

FILED

Department of Business and Professional Regulation

Deputy Agency Clerk

CLERK Brandon Nichols

Date 12/2/2010

File # 2010-11338

**STATE OF FLORIDA
CONSTRUCTION INDUSTRY LICENSING BOARD**

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
Petitioner,

vs.

CASE NO 2007-013056
LICENSE NO.. CGC060878

JOHN WILLIAM BARKER, JR ,
Respondent

FINAL ORDER

THIS MATTER came before the Construction Industry Licensing Board (hereinafter referred to as the "Board") pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on February 11, 2010 in Tampa, Florida, for consideration of the Recommended Order entered in this case by Daniel M. Kilbride, Administrative Law Judge dated July 21, 2009 Respondent was present.

Respondent filed exceptions to the Recommended Order The Board denied the first exception to paragraph 37 because the administrative law judge's findings were based on competent and substantial evidence. The Board denied the second exception to paragraph 17 because the administrative law judge's findings were based on competent and substantial evidence. After reviewing the complete record accompanying the Recommended Order, the Recommended Order, and being fully advised in the premises, the Board finds that there is competent and substantial evidence to support the findings of fact in the Recommended Order

The Board hereby adopts the findings of fact (paragraphs 1-40) and conclusions of law, (paragraphs 41-58) in the Recommended Order. At the request of the parties the Board removes the recommended 90 day suspension because, based on page 17 of the transcript, the Respondent had no prior discipline, the Respondent did return to the job site, and the Respondent will be better able to make restitution. The remainder of the recommendation is adopted. A copy of the Recommended Order, attached to and made a part hereof, is hereby adopted, and but for the suspension, becomes the Final Order of the Board.

THEREFORE, IT IS HEREBY ORDERED:

1. Respondent shall pay an administrative fine in the amount of \$5,500.00 and investigative costs in the amount of \$276.18. Said fine and costs shall be paid within thirty (30) days after the date of filing of the Final Order.

In addition, the Respondent is required to pay interest on the fine due to the Board at a rate of 18% per annum, beginning on the thirty-first (31st) day after the issuance of the Final Order.

2. Respondent shall pay restitution in the amount of \$ 5,116.42 to Edward Dueboay. Proof of restitution, or acknowledgment of satisfaction must be provided to the Executive Director of the Construction Industry Licensing Board, at 1940 N Monroe Street MS# N14, Tallahassee, FL 32399-1039 within thirty (30) days of the date of the filing of the Final Order.

3. To assure payment of the fine, and costs, it is further ordered that Respondent's license to practice contracting shall be suspended with the imposition of the suspension being stayed for thirty (30) days from the date of the filing of the Final Order.

If the ordered fine and costs are paid to the Board within the thirty (30) days, the suspension imposed shall not take effect. Upon payment of the fine and costs after the thirty (30) days, the suspension imposed shall be lifted. If the licensee does not pay the fine and costs within said period, then immediately upon expiration of the stay, he shall surrender his license to the Department of Business and Professional Regulation.

4. Respondent is hereby placed on PROBATION for 2 years with 4 satisfactory appearances with the following conditions:

(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. 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 at least 30 days in advance of the probation appearance or as otherwise directed.

(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 Respondent 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 Respondent to make a satisfactory appearance, the stay of suspension of the Respondent's license to practice contracting shall be lifted and the license shall remain in suspended status unless and until a further stay is granted by the Board.

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

(F) To ensure successful completion of probation, Respondent's license to practice contracting shall be suspended for the period of probation, with the suspension stayed for the period of probation. The time of the suspension and the stay shall run concurrently with the period of probation. If Respondent successfully completes probation, the suspension shall terminate. 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 remain in suspended status unless and until a further stay is granted by the Board.

5 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 Order.

This Final Order shall become effective upon filing with the Clerk of the

Department of Business and Professional Regulation.DONE AND ORDERED this 2nd day of December, 2010
WILLIAM S. SHEEHAN, Chair
Construction Industry Licensing Board**NOTICE OF RIGHT TO 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 AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION 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 APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by Certified Mail to: JOHN WILLIAM BARKER, JR , 7400 Nalle Grade Road, North Fort Myers, Florida 33917; and by hand/interoffice delivery to the Construction Industry Licensing Board, 1940 N. Monroe Street MS#N14, Tallahassee, Florida 32399-1039; Jeff Kelly, Esq., Chief Construction Attorney, Office of the General Counsel, 1940 N. Monroe St., Ste. 60, Tallahassee, Florida 32399-2202, and Daniel Biggins, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on or before 5 00 p m., this 2nd day of December, 2010.



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PS Form 3800, August 2006 See Reverse for Instructions		