions of Chapter 489, Florida Statutes. Specifically, the Respondent is charged with violating Section 489.127(1)(f), Florida Statutes, by engaging or advertising himself or his business organization in the practice of unlicensed contracting and, as to Section 489.531(1), Florida Statutes, by practicing electrical contracting, or advertising as being available to practice electrical contracting, while not being properly certified or registered.

The allegations of the complaint were disputed by the Respondent and a formal administrative proceeding ensued. The matter was referred to the undersigned Administrative Law Judge and subsequently set for hearing.

The cause came on for hearing as noticed. The Petitioner offered the testimony of four witnesses at the hearing: Carolyn

H. Wilson, Reuben Williams, Caleb Alfred and Investigator Kelly Capes, of the Department of Business and Professional Regulation (Department). Additionally, the Petitioner's Exhibits 1 through 12 were offered and admitted into evidence. The Respondent testified on his own behalf at the hearing and had Exhibits 1 through 5 admitted into evidence. The Petitioner has voluntarily dismissed Counts III and IV of the Administrative Complaint.

Upon concluding the hearing, the parties elected to have the testimony transcribed and to submit proposed recommended orders. The Proposed Recommended Orders have been timely submitted and have been considered in the rendition of this Recommended Order.

#### FINDINGS OF FACT

1. On or about December 11, 2006, the Respondent entered into a contract with Ms. Carolyn H. Wilson for remodeling work, at Ms. Wilson's home in St. Petersburg, Florida.

2. The scope of the work included in the Respondent's "Quotation" or their agreement, involved structural work, plumbing, and electrical work. The Respondent presented himself as being properly licensed for the work which he contracted to perform at Ms. Wilson's property. The Respondent had dictated the terms of the agreement or contract to Mr. Caleb Alfred who wrote the terms required by the Respondent into the "Quotation"

form provided by the Respondent. Mr. Alfred was paid a \$200.00 commission for referring Ms. Wilson and her job to the Respondent. Mr. Alfred is not affiliated in any way with the Respondent, however, and was a coworker at a local school with Ms. Wilson, who was the Assistant Principal.

3. Ms. Wilson understood that she was contracting for work to be done by the Respondent and not by Mr. Alfred. The Respondent and Ms. Wilson signed the "Quotation" form as the contract for the project.

4. The Respondent was never licensed to engage in any category of contracting in the State of Florida at any time material to the facts in this case and to the allegations in the Administrative Complaint.

5. On December 11, 2006, the Respondent was paid \$7,000.00, by Ms. Wilson's check no. 1022, the day the agreement was entered into. Thereafter he was paid \$11,000.00 on December 19, 2006, by check no. 1024 issued by Ms. Wilson. He was paid on December 21, 2006, \$1,400.00 by check no. 1025 and another \$3,000.00 on December 22, 2006, by Ms. Wilson's check no. 1026. The Respondent also incurred some additional charges on Ms. Wilson's Home Depot and Lowes accounts for certain tools and items which he kept after he left the job. The Respondent maintains that he kept those tools as a remedy for work that he had performed for which Ms. Wilson had not paid him.

6. The work the Respondent contracted to do required a permit. No permit of any kind for the referenced project was ever obtained.

7. The electrical work to be performed by the Respondent included the installing of 10 recessed lights and two outlets. The lights to be installed, some of which were installed by the Respondent, were plug-in lights. The outlets installed by the Respondent involved merely screwing existing wires into the new outlets. They did not involve the addition of any wiring to the project or the home.

8. The dishwasher to be installed by the Respondent did not actually involve plumbing. The plumbing work was already done and was existing at the site. The Respondent merely had to screw the plumbing outlet on the dishwasher to the standing plumbing or pipe.

9. The installation of the flooring and the installation of the wall in the residence accomplished by the Respondent was structural work and constituted contracting. The wall was installed and was attached to the trusses of the structure. The flooring portion of the project involved installation of the hardwood flooring and the pad beneath, the charge for which totaled approximately \$15,400.00 itself.

10. The Respondent is a native of Trinidad. While residing in Trinidad he built houses. He therefore is quite

experienced in construction. He has a "handyman" license from the City of Sanford. That handyman license prohibits electrical repair or replacement of any type, roof repair, installation of exterior doors and windows, and any work that requires a permit. The Respondent apparently was of the belief that he was authorized to do the type of work at issue, based on the strength of holding handyman license.

11. Additionally, the handyman exemption from licensure which is provided in Section 489.103(9), Florida Statutes, references contracts under \$1,000.00 dollars. It also requires, for an exemption, that the work involved not require any permitting. Neither is the case here, the work involved much more than \$1,000.00 and did require permitting, at least in part.

12. The Respondent apparently finished most of the job at issue. It is debatable whether he finished the dishwasher installation which merely involved placing it and screwing it into the already existing plumbing outlet. There is apparently a dispute over whether he was to install cabinets. The Respondent maintains that Ms. Wilson was to purchase and have installed the cabinets. It is therefore debatable, and not clear from the evidence of record, whether the Respondent is indeed still owed money by Ms. Wilson, or whether he charged more money for his work during the course of the project than

they had agreed to and therefore owes her a refund. In any event, the monetary dispute is not of direct relevance to the question of the violations charged in the Administrative Complaint.

13. The Department adduced testimony of its investigator concerning investigative costs. She thus testified that she had no recollection of how many hours or how much time she had expended in investigating the case culminating in the Administrative Complaint. She testified that she relied on a computer time-tracking program of the Department. But no such record was offered into evidence, nor the custodian of such record to testify. Consequently, the cost figure asserted by the Department as investigative cost for this proceeding of \$520.18 has not been proven by persuasive, competent evidence.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2007).

15. Section 455.228, Florida Statutes, empowers the Department to impose discipline on any person found to be in violation of Sections 489.127(1) and 489.531(1), Florida Statutes, as pertinent to this Administrative Complaint and proceeding.

16. The Petitioner/Department has the burden of establishing the violations charged by clear and convincing evidence. Section 120.57(1)(j), Florida Statutes; Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996). The court in Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 116 at Fn. 5 (Fla. 1st DCA 1989) declared this standard of proof as requiring that the evidence must be credible, the facts to which a witness is testifying must be distinctly remembered, precise and explicit and the witnesses must be lacking in confusion as to those facts. The evidence must of sufficient weight to produce in the mind of the trier of fact a firm belief as to the truth of the allegation sought to be established. See Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

17. The Respondent is alleged to have violated Section 489.127, Florida Statutes, which provides, in pertinent part, that:

(1) No person shall:

\* \* \*

(f) Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a



contractor without being duly registered or certified or having a certificate of authority; . . .

18. Section 489.105(3), Florida Statutes, defines a contractor as:

. . . the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others . . . .

19. Section 489.105(6), Florida Statutes, provides in relevant part:

(6) "Contracting" means, except as exempted in this part, engaging in business as a contractor and includes, but is not limited to, performance of any of the acts as set forth in subsection (3) which define types of contractors. 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.

20. The Petitioner has established by clear and convincing evidence that the Respondent violated Section 489.127(1)(f), Florida Statutes, by practicing contracting or advertising himself or a business organization as being available to engage in contracting when he did not have a certification or registration. He submitted a "Quotation" or contract, to

Carolyn Wilson without being registered or certified as a contractor and offered to perform the kitchen remodeling project at issue at her home in St. Petersburg. The scope of work included the above-found elements of the project that are indeed regulated by Chapter 489, Florida Statutes, and constitutes structural contracting and electrical work (the evidence does not establish that the Respondent engaged in any plumbing work).

21. The Complaint alleges that the Respondent violated Section 489.531(1), Florida Statutes, which provides, in pertinent part, that a person may not:

(1) Use the name or title "electrical contractor" or "alarm system contractor" or words to that effect, or advertise herself or himself or a business organization as available to practice electrical or alarm contracting, when the person is not then the holder of a valid certification or registration issued pursuant to this part.

22. Section 489.505(12), Florida Statutes, defines an electrical contractor, in pertinent part as the following:

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, appliances, apparatus, raceways, conduits, or any part thereof, which generates, transmits, transforms, or utilizes electrical energy in any form, including the electrical installations and systems within plants and substations, all in compliance with applicable plans, specifications, codes, laws and regulations. The term means any person, firm, 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. (emphasis added).

23. In accordance with Sections 489.105(6) and 489.505(9), Florida Statutes, the attempted sale of construction and electrical contracting services and the negotiation for a contract regarding those services constitutes contracting.

24. The Petitioner has established that the Respondent violated Section 489.531(1), Florida Statutes, by practicing electrical contracting or advertising himself to be available to engage in such contracting without the proper certification or registration. He contracted to perform electrical work consisting of installation of at least some of the 10 recessed lights ordered by Carolyn Wilson to be installed at her residence in St. Petersburg, Florida. Additionally, he installed at least some of the outlets required by Ms. Wilson, even if the installation was very simple, involving only screwing wires into the new outlets. Such comes within the above definition of installing, repair, altering or adding to electrical wiring, fixtures, appliances, apparatus, etc. for purposes of the above statutory definition.

25. It is also apparent, from clear and convincing evidence of record, that this electrical work was of quite a de minimus nature, even though it comes within the above definition. It was simple, limited in scope and quite easily within the skills of a person not certified in electrical contracting. Accordingly, a minimum penalty for this portion of the work is warranted.

26. Section 489.103, Florida Statutes, provides as follows:

489.103 Exemptions.--This part does not apply to:

(9) Any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than \$1,000, but this exemption does not apply:

(a) If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$1,000 for the purpose of evading this part or otherwise.

(b) To a person who advertises that he or she is a contractor or otherwise represents the he or she is qualified to engage in contracting.

27. Florida Administrative Code Rule 61G4-12.011 states:

\* \* \*

(2) For purposes of the exemption provided by Section 489.103(9), Florida Statutes,

activities which are not casual, minor, or inconsequential, include, but are not limited to, any work affecting structural components, any work involving use of toxic or hazardous chemicals or substances, any work affecting access or egress to a structure, any work affecting accommodations for the physically disabled, any work for which a building permit is required and any work affecting life-safety matters as defined in the applicable building codes.

28. The exception provided for in Section 489.103(9) does not apply to the unlicensed contracting situation at issue because the contract price was clearly much higher than \$1,000.00 and the structural work contracted for required the issuance of permits by the City of St. Petersburg. The plumbing work alleged may have as well, although it is not established that the Respondent performed any plumbing work.

29. Chapter 489, Part II as applied to electrical contracting, does not contain any "handyman exception." Additionally, the handyman license issued to the Respondent by the City of Sanford clearly does not give the Respondent the right to perform any contracting of structural work, electrical work, or plumbing work in the City of St. Petersburg, even if the contract price had been less than \$1,000.00.

30. In summary, the Respondent is clearly engaged in contracting without the proper certification and registration for both structural contracting and electrical contracting, although the electrical contracting was of a de minimus nature.

The allegations concerning plumbing as a phase of contracting performed by the Respondent have not been established by clear and convincing evidence. The most the Respondent may have agreed to do was to connect the dishwasher to existing plumbing in the kitchen in question, which involved only screwing the pipe on the dishwasher to the pipe coming out of the wall. Such does not constitute plumbing contracting.

31. In accordance with Section 455.228, Florida Statutes, the Department may impose an administrative penalty not exceeding \$5,000.00 per incident and is entitled to recover the costs of the investigation if proven. Because the electrical contracting at issue was of a de minimus in nature, in terms of the scope of the work (and therefore the potential risk to the homeowner), and because no plumbing contracting was proven to have been actually performed, the penalty should be reduced by a reasonable amount for these contingencies. In view of this and counter balanced by the fact that substantial construction contracting or structural contracting was performed by the Respondent in terms of a hardwood flooring job for which he was paid approximately \$15,400.00, as well as additional monies amounting in total to some \$17,000.00 or \$18,000.00 dollars, a significant penalty for such work is warranted. No competent persuasive proof of the amount of investigative costs has been established, however.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the Department of Business and Professional Regulation finding that the Respondent violated Sections 489.127(1)(7) and 489.531(1), Florida Statutes, and imposing an administrative penalty in the amount of \$2,000.00.

DONE AND ENTERED this 29th day of August, 2008, in Tallahassee, Leon County, Florida.



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P. MICHAEL RUFF  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 29th day of August, 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.