

FILED
Department of Business and Profession
Deputy Agency Clerk
CLERK Brandon Nichols
Date **4/23/2010**
File # **2010-03127**

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs.

DOAH Case Nos. 09-2541
09-2545

BRENDA CARPENTER and PHILIP
HENLEY, d/b/a B AND P
ENTERPRISES OF CENTRAL FLORIDA,
INC.,

DBPR Case Nos. 08-060540
08-060543
06-051635
08-053153

Respondents.

FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order issued by Administrative Law Judge Suzanne Hood on February 23, 2010, after a formal hearing conducted on January 22, 2010, pursuant to Section 120.57(1). Florida Statutes. Upon consideration of the Administrative Complaints (Composite Exhibit A), the Recommended Order (Exhibit B), any exceptions and responses to exceptions filed by any party, the transcript of the formal hearing and the exhibits received into evidence, and being otherwise fully advised of the premises, it is ORDERED AND ADJUDGED:

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ADMINISTRATIVE LAW JUDGE

RULING ON RESPONDENTS' EXCEPTIONS

Respondents' exceptions and Petitioner's Response to Respondent's Exceptions have been considered and the Exceptions are denied for the reasons set forth in Petitioner's written response.

FINDINGS OF FACT

The findings of fact set forth in the Recommended Order are approved and adopted and incorporated by reference.

CONCLUSIONS OF LAW

1. The Department has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapters 455 and 489, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated by reference.

PENALTY

1. *Violation of Section 489.127(1)(f), Florida Statutes*

Upon review of the record in this case, the Department determines that the penalty recommended by the Administrative Law Judge for the violation of Section 489.127(1)(f), Florida Statutes, be accepted.

2. *Violation of Section 489.531, Florida Statutes*

Upon review of the record in this case, the Department reduces the administrative fine of \$5,500.00 imposed on both Respondents Henley and Carpenter individually as set forth in

the Recommended Order and imposes a fine of \$5,000.00 on each Respondent individually for this violation.

As required by Section 120.57(1)(1), Florida Statutes, the Department bases this reduction of the administrative fine stating with particularity the following reasons and providing citations to the record:

Section 120.57(1)(f)3, Florida Statutes, provides that the record in a 120.57(1) proceeding includes "those matters officially recognized." The record contains Petitioner's Motion for Official Recognition of certain statutes, including Section 455.228, Florida Statutes (2006), which was granted by the administrative law judge (Transcript at 7, 1-4, 18-24).

The Department has substantive jurisdiction to reduce the penalty. Biscayne Kennel Club v. Department of Business Regulation, 276 So.2d 823, 828 (Fla. 1973) (administrative construction of a statute by an agency responsible for the statute's administration is entitled to great weight and should not be overturned unless clearly erroneous).

Part II of Chapter 489, Florida Statutes, does not provide specific administrative penalties for the unlicensed practice of electrical contracting. Thus, the authority for imposition of an administrative fine for unlicensed electrical contracting is

found in Section 455.228(1), Florida Statutes, and may not exceed \$5,000 per incident.¹

Having considered the testimony adduced at hearing, the admitted exhibits, the records, Respondents' exceptions, and applicable law,

IT IS HEREBY ORDERED that the Findings of Fact and Conclusions of Law set forth in the Recommended Order are adopted in full as the Department's Findings of Fact and Conclusions of Law in this matter and that:

1. Respondent Philip Henley shall pay an administrative fine of \$5,500 for violation of Section 489.127(1)(f) and \$5,000 for violation of Section 489.531, for a total fine of \$10,500 plus and costs in the amount of \$1,005.67.

2. Respondent Brenda Carpenter fine of \$5,500 for violation of Section 489.127(1)(f) and \$5,000 for violation of Section 489.531, for a total fine of \$10,500.00 plus costs in the amount of \$554.

¹ Compare Section 489.13(3), Florida Statutes, ("notwithstanding s. 455.228, the department may impose an administrative fine of up to \$10,000 on any unlicensed person guilty of unlicensed contracting.").

3. All amounts due hereunder are due and payable to the Department of Business and Professional Regulation, Revenue Unit, 1940 North Monroe Street, Tallahassee, Florida 32399-2202 within 30 calendar days of the effective date of this order. Please refer to the case number(s) when making payment.

4. Respondents shall cease any further unlicensed activity that violates Chapters 455 or 489, Florida Statutes.

5. This Final Order shall become effective on the date of filing with the Agency Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 30th day of March 2010.



Charlie Liem, Interim Secretary
Department of Business and
Professional Regulation
Northwood Center
1940 North Monroe Street
Tallahassee, FL 32399-0750

NOTICE OF RIGHT TO APPEAL

Unless expressly waived, any party adversely affected by this Final Order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within 30 days of the effective date of this order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and Section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been provided via U.S. Mail to Phillip Henley and Brenda Carpenter, 5209 U.S. Highway 221, Greenville, Florida 32331 this 23rd day of April 2010.



Brandon Nichols, Deputy Agency Clerk

COPIES FURNISHED:

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