

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
CONSTRUCTION INDUSTRY LICENSING )  
BOARD, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-0174  
 )  
PAGE WURTS, d/b/a PAGE HOME )  
BUILDERS, INC., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on March 11, 2009, in St. Petersburg, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kyle Christopher, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 42  
Tallahassee, Florida 32399-2202

For Respondent: No appearance.

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsections 489.129(1)(n) and 489.129(1)(m), Florida Statutes (2005),<sup>1</sup> and if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On December 3, 2008, Petitioner, Department of Business and Professional Regulation (Department), filed a two-count Administrative Complaint against Respondent, Page Wurts, d/b/a Page Home Builders, Inc. (Respondent), alleging that Respondent had violated Subsections 489.129(1)(n) and 489.129(1)(m), Florida Statutes, in the construction of an addition to a residential structure located in Belleair, Florida. Respondent requested an administrative hearing.

The case was forwarded to the Division of Administrative Hearings on January 13, 2009, for assignment to an administrative law judge to conduct the final hearing. The case was originally assigned to Administrative Law Judge R. Bruce McKibben, but was transferred to Administrative Law Judge Susan B. Harrell to conduct the final hearing.

Respondent was provided notice of the final hearing scheduled to commence at 9:30 a.m. on March 11, 2009, in St. Petersburg, Florida. At 9:30 a.m., Respondent had not appeared for the final hearing nor had any representative of Respondent appeared. The commencement of the final hearing was delayed until 10:00 a.m. to give Respondent an opportunity to appear, but neither Respondent nor a representative of Respondent appeared for the final hearing.

At the final hearing, the Department presented the following witnesses: Trudy Capone, Fred Hawes, and John Bosley. Petitioner's Exhibits A through I were admitted in evidence.

The Transcript was filed on March 16, 2009. The parties were given ten days after the filing of the Transcript to file proposed recommended orders. The Department filed Petitioner's Proposed Recommended Order on March 27, 2009. Respondent did not file a proposed recommended order. Petitioner's Proposed Recommended Order has been given due consideration in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Page Wurts is a Florida State Certified Residential Contractor, whose license number is CRC 1327279. His initial date of licensure was July 12, 2004, and his licensure expires on August 31, 2010.

2. Page Home Builders, Inc. has a Certificate of Authority as a Contractor Qualified Business in the State of Florida. The license number is QB 32526. The initial date of licensure was July 12, 2004, and the certificate of authority expires on August 31, 2009. Page Wurts is the primary qualifying agent for Page Home Builders, Inc.

3. On September 9, 2005, Page Home Builders, Inc., entered into a contract with Trudy Capone for \$112,000.00 to build, among other things, an addition to her home located at 1005

Verona Street, Belleair, Florida. On September 24, 2005, Ms. Capone and Page Home Builders, Inc. amended the contract to include the installation of a swimming pool and the renovation of a bathroom, including the replacement of the tub. The contract amount was increased by \$37,700.00. On December 13, 2005, Ms. Capone and Page Home Builders, Inc., agreed to a change order for additional windows, increasing the contract amount by \$3,200.00. On January 5, 2006, Ms. Capone and Page Home Builders, Inc., entered into a second amendment to the contract to include the installation of an air conditioning system, and the extension of the truss system over the patio, to be supported by columns. This amendment increased the contract amount by \$19,485.00, bringing the total contract amount to \$169,185.00. Page Home Builders, Inc. accepted approximately \$153,265.00 on the contract. Ms. Capone agreed to credit Page Home Builders, Inc., with \$1,084.50.00 for half the cost of a claw foot tub, which Page Home Builders, Inc., purchased.

4. Subcontractors hired by Page Home Builders, Inc., cut several existing trusses without supporting the ceiling below and without approval of the architect, causing the ceiling of Ms. Capone's home to collapse, damaging the floor, furniture, and other property of Ms. Capone. The collapsed ceiling nearly stuck Ms. Capone. As a result of the collapse, Ms. Capone was

trapped in her house for approximately 30 minutes until she could be extricated.

5. The hardwood floors were improperly installed. There were numerous gaps between butt and side joints with some in excess of 1/8 of an inch. There was glue smeared over the finished surfaces. Thresholds and reducers were missing. There is an area in the family room where butt joints are nearly aligned instead of being randomly staggered. Additional floating of the floors should have been done prior to the installation of the wood flooring, especially at the arched opening between the living room and hallway. The flooring color is mismatched where it transitions from the living room to the existing hall and bedrooms.

6. John Bosley, an expert in construction, is of the credible opinion that due to the poor workmanship on the project Ms. Capone's house was destroyed and made unlivable. The fit and finish of the work was some of the worst work that he has ever seen. Mr. Bosley is of the opinion that the poor work resulted from a lack of supervision of the subcontractors by the contractor. Mr. Bosley's testimony is credited.

7. It will cost over \$50,000 to correct the poor workmanship. In a letter to the Department dated April 24, 2008, Page Wurts acknowledged that Ms. Capone was entitled to a credit of \$650.00 for stucco and damage to plants and trellis.

The difference between the credit to Ms. Capone for stucco and plant damage and the amount owed to Page Home Builders, Inc., for the tub is \$434.50, bringing the total contract amount to \$169,619.50. Ms. Capone made contract payments of \$153,265.00, leaving \$16,354.50 remaining unpaid on the contract. By subtracting the remaining contract amount from \$50,000.00, which is the cost of repair, the amount owed to Ms. Capone to remedy the shoddy work is \$33,645.50.

8. The Department incurred investigative costs in this case, excluding costs associated with attorney's time, in the amount of \$477.52.

#### CONCLUSIONS OF LAW

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

10. The Department has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996). The Department has alleged that Respondent violated Subsections 489.129(1)(m) and 489.129(1)(n), Florida Statutes, which provide:

(1) The board may take any of the following actions against any certificate holder 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:

\* \* \*

(m) Committing incompetency or misconduct in the practice of contracting.

(n) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.

11. The Department alleged in the Administrative Complaint that Respondent violated Subsections 489.129(1)(m) and 489.129(1)(n), Florida Statutes, by cutting several existing trusses, causing damage to Ms. Capone's property and by improperly installing hardwood floors in Ms. Capone's home. As a result of Respondent's failure to supervise the subcontractors on the job, Ms. Capone's home was rendered unlivable.

12. Although Page Wurts did not personally cut the trusses or install the hardwood floors, he is the qualifying agent for Page Home Builders, Inc., and has a statutory duty to supervise

projects entered into under his license. Gatwood v. McGee, 475 So. 2d 720, 723 (Fla. 1st DCA 1985); Hunt v. Department of Professional Regulation, 444 So. 2d 997, 999 (Fla. 1st DCA 1983); Alles v. Department of Professional Regulation, 423 So. 2d 624, 625 (Fla. 5th DCA 1982).

13. In Alles, the court reasoned that:

The obvious purpose of [Chapter 489, Part I, Florida Statutes] allowing a company to act as a contractor through a licensing contractor is to insure that projects undertaken by a company are to be supervised by one certified and licensed by the board. To allow a contractor to be the "qualifying agent" for a company without placing any requirement on the contractor to exercise any supervision over the company's work done under his license would permit the contractor to loan or rent his license to the company. This would completely circumvent the legislative intent that an individual, certified as competent, be professionally responsible for supervising construction work on jobs requiring a licensed contractor.

Id.

14. The Department has established the allegations in the Administrative Complaint by clear and convincing evidence. Respondent was responsible for the negligent cutting of several trusses, which damaged Ms. Capone's property, and improperly installing the hardwood floors. Respondent violated Subsections 489.129(1)(m) and 489.129(1)(n), Florida Statutes.

15. There were many other examples of negligence in the performance of the work at the Capone residence and of



incompetency in the work that was performed. However, those instances were not alleged in the Administrative Complaint and cannot form a basis for discipline. See Marcelin v. Department of Business and Professional Regulation, 753 So. 2d 745 (Fla. 3rd DCA 2000); Ghani v. Department of Health, 714 So. 2d 1113 (Fla. 1st DCA 1998).

16. Florida Administrative Code Rule 61G4-17.001 sets forth the disciplinary guidelines for the Construction Industry Licensing Board. The penalty range for a violation of Subsection 489.129(1)(m), Florida Statutes, ranges from a \$1,000 fine and probation or suspension to a \$5,000 fine and probation or suspension. The penalty range, absent aggravating or mitigating circumstances, for a violation of Subsection 489.129(1)(n), Florida Statutes, ranges from a \$1,000 fine to a \$3,000 fine and probation, suspension, or revocation.

17. Florida Administrative Code Rule 61G4-17.002 sets forth aggravating and mitigating circumstances to be considered in determining an appropriate disciplinary action and provides:

Circumstances which may be considered for the purposes of mitigation or aggravation of penalty shall include, but are not limited to, the following:

(1) Monetary or other damage to the licensee's customer, in any way associated with the violation, which damage the licensee has not relieved, as of the time the penalty is to be assessed. (This provision shall not be given effect to the extent it would contravene federal

bankruptcy law.)

(2) Actual job-site violations of building codes, or conditions exhibiting gross negligence, incompetence, or misconduct by the licensee, which have not been corrected as of the time the penalty is being assessed.

(3) The danger to the public.

(4) The number of complaints filed against the licensee.

(5) The length of time the licensee has practiced.

(6) The actual damage, physical or otherwise, to the licensee's customer.

(7) The deterrent effect of the penalty imposed.

(8) The effect of the penalty upon the licensee's livelihood.

(9) Any efforts at rehabilitation.

(10) Any other mitigating or aggravating circumstances

18. There are aggravating factors in the instant case.

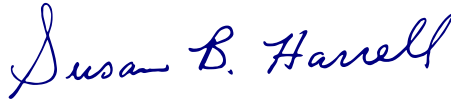
Ms. Capone suffered physical damage to her property as a result of the negligence of Respondent. The ceiling of her home collapsed, rendering her home uninhabitable. It will cost over \$50,000 to correct the poor work.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Respondent violated Subsections 489.129(1)(m) and 489.129(1)(n), Florida Statutes, imposing a \$10,000 fine, revoking Respondent's certification (License Nos. CRC 1327279 and QB 32526), requiring Respondent to pay restitution to

Ms. Capone in the amount of \$33,645.50, and requiring Respondent to pay investigative costs of 477.52.

DONE AND ENTERED this 6th day of April, 2009, in Tallahassee, Leon County, Florida.



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SUSAN B. HARRELL  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of April, 2009.

ENDNOTE

<sup>1/</sup> Unless otherwise indicated, all references to the Florida Statutes are to the 2006 version.

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.