

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICHAEL OBERSTEIN,)
)
 Petitioner,)
)
 vs.) Case No. 08-1494
)
 ELECTRICAL CONTRACTORS')
 LICENSING BOARD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on January 5, 2009, by video teleconference, with the parties appearing in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Michael Oberstein, pro se
8960 Northwest 13th Street
Plantation, Florida 33322

For Respondent: Michael T. Flury, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
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STATEMENT OF THE ISSUE

Whether the Petitioner's application for licensure by endorsement as a Florida certified electrical contractor should

be granted or denied for the reasons set forth in the Notice of Intent to Deny dated February 28, 2008.

PRELIMINARY STATEMENT

In a Notice of Intent to Deny dated February 28, 2008, the Electrical Contractors' Licensing Board ("Board") notified Michael Oberstein that his application for licensure by endorsement was denied because he had failed to demonstrate that the examination he took to obtain his New York City Master Electrician License were substantially similar to or more stringent than the examination given in Florida at the time he took the examination in New York City; that he had failed to demonstrate that his New York City license is issued based on criteria that were substantially similar to the criteria for certification in Florida at the time he obtained his New York City license; and that he had failed to demonstrate that he passed a national, regional, state, or United States territorial licensing examination that is substantially equivalent to the examination required by Chapter 489, Part II, Florida Statutes (2008).¹ Mr. Oberstein timely requested a formal administrative hearing, and the Board transmitted the matter to the Division of Administrative Hearings for the assignment of an administrative law judge. After several continuances, the final hearing was held pursuant to notice on January 5, 2009. At the hearing, Mr. Oberstein specifically limited the basis on which he seeks

licensure by endorsement in Florida to Section 489.511(6)(b), Florida Statutes.

Mr. Oberstein testified in his own behalf and presented the testimony of Julia Gould; Petitioner's Exhibits 1 through 19 were offered and received into evidence. The Board presented the testimony of Clarence Tibbs; Respondent's Exhibits A and B were offered and received into evidence. On January 13, 2009, Mr. Oberstein filed a Motion for Inclusion of Additional Petitioner's Exhibits 20, 21, 22, and 23, requesting that these additional exhibits be received into evidence because they would assist the trier of fact in understanding that the criteria for licensure in New York City in 1990 were substantially similar to the criteria for licensure in Florida in 1990. The Board filed a response in opposition to the motion. The record of this proceeding was closed at the conclusion of the hearing on January 5, 2009. Mr. Oberstein did not request at that time that the record be held open for the submission of additional exhibits. Because the hearing is concluded and the record closed, the Board did not have the opportunity to review these additional documents and question Mr. Oberstein on their significance. As a result, although it does not appear that the Board will be actually prejudiced by the admission of these exhibits, the potential for prejudice exists. Mr. Oberstein's motion is, therefore, denied.

The one-volume transcript of the proceeding was filed on February 2, 2009, and the parties timely filed proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Board is the entity that is responsible for certifying applicants to the Department of Business and Professional Regulation (Department") for licensure as electrical contractors, including applicants for licensure as electrical contractors. § 489.511(6), Fla. Stat.

2. Mr. Oberstein was licensed in October 1990 by the City of New York City, New York, as a Master Electrician, and he was in business as a master electrician in New York City until the present. New York State has no statewide electrician's license.

3. On August 21, 2007, Mr. Oberstein applied to the Department for Florida licensure by endorsement as an electrical contractor.

4. The electrical contractor examination in New York City in 1990 consisted of three parts. The first part was a four-hour examination containing 50 multiple-choice questions and five essay questions in which the applicants were required to

draw conduits and conductors for light, heat, and power in buildings, with applicable calculations in compliance with electrical code requirements. The examination candidates were not allowed to use calculators or any books during the examination. The second part of the examination was a four-hour practical examination in which candidates were required to conduct actual wiring of control devices, testing and wiring of magnetic starters, testing and meggering of panels and circuits, wiring diagrams for instrument transformers, wiring and testing high and low voltage connections and motors, and blueprint readings, among other things. The examination included some questions in the written portion of the examination on business operations and basic business law, but there was no separate section on this subject, and the percentage of questions on business practices was low. The minimum passing score for the examination was 70 percent.

5. Although specific information about the electrical contractors examination administered in Florida in 1990 are not available,² the examination administered in or about 1990 consisted of 150 multiple choice questions administered over a period of eight hours. The examination included a three-hour component containing 50 multiple-choice questions on business practices. Examination candidates were allowed to refer during

the examination to a number of books, including the National Electric Code, and were allowed to use calculators.

6. The evidence submitted by Mr. Oberstein 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 administered in Florida in or about 1990.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

8. Mr. Oberstein has applied for licensure as an electrical contractor, and he, therefore, has the burden of proving by a preponderance of the evidence that he meets all the requirements for issuance of the license. See Department of Banking & Fin. v. Osborne Stern, 670 So. 2d 932, 934 (Fla. 1996)("[W]hile the burden of producing evidence may shift between the parties in an application dispute proceeding, the burden of persuasion remains upon the applicant to prove her entitlement to the license."); § 120.57(1)(j), Fla. Stat. ("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute").

9. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289, n.1 (Fla. 2000)(relying on American Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997), quoting Bourjaily v. United States, 483 U.S. 171, 175 (1987)).

10. Section 489.511, Florida Statutes, provides in pertinent part:

5) The board shall certify as qualified for certification by endorsement any individual applying for certification who:

* * *

(b) Holds a valid license to practice electrical or alarm system contracting issued by another state or territory of the United States, if the criteria for issuance of such license was substantially equivalent to the certification criteria that existed in this state at the time the certificate was issued.

11. Florida Administrative Code Rule 61G6-5.009 sets forth the criteria for licensure by endorsement and provides in pertinent part:

(1) The Department upon certification by the Board shall issue a license by endorsement to an electrical contractor who submits a completed application to the Department accompanied by the application fee, and complies with the terms of this rule.

(2) If the applicant seeking licensure by endorsement engages in contracting as a sole proprietorship, then the applicant must demonstrate that:

(a) The applicant currently possesses a statewide license as an electrical contractor under the laws of another state, and was required in order to be so licensed to meet standards of credit, financial responsibility, business reputation, and necessary experience or the educational equivalent thereof substantially similar to or more stringent than those required for licensure by Florida law and these rules; and

(b) The out-of-state license was issued upon the satisfactory completion of an examination substantially similar to or more stringent than the examination given by the Department.

(c) If applicant is applying pursuant to Section 489.511(6)(b), F.S., he or she must demonstrate that the criteria for issuance of the license was substantially equivalent to the certification criteria that existed in this state at the time the certification was issued.

(3) If the applicant seeking licensure by endorsement engages in contracting as a partnership, corporation, business trust, or other legal entity, then the applicant must demonstrate that:

(a) The applicant currently possesses a statewide license as an electrical contractor under the laws of another state, and was required in order to be so licensed to meet standards of credit, financial responsibility, and business reputation substantially similar to or more stringent than those required by Florida law and these rules; and

(b) The out-of-state license was issued upon the satisfactory completion of an examination by the applicant's qualifying agent which examination is substantially similar to or more stringent than the examination given by the Department; and

(c) The qualifying agent of the applicant was required under the laws of the other state to possess; and

(d) If applicant is applying pursuant to Section 489.511(6)(b), F.S., he or she must demonstrate that the criteria for issuance of the license was substantially equivalent to the certification criteria that existed in this state at the time the certification was issued.

(4) An applicant seeking endorsement under subsection (2) or (3) must also demonstrate that applicant has an active license and has met all requirements for electrical or alarm contracting in the state, and that there are no outstanding or unresolved complaints filed against the applicant in the other state.

(5) The Department and the Board are authorized to investigate for the purpose of corroborating any of the information submitted pursuant to this rule.

12. The Board refused to certify Mr. Oberstein for licensure as an electrical contractor in Florida on the grounds that he did not establish that the New York City Master Electrician license issued to him in 1990 was issued by another state or territory or was based on substantially similar criteria as the Florida electrical contractor's license in 1990. Pursuant to Florida Administrative Code Rule 61G6-5.009, the

Board considers "substantially equivalent" criteria to include "standards of credit, financial responsibility, and business reputation substantially similar to or more stringent than those required by Florida law and these rules."

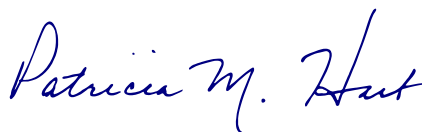
13. First, New York City is neither a state nor a territory of the United States. However, in the absence of a statewide electrician licensing program in New York State, and given the obvious sophistication of the licensure process for New York City, the fact that New York City is neither a state nor a territory should not prevent Mr. Oberstein from qualifying for a Florida electrical contractor's license if he meet the other criteria in Section 489.511(6)(b), Florida Statutes, and Florida Administrative Code Rule 61G6-5.009.

14. Mr. Oberstein proved by a preponderance of the evidence that the examination he passed in New York City was substantially similar to or more stringent than that administered in Florida in or about 1990. He did not, however, present evidence regarding the standards of credit, financial responsibility, and business reputation that were required for licensure in New York City. Accordingly, Mr. Oberstein has failed to carry his burden of proving by a preponderance of the evidence that he meets the criteria for licensure by endorsement in Section 489.511(6)(b), Florida Statutes.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Electrical Contractor's Licensing Board deny the application of Michael Oberstein for licensure by endorsement as an electrical contractor.

DONE AND ENTERED this 31st day of March, 2009, in Tallahassee, Leon County, Florida.



PATRICIA M. HART
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of March, 2009.

ENDNOTES

^{1/} All references herein to the Florida Statutes are to the 2008 edition unless otherwise indicated.

^{2/} The Board suggests that Mr. Oberstein has failed in his burden of proof because he could not produce details of the Florida 1990 electrical contractor examination. This position is untenable because the details of the examination could be available only to the Board, and there is apparently no way Mr. Oberstein could have access to this information.

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.