

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD
DIVISION I**

FILED
2009 DEC 11 A 10:11
DIVISION OF
ADMINISTRATIVE
HEARINGS

DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,

Petitioner,

v.
THOMAS GEPFRICH,
D/B/A ARIZEN HOMES, INC.,

Case No. 2008-009192, 2007-044949
2007-053115
License No. CGC1104399, CGC1204399
QB 15702, QB 18820

Respondent.

FINAL ORDER

THIS MATTER came before the Construction Industry Licensing Board (hereinafter the "Board"), pursuant to Sections 120.569 and 120.57(1), Florida Statutes, at the duly noticed meeting on September 10, 2009, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order entered on April 13, 2009 (attached hereto as *Exhibit A*), Petitioner's Exceptions to the Recommended Order (attached hereto as *Exhibit B*), and Respondent's Proposed Order as Exceptions to Recommended Order (attached as *Exhibit C*). At the meeting, Petitioner was represented by Daniel Biggins, Assistant Attorney General; Respondent was present and represented by legal counsel.

Upon consideration of the Recommended Order, and the Exceptions to the Recommended Order, the argument of the parties, and after a review of the complete

record in this case, and being fully advised in the premises, the Board makes the following findings and conclusions:

RULINGS ON EXCEPTIONS

1. The Board did not rule on Respondent's Proposed Order as Exceptions to Recommended Order, because they were did not clearly identify the disputed portion of the recommended order by page or paragraph, they did not identify the legal basis for the exception, nor did they include appropriate and specific citations to the record in accordance with Section 120.57(1), Florida Statutes.

2. The Board did not rule on Petitioner's Exceptions to the Recommended Order, but accepted them as recommendations for penalty, based on a review of the record and specific citations to the record and for the reasons set forth in Petitioner's Exceptions to the Recommended Order.

FINDING OF FACT

1. The Findings of Fact set forth in the Recommended Order are approved, adopted and incorporated herein by reference.

2. The Board has jurisdiction over this matter pursuant to the provisions of Chapters 120 and 489, Florida Statutes.

CONCLUSIONS OF LAW

The Conclusions of Law set forth in the Recommended Order are consistent with the findings and are approved, adopted and incorporated herein by reference.

Wherefore, it is hereby ORDERED and ADJUDGED that,

The recommended penalty set forth in the Recommended Order is modified herein,

as follows:

1. Respondent is hereby placed on PROBATION for six (6) years.

(A) Respondent is required to appear before the Probation Committee of the Board at such times as directed by the Board Office, approximately every six (6) months. Accordingly, Respondent shall make twelve (12) satisfactory appearances as determined by the Board. Respondent's first probationary appearance requires a full day attendance at the Board meeting. In connection with each probation appearance, Respondent shall answer questions under oath. In addition, Respondent shall provide such other information or documentation as is requested by either the Petitioner, Department, the Board or the Probation Committee. Respondent shall forward said documentation to the Board in advance of the probation appearance.

(B) The burden shall be solely upon Respondent to remember the requirement for said appearance and to take the necessary steps in advance of said appearance to contact the Board office and ascertain the specific time, date, and place of said appearance. Respondent shall not rely on notice of said appearance from the Board or the Department.

(C) Should Respondent violate any condition of the probation, it shall be considered a violation of Section 489.129(1)(i), Florida Statutes, and shall result in further disciplinary action by the Board.

(D) Should the licensee fail to make a satisfactory appearance as determined by the Board, the term of the probationary period shall automatically be extended by six (6) months. If there occurs a second such failure then the term of probationary period will be extended an additional year. Should the Board determine a third failure of the licensee to

make a satisfactory appearance, the stay of suspension of the licensee's licensure to practice contracting shall be lifted and the license shall be suspended.

(E) Should Respondent's license to practice contracting be suspended or otherwise placed on inactive status, the probation period shall be tolled and shall resume running at the time Respondent reactivates the license, and Respondent shall serve the time remaining in the term of probation.

(F) To ensure successful completion of probation, Respondent's license to practice contracting shall be suspended, with the suspension stayed for the period of probation. If Respondent successfully completes probation, the stay of suspension shall be permanent and the suspension shall not take effect. If Respondent fails to comply with the requirements set forth in the Final Order imposed in this case, or fails to make satisfactory appearances as Determined by the Board, the stay shall be lifted. Once the stay is lifted, the license shall be suspended.

2. Respondent shall pay to the Board an Administrative Fine, in the sum of **nine thousand, seven hundred, fifty dollars and zero cents (\$9,750.00)** and Investigative Costs, in the sum of **eight hundred, forty-one dollars and nine cents (\$841.09)**. Said fine and costs shall be paid within 30 days after the date of filing of this Final Order. In addition, Respondent is required to pay interest on the fine due to the Board at a rate of 18% per annum, beginning on the 31st day after the issuance of this Final Order.

3. (A) In Case No. 2008-009192, Respondent shall pay to Steve Shanahan restitution in the sum of **fourteen thousand, six hundred, fourteen dollars and zero cents (\$14,614.00)**, or obtain an Acknowledgment of Satisfaction from Steve Shanahan.

(B) In Case No. 2007-044949, Respondent shall pay to Dornant Hall and Sherine Hall restitution in the sum of **seventeen thousand, six hundred, forty-eight dollars and**

zero cents (\$17,648.00), or obtain an Acknowledgment of Satisfaction from Dornant Hall and Sherine Hall.

(C) In Case No. 2007-053115, Respondent shall pay to Gordon Suarez and Alma Suarez restitution in the sum of **forty-four thousand, four hundred, eleven dollars and zero cents (\$44,411.00)**, or obtain an Acknowledgment of Satisfaction from Gordon Suarez and Alma Suarez.

Proof of payment, or acknowledgment of satisfaction must be provided to the Executive Director of the Construction Industry Licensing Board, Post Office Box 5257, Tallahassee, Florida 32314-5257, within 30 days of the filing of this Final Order.

4. To assure payment of the fine, costs and restitution, it is further ordered that Respondent's license to practice contracting shall be suspended with the imposition of the suspension being stayed for 30 days from the date of the filing of this Final Order. If the ordered fine, costs and restitution are paid to the Board within that 30-day period, the suspension imposed shall not take effect. If Respondent makes the payment of the fine, costs and restitution after the 30-day period, the suspension imposed shall be lifted. If the licensee does not pay the fine, costs and restitution within the 30-day period, then immediately upon expiration of the stay the licensee shall surrender the license to the Department of Business and Professional Regulation.

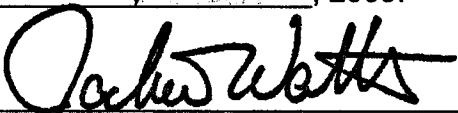
5. Respondent shall complete seven (7) additional credit hours of live continuing education specifically related to Chapter 489, Florida Statutes, and related rules, within one (1) year of the filing of this Order. The seven (7) hours ordered shall be in addition to the continuing education required by Rule 61G4-18.001, Florida Administrative Code. Proof of the seven (7) additional hours must be supplied directly to Executive Director, Construction Industry Licensing Board, Department of Business and Professional

Regulation, Post Office Box 5257, Tallahassee, Florida 32314-5257. Failure to provide such proof direct to the Executive Director will result in a violation of this Order.

6. A change in licensure status, including the suspension, revocation, voluntary relinquishment, or involuntary relinquishment of license does not relieve Respondent of the obligation to pay any fines, costs, interest or restitution imposed in this Final Order.

This Final Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 3rd day of December, 2009.



JACQUELINE A. WATTS, Chair
Construction Industry Licensing Board

NOTICE OF RIGHTS OF JUDICIAL REVIEW

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 Clerk of the Department of Business and Professional Regulation and a second copy, accompanied by filing fees prescribed by law, with the First District Court of Appeal or the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within 30 days of rendition of this Final Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Certified Mail to **Thomas Gefrich**, 1862 Pier Point Street, Northport, Florida 34288, and **Val L. Osinski, Esquire**, Law Offices of Val L. Osinski, 9600 West Sample Road, Suite 304, Coral Springs, Florida 33065; by hand or interoffice delivery to **Construction Industry Licensing Board**, Post Office Box 5257, Tallahassee, Florida 32314-5257, **Jeffrey F. Kelly, Esquire**, Chief Construction Attorney, Office of the General Counsel, 1940 North Monroe Street, Suite 60, Tallahassee, Florida 32399-2202, and **Carrol Y. Cherry**, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, by hand or interoffice delivery, this 10th day of December, 2009.

Brandon M. Nichols

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