

STATE OF FLORIDA  
ELECTRICAL CONTRACTORS' LICENSING BOARD

MICHAEL OBERSTEIN, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 ELECTRICAL CONTRACTORS' )  
 LICENSING BOARD, )  
 )  
 Respondent. )

Case No. 08-1494

2009 NOV 10 A 10:39  
 FILED  
 DIVISION OF ADMINISTRATIVE HEARINGS

**FINAL ORDER**

THIS CAUSE came before the Electrical Contractors' Licensing Board (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on July 17, 2009, in Ft. Lauderdale, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Petitioner's Exceptions to the Recommended Order, and Respondent's Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, and C) in the above-styled case. Petitioner was present and not represented by counsel. Respondent was represented by Deborah Bartholow Loucks, Assistant Attorney General, Attorney at Law. The Board was represented by LeChea Parson, Assistant General Counsel.

Upon review of the Recommended Order, the exceptions to the Recommended Order filed by both parties, the argument of the parties, and after a review of the complete record in these cases, the Board makes the following findings and conclusions.

## RULINGS ON PETITIONER'S EXCEPTIONS

The Board reviewed and considered Petitioner's Exceptions and ruled as follows:

1. EXCEPTION ONE: Petitioner took exception to Paragraph 14 of the Recommended Order. Paragraph 14 sets forth the Administrative Law Judge's Conclusion of Law that Petitioner did not prove by a preponderance of the evidence that he meets the criteria for licensure by endorsement. The Board agreed with the Administrative Law Judge's finding that Petitioner did not qualify for licensure by endorsement. Upon review of the exception, the record, and argument of Petitioner, to the extent that the paragraph includes findings of fact, the Board finds that there is competent substantial evidence to support the findings of fact. Moreover, the Board cannot reweigh the evidence. See Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco, 475 So. 2d 1277, 1281 (Fla. 1<sup>st</sup> DCA 1985)(holding that "[t]he agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion). Therefore, Petitioner's first exception is denied.

2. EXCEPTION TWO: Petitioner's second exception requests that the Board reweigh the evidence admitted at hearing. Petitioner also took exception to the Administrative Law Judge's refusal to let Petitioner read certain parts of the Electrical Code of the City of New York into the hearing transcript. The excerpt that Petitioner wanted to read into the transcript was an admitted exhibit and therefore, was part of the hearing record. Upon review of the exception, the record, and argument of Petitioner, to the extent that the paragraph includes findings of fact, the Board finds that there is competent substantial evidence to support the Administrative Law Judge's findings of fact. Moreover, the Board cannot reweigh the evidence. See Heifetz, 475 So. 2d at 1281. Therefore, Petitioner's second exception is denied.

3. EXCEPTION THREE: Petitioner's third exception requests that the Board reweigh the evidence admitted at the hearing. Petitioner directed the Board to review Petitioner's Exhibit 5, which Petitioner argues contradicts the Administrative Law Judge's determination that Petitioner does not meet the requirements for licensure by endorsement. Upon review of the exception, the record, and argument of Petitioner, to the extent that the exception relates to the findings of fact, the Board finds that there is competent substantial evidence to support the Administrative Law Judge's findings of fact. Again, the Board cannot reweigh the evidence. See Heifetz, 475 So. 2d at 1281. Therefore, Petitioner's third exception is denied.

4. EXCEPTION FOUR: Petitioner's fourth exception does not clearly identify the disputed portion of the recommended order by page number or paragraph, does not identify the legal basis for the exception, and does not include appropriate and specific citations to the record. Thus, the Board need not rule on this exception. See §120.57(1)(k), Fla. Stat. (2008)(mandating that "[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record."). Nevertheless, even if the Board were to consider the merits of this exception, it would conclude that this exception is meritless. Petitioner's fourth exception reiterates the evidence presented at the hearing and requests that the Board re-weigh the evidence admitted at hearing. Petitioner directed the Board to review Petitioner's Exhibit 5, which he argues contradicts the Administrative Law Judge's determination that Petitioner does not meet the requirements for licensure by endorsement. Upon review of the exception, the record, and argument of Petitioner, to the extent that the exception relates to the findings of fact, the Board finds that there is

competent substantial evidence to support the findings of fact. Moreover, the Board cannot reweigh the evidence. See Heifetz, 475 So. 2d at 1281. Therefore, Petitioner's fourth exception is denied.

5. EXCEPTION FIVE: Petitioner's fifth exception does not clearly identify the disputed portion of the recommended order by page number or paragraph, does not identify the legal basis for the exception, and does not include appropriate and specific citations to the record. Thus, the Board need not rule on this exception. See §120.57(1)(k), Fla. Stat. (2008). Nevertheless, even if the Board were to consider the merits of this exception, it would conclude that this exception is meritless. Petitioner's fifth exception describes Petitioner's cross-examination of Respondent's expert witness and asks the Board to re-weigh the evidence admitted and to judge the credibility of the witness. It is appropriate for the Administrative Law Judge as the trier of fact to determine the credibility of the witnesses testifying at the hearing. It is impermissible for the Board to review the transcript to determine a witness's credibility. See Heifetz, 475 So. 2d at 1281. To the extent that this exception sets forth an exception to a finding of fact or conclusion of law in the Recommended Order, the Board denied Petitioner's fifth exception.

6. SIXTH EXCEPTION: Petitioner's sixth exception does not clearly identify the disputed portion of the recommended order by page number or paragraph, does not identify the legal basis for the exception, and does not include appropriate and specific citations to the record. Thus, the Board need not rule on this exception. See §120.57(1)(k), Fla. Stat. (2008). Nevertheless, even if the Board were to consider the merits of this exception, it would conclude that this exception is without merit. Petitioner's sixth exception lists the evidence admitted at the hearing to prove that Petitioner meets the financial responsibility standard set forth in rule

61G6-5.005, Florida Administrative Code. Petitioner's sixth exception asks the Board to reweigh the evidence admitted at hearing. But, the Board cannot reweigh the evidence. See Heifetz, 475 So. 2d at 1281. To the extent that this exception sets forth an exception to a finding of fact or conclusion of law in the Recommended Order, the Board denied Petitioner's sixth exception.

### **RULINGS ON RESPONDENT'S EXCEPTIONS**

The Board reviewed and considered Respondent's Exceptions and ruled as follows:

1. EXCEPTION ONE: Respondent filed an exception to paragraph six of the Recommended Order which states that the evidence submitted by Petitioner is sufficient to establish that the master electrician's licensure examination administered in New York City in 1990 was substantially similar to or more stringent than the electrical contractor's license examination administered in Florida in 1990. Respondent's exception listed specific examples in the transcript that illustrated the differences between the two examinations. The Board accepted Respondent's Exception to Paragraph 6 of the Recommended Order for the reasons stated in Respondent's written exception. The Board adopted the grounds stated in Respondent's written exception and incorporates the written exception herein. The Board finds that there is competent substantial evidence in the record to support its finding that the two examinations are not similar. The Board voted to accept Respondent's first exception and to substitute the following language for Paragraph 6 of the Recommended Order:

6. The evidence submitted by Mr. Oberstein is insufficient to establish that the master electrician's licensure examination administered in New York City in 1990 was substantially similar to or more stringent than the electrical contractor's license administered in Florida in or about 1990.

2. EXCEPTION TWO: Respondent filed an exception to the Administrative Law Judge's conclusion of law set forth in endnote 2, which states that the Board's position that Mr. Oberstein failed to meet his burden of proof because he could not produce details of the 1990 Florida examination is untenable because the examination details are only available to the Board. The Board accepted Respondent's Exception to endnote 2 of the Recommended Order for the reasons stated in Respondent's written exception. The Board adopted the grounds stated in Respondent's written exception and incorporates the written exception herein. Respondent's position that Petitioner failed to meet his burden of proof because Petitioner did not provide details of the Florida 1990 examination is an accurate statement of the law. The Board voted to accept Respondent's exception 2 and to delete endnote 2 from the Recommended Order.

3. EXCEPTION THREE: Respondent took exception to the Conclusion of Law found in paragraph 13 of the Recommended Order. The Administrative Law Judge found that the fact that New York City is neither a state nor a territory should not preclude Mr. Oberstein from obtaining a license by endorsement if he meets the other requirements for licensure. This Conclusion of Law ignores the explicit statutory language set forth in Section 489.511(6), Florida Statutes (now found in Section 489.511(5), Florida Statutes). Moreover, because the Board administers section 489.511(5) of the Florida Statutes, this issue implicates a conclusion of law within the Board's substantive jurisdiction. See §120.57(1)(I), Fla. Stat. (2008)(providing that "[t]he agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction."). Therefore, the Board found that its basis for rejecting the Conclusion of Law was based on the discussion of the rules of statutory construction included in Respondent's written exceptions. The Board accepted Respondent's Exception to the

Conclusion of Law set forth in Paragraph 13 of the Recommended Order, adopted the grounds stated in Respondent's written exception, and incorporates the written exception herein. The Board found that its substituted conclusion of law is as or more reasonable than the Conclusion of Law found in Paragraph 13 of the Recommended Order. The Board voted to accept Respondent's third exception and to substitute the following language for Paragraph 13 of the Recommended Order:

13. First, New York City is neither a state nor a territory of the United States. Therefore, Petitioner fails to meet the requirements of Section 489.511(5)(b), Florida Statutes, because he does not hold a license to practice electrical or alarm system contracting issued by another state or territory of the United States.

4. Based on the Board's adoption of the revised language for Paragraph 6, the Board voted to delete the first sentence of Paragraph 14 of the Recommended Order to prevent a contradiction in the findings of fact and the conclusions of law.

#### **FINDINGS OF FACT**

1. The findings of fact set forth in the Recommended Order, as modified and amended by the exceptions accepted for the reasons stated above, are approved and adopted and incorporated by reference herein.

2. There is competent substantial evidence to support the findings of fact and to support the substituted findings of fact.

#### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapters 455, and 489, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order, as modified and amended by the exceptions accepted for the reasons stated above, are approved and adopted and incorporated by reference herein.

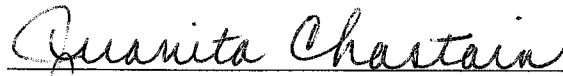
**RECOMMENDATION**

Upon a complete review of the record in this case, the Board determines that the Recommendation of the Administrative Law Judge that the Board deny the application of Michael Oberstein for licensure by endorsement is accepted.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

**DONE AND ORDERED** this 27 day of October, 2009.

ELECTRICAL CONTRACTORS' LICENSING BOARD



Juanita Chastain, Executive Director  
for Noel Thomas, Vice-Chair

**NOTICE OF RIGHTS**

**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 HEALTH 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 FLORIDA APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF THE FILING DATE OF THE ORDER TO BE REVIEWED.**



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail to: **Michael Oberstein**, 8960 NW 13<sup>th</sup> Street, Plantation, Florida 33322; and by interoffice mail to **Deborah B. Loucks**, Assistant Attorney General, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050; **LeChea Parson**, Assistant General Counsel, 1940 N. Monroe St., Suite 60, Tallahassee, Florida 32399, and Patricia M. Hart, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, on November 6<sup>th</sup>, 2009.

*Brandon M. Nichols*

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