

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY CONSTRUCTION)
LICENSING BOARD,)
)
Petitioner,)
)
vs.) Case No. 08-4473
)
LOUISE WOLD-PARENTE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On January 21, 2009, an administrative hearing in this case was conducted in Largo, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jason Ester, Esquire
Pinellas County Attorney's Office
315 Court Street, Sixth Floor
Clearwater, Florida 33756-5165

For Respondent: Warren J. Knaust, Esquire
Knaust & Associates, P.A.
2167 Fifth Avenue, North
St. Petersburg, Florida 33713

STATEMENT OF THE ISSUES

The issues in this case are whether the allegations of the Administrative Complaint are correct, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated August 15, 2008, the Pinellas County Construction Licensing Board (Petitioner) alleged that Louise Wold-Parente (Respondent), a licensed general contractor, obtained a permit for the construction of a dwelling on behalf of an unlicensed contractor and that there was no workers' compensation coverage applicable to the project.

The Respondent requested a formal hearing. The Petitioner forwarded the appeal to the Division of Administrative Hearings, which scheduled and conducted the administrative hearing.

At the hearing, the Petitioner presented the testimony of two witnesses and had Exhibits numbered 1 through 3 admitted into evidence. The Respondent did not appear at the hearing, but was represented by counsel who presented the testimony of one witness.

No transcript of the hearing was filed. Both parties filed Proposed Recommended Orders that were reviewed in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was a general contractor, holding license CGC1251933 issued by the Petitioner.

2. At all times material to this case, the Respondent was the qualifying contractor for "Signature Built Construction,

Inc.," located at 1349 Admiral Woodson Lane, Clearwater, Florida, 33755.

3. In May 2008, a complaint was filed against David Helms and "Signature Built by David Helms, Inc.," related to alleged problems between Mr. Helms and purchasers of a dwelling (the Wolbert residence).

4. The Respondent is not a qualifying contractor for Signature Built by David Helms, Inc.

5. Neither Mr. Helms nor Signature Built by David Helms, Inc., is a licensed contractor.

6. Signature Built Construction, Inc., and Signature Built by David Helms, Inc., are two separate Florida corporations.

7. There is no credible evidence that the two corporations have entered into any formal joint venture agreement or have become legally qualified to enter into joint construction contracts or to obtain joint building permits.

8. The specific allegations of the complaint between the purchasers of the Wolbert residence and Mr. Helms are immaterial to this proceeding.

9. The first page of the "Building and Purchase Agreement" for construction of the Wolbert residence identifies Signature Built by David Helms, Inc., as the "Builder" or "Seller," but further states as follows:

Signature Built Construction, Inc., license numbers CBC1251933/QB32131 is the Contractor/Builder of record for Signature Built by David Helms, Inc. and is joined under this agreement.

10. The Respondent's signature does not appear on the Building and Purchase Agreement.

11. There is no credible evidence that the Respondent was legally bound by the Building and Purchase Agreement.

12. The Administrative Complaint at issue in this proceeding alleges that the Respondent improperly obtained the permit for the Wolbert residence construction project on behalf of Signature Built by David Helms, Inc.

13. The evidence establishes that the Respondent obtained the building permit for construction of the Wolbert residence pursuant to the Building and Purchase Agreement between the purchasers and Signature Built by David Helms, Inc.

14. The Administrative Complaint alleges that the Respondent failed to maintain workers' compensation insurance for the construction of the Wolbert residence and, therefore, committed "fraud or deceit or gross negligence, incompetency or misconduct in the practice of contracting."

15. The evidence fails to establish that the Respondent did not maintain workers' compensation coverage for construction of the Wolbert residence.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008).

17. In this case, the Petitioner bears the burden of proving by clear and convincing evidence that the Respondent engaged in the conduct, and thereby committed the violations, alleged in the Administrative Complaint. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987). For proof to be considered "'clear and convincing' . . . the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). "Although this standard of proof may be met where the evidence is in conflict, . . . it seems to preclude evidence that is ambiguous." Westinghouse Electric Corporation, Inc. v. Shuler Bros., Inc., 590 So. 2d 986, 989 (Fla. 1st DCA 1991). The evidence clearly

establishes that the Respondent obtained a building permit for the construction of the Wolbert residence.

18. Subsection 489.129(1)(d), Florida Statutes (2008), provides as follows:

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:

* * *

(d) Performing any act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, if the certificateholder or registrant knows or has reasonable grounds to know that the person or entity was uncertified and unregistered.

19. Pinellas County Code Section 26-129(b)(5) provides for disciplinary action against a licensee for "performing any act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, if the

certificate holder or registrant knows or has reasonable grounds to know that the person or entity was uncertified and unregistered."

20. By obtaining the permit for the construction of the Wolbert residence pursuant to the Building and Purchase Agreement executed between the purchasers and Signature Built by David Helms, Inc., the Respondent assisted in the uncertified and unregistered practice of contracting, in violation of the referenced statute and code provision.

21. The Administrative Complaint alleges that the Respondent failed to maintain workers' compensation insurance for the construction of the Wolbert residence and, therefore, committed "fraud or deceit or gross negligence, incompetency or misconduct in the practice of contracting." The evidence fails to support the allegation. It should be noted that the Petitioner's Proposed Recommended Order acknowledges that the Respondent's workers' compensation coverage was applicable to all projects for which the Respondent obtained the permit.

22. Pinellas County Code Section 26-129(e)(3) sets forth the guidelines for disciplinary penalties against licensees and provides as follows:

The board is authorized to take the following disciplinary action:

(1) Suspend the certificate holder or registrant from all operations as a

contractor during the period fixed by the board, but the board may permit the certificate holder or registrant to complete any contracts then uncompleted.

(2) Revoke a certificate or registration.

(3) Impose an administrative fine or penalty not to exceed \$1,000.00 (which shall be recoverable by the board only in an action at law).

(4) Require restitution and impose reasonable investigative and legal costs.

23. The recommended penalty set forth herein reflects the referenced guidelines.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Petitioner enter a final order determining that the Respondent has committed the violation of statute and code provisions as set forth herein and providing for a fine of \$1,000.00 and assessing legal costs.

DONE AND ENTERED this 19th day of February, 2009, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of February, 2009.

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.