

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-3646  
 )  
RONALD R. MARRA, d/b/a PRO TECH )  
BUILDING SYSTEMS, LLC, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings, in the above-styled case on November 19, 2009, in Fort Myers, Florida.

APPEARANCES

For Petitioner: Sorin Ardelean, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399

For Respondent: Ronald R. Marra  
Pro Tech Building Systems, LLC  
11332 Pond Cypress  
Fort Myers, Florida 33913

STATEMENT OF THE ISSUE

Whether disciplinary action should be taken against Respondent's license to practice contracting, license number CGC1507637, based on the violations alleged as follows:

a) By committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer in violation of Subsection 489.129(1)(g)2., Florida Statutes (2006)<sup>1</sup>;

b) By abandoning a construction project in which the contractor is engaged or under contract as a contractor, in violation of Subsection 489.129(1)(j), Florida Statutes; and

c) By committing incompetency or misconduct in the practice of contracting, in violation of Subsection 489.129(1)(m), Florida Statutes, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On May 12, 2008, Petitioner, Department of Business and Professional Regulation, filed an Administrative Complaint alleging that Respondent, Ronald Mara, violated the laws regulating his professional activities as a certified contractor in the State of Florida. Respondent disputed the allegations contained in the Administrative Complaint and elected to have a formal administrative hearing. Subsequently, the case was transferred to the Division of Administrative Hearings (DOAH) to conduct a hearing pursuant to Section 120.57, Florida Statutes.

At the hearing, Petitioner offered the testimony of four witnesses: Investigator Larry Chatfield, Michael Dalla Costa, Alvin Coiner and Harley Carter. Petitioner introduced 12 exhibits, which were entered into evidence.

Respondent testified in his individual capacity, and introduced four exhibits which were entered into evidence.

Petitioner moved that the record remain open in order to permit Petitioner to take the deposition testimony of Scott White, the successor contractor on the project in question. Petitioner was granted permission to take the deposition within a reasonable period of time. As of the date of this Recommended Order, the deposition testimony of Scott White has not been taken or filed. The Transcript of the hearing was filed on December 4, 2009. Petitioner filed its Proposed Recommended Order on December 14, 2009. Respondent has not filed his proposal as of the date of this Recommended Order.

#### FINDINGS OF FACT

Based on the evidence, the following facts are found:

1. At all times material, Respondent was a certified general contractor, having been issued license number CGC1507637 by the Florida Construction Industry Licensing Board (CILB).

2. At all times material, Respondent was the qualifier of Pro-Tech Building Systems, LLC.

3. On September 14, 2006, Respondent entered into a contract with the owner, Alvin Coiner, to erect the walls of

the residence that Coiner was building on a lot he owned in St. James City, Florida.

4. The price of the contract with Respondent was \$38,253.00. It called for the erection of reinforced concrete walls, using insulated concrete Integra-Spec<sup>®</sup> forms produced by the Canadian manufacturer Phil-Insul Corporation.

5. Initially, Coiner planned to build the house using concrete blocks for the outer walls, and engineering plans were submitted to the County building department, which were approved.

6. At some time before September 14, 2006, Respondent, Michael Dalla Costa and Coiner met at Respondent's office and agreed to construct the walls using the Integra-Spec<sup>®</sup> Insulated Concrete forms (ICF) system instead of regular concrete blocks.

7. All parties agreed that the transitioning from concrete blocks to Integra-Spec<sup>®</sup> ICF should not present any issues if the slab was code-compliant.

8. Integra-Spec<sup>®</sup> insulated concrete forms are a technology used to build steel-reinforced concrete walls. It uses Styrofoam Lego<sup>®</sup>-like interlocking inner and outer panels, locked together with a web of plastic ties, between which the rebar is installed inside, vertically and horizontally. After the forms are installed and the rebar is put in place, raw concrete is then pumped in the space between the panels, thus forming the concrete insulated walls after the concrete cures.

9. Coiner discussed with a representative of the Phil-Insul Corporation the requirements to build a home using the Integra-Spec® forms. To do so required a trained professional.

10. Respondent assured Coiner that he was fully trained to install Phil-Insul products and that he had completed several jobs in the Ft. Myers area. Respondent claimed that he was very experienced with both Integra-Spec® forms and with Greenblock concrete forms, and he was also very knowledgeable as to the building code requirements for insulated concrete forms in Lee and Collier Counties.

11. The Integra-Spec® walls were to be constructed in compliance with all local building codes and requirements and were to be certified by the design engineer.

12. Coiner hired Gary Harvey Engineering of Ft. Myers as the engineer of record.

13. Michael Dalla Costa supervised and coordinated the work on behalf of Coiner during Coiner's absence from the area.

14. In the fall of 2006, Respondent submitted to Dalla Costa some plans that were not approved by Harvey Engineering. Through an error, the plans were submitted to the Lee County Building Department. The building department denied the plans, as they were not approved by the engineer of record, Harvey Engineering.

15. On November 20, 2006, and January 30, 2007, Harvey Engineering submitted revised plans that were approved by the building department.

16. The revised plans by Harvey Engineering were the official documentation to show how the job should proceed.

17. Between October and December 2006, the relationship deteriorated between Respondent, and the building inspector, Dalla Costa and Coiner. Respondent repeatedly argued with the others over whether an additional quantity of rebar, required by the building department, had to be installed.

18. The building inspector did not approve work done by Respondent. Based on his inspection and determination that rebar was missing, the building inspector advised the owner that, in the inspector's opinion, Respondent did not do a proper job in preparing the walls for the pouring of the concrete into the walls.

19. Respondent installed the Integra-Spec<sup>®</sup> ICF forms and the additional rebar, and then stopped work at some point in the beginning of December 2006.

20. Dalla Costa had paid Respondent a total of \$34,955.00 up to this point.

21. Respondent sent a proposed change order and asked Coiner to pay him an additional \$9,239.44, in addition to the agreed contract price. He threatened to completely stop work and leave the job. Coiner did not agree to the proposed change

order or to pay additional money over the original contract price.

22. According to Respondent the slab was not level, which created additional work for Respondent to properly install the Integra-Spec<sup>®</sup> forms. However, there is no dispute that the slab was code-compliant and passed inspection. The contract between parties does not provide for contract price adjustments based on additional work incurred due to slabs that are out of level.

23. According to the Integra-Spec<sup>®</sup> installation manual, there are two methods of adjustment when the slabs are out of level, including provision for tolerances in excess of one inch. The manual recommends that when the slab is in excess of one inch out of level, shaving the bottom course of the form units at highest point of slab.

24. Respondent testified that he was familiar with the adjustment methods when the slab is out of level.

25. Due to lack of work on the construction site between the second half of December 2006, and the end of March 2007, Coiner hired an attorney to help him deal with Respondent. Coiner's attorney contacted Respondent in writing on April 2 and April 13, 2007, requesting that Respondent resume work. He did not return to the job.

26. Based on advice from the attorney, Coiner hired contractor Scott White as a consultant to oversee the project and advise Coiner as to how to proceed on the project.

27. As the project situation deteriorated further due to Respondent ceasing work completely, failing inspections and Integra-Spec® forms falling down, Coiner hired White to finish the job for the price of \$17,250.00. White erected the walls and finished the job in a professional manner, which passed inspection.

28. According to testimonies by Coiner and Respondent himself, Respondent completed between 75% to 90% of the job. However, due to Respondent's abandoning the job site for months, the Integra-Spec® forms had been blown down by winds and had to be re-installed or re-aligned by White.

29. The concrete pre-pour inspection was never completed. Respondent never poured the concrete and he never finished the walls.

30. Due to Respondent's abandonment of the job, Coiner incurred additional expenses of \$26,550.00 as follows: an additional six months of construction loan interest at \$200.00 per month, \$6,500.00 in legal fees, \$1,500.00 for consulting fees, about \$100.00 for failed inspections fees, and \$17,250.00 paid to White to finish Respondent's job.

31. The total investigative costs of this case to Petitioner, excluding costs associated with an attorney's time, were \$351.47.

32. Respondent's reasons for abandoning the job are not persuasive.



CONCLUSIONS OF LAW

33. DOAH has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2009).

34. Petitioner is the state agency charged with regulating the practice of contracting, pursuant to Section 20.165 and Chapters 455 and 489, Florida Statutes.

35. Pursuant to Section 489.129, Florida Statutes, the CILB is empowered to revoke, suspend or otherwise discipline the license of a contractor who is found guilty of any of the grounds enumerated in Subsection 489.129(1), Florida Statutes.

36. Petitioner has the burden of proving by clear and convincing evidence the allegations filed against Respondent in the Administrative Complaint. § 120.57(1)(j), Fla. Stat.; Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996), and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

37. Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, fn.5 (Fla. 1st DCA 1989) provides the following guidance regarding the clear and convincing evidence standard:

That standard has been described as follows:  
[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence 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 the firm belief of [sic] 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).

38. The Administrative Complaint alleges that Respondent is guilty of violating Subsections 489.129(1)(g), (j), and (m), Florida Statutes, which provide, in pertinent part:

(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 or registration, require financial restitution to a consumer, 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 . . . or business organization for which the contractor is a primary qualifying agent . . . is found guilty of any of the following acts;

\* \* \*

(g) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement occurs when:

\* \* \*

2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned;

3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

\* \* \*

(j) Abandoning a construction project in which the contractor is engaged or under contract as a contractor. A project may be presumed abandoned after 90 days if the contractor terminated the project without just cause or without proper notification to the owner, including reason for termination, or fails to perform work without just cause for 90 consecutive days.

\* \* \*

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

39. Petitioner has proven by clear and convincing evidence that Respondent violated Subsection 489.129(1)(g)2., Florida Statutes, Count I of the Administrative Complaint, by committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer.

40. Respondent abandoned the Coiner contract when the percentage of completion of the job (more than 75% but less than 90%) was less than the total contract price paid to him (90%). Respondent testified that he completed 90% of the job, however the evidence is clear that parts of the work completed by

Respondent had to be redone by the second contractor; that Respondent never completed the pre-pour inspection (when second draw was due to him, according to contract); and that he never poured the concrete, which would have cost in his own estimate \$3,500.00 (more than 10% of the contract price). Therefore, the evidence clearly and convincingly shows that Respondent did not complete 90% of the job at the time when he abandoned the Coiner project.

41. Petitioner has proven by clear and convincing evidence that Respondent violated Subsection 489.129(1)(j), Florida Statutes, Count II of the Administrative Complaint, by abandoning a construction project in which the contractor is engaged or under contract as a contractor. A project may be presumed abandoned after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including reason for termination, or fails to perform work without just cause for 90 consecutive days.

42. The evidence established that Respondent failed to perform any meaningful work under the Coiner contract for a period of time exceeding 90 days. Respondent did not perform work between the second half of December 2006 to April 2007. Although Respondent may have occasionally been present on the site or met with other people involved in the project, the evidence does not show that any identifiable work was done by Respondent during this period. However, Respondent effectively

abandoned the project by requesting additional payment not justified under the contract and threatening to abandon the job if he was not paid, then completely stopping any work after Coiner refused to pay above and beyond the contract price.

43. Respondent asked Coiner to pay in excess of \$9,000.00 in addition to the agreed contract price, as a "change order." However, there is no evidence that the scope of work of the contract changed so that a change order would be necessary. Although Respondent had to deal with issues that (despite his familiarity with ICF construction and the building code requirements in Lee County) he apparently did not foresee when he proposed the contract to Coiner. Nothing changed as far as the scope of work of the contract is concerned. Respondent was under contract to build ICF walls for Coiner's residence, and that did not change after the slab was poured, or after the building department requested enough rebar in the walls to meet the code. Therefore, Respondent's attempts to "force" a change order upon Coiner were due to his initial inaccurate estimates as to what it would cost Respondent to build the walls, and not to an unforeseeable change in the circumstances.

44. According to Respondent's own testimony, he was thoroughly familiar with both ICF building techniques and the building code requirements in Lee County. Thus, due to his experience with ICF construction, Respondent cannot reasonably argue that, when he contracted with Coiner, he did not foresee

the possibility that the slab would be out of level sufficiently to require adjustments. Even the Integra-Spec<sup>®</sup> installation manual recognized that adjustments might become necessary.

45. Respondent cannot persuasively claim that it was beyond his reasonable expectation that the Lee County Building Department would require additional rebar in order to meet the local building code. Respondent stated he was very familiar with the building department requirements. If he was familiar with the building requirements, as he contends, not only should Respondent have foreseen at the time of the contract how much rebar the inspector would require, but also he should have expected that the inspector will require in fact that specific quantity of rebar.

46. Respondent argues that when non-level slabs are involved on a project, the necessary adjustments should not be done for free by the contractor, and Petitioner agrees. However, if Respondent contemplated to be paid for additional work he had to do due to the out of level slab, he should have provided for a higher contract price, or for price adjustment in the contract, not add such charges later, above and beyond the agreed contract price. In fact, Subsection 489.129(1)(g)3., Florida Statutes, specifically prohibits contracting practices in which the customer ends up paying above the contract price, except where the customer agrees to a change order, or where circumstances beyond the control of the contractor exist, or

where such additional charges are provided for by the contract. In this case, there was no agreed change order, no extenuating unforeseeable circumstances, and the contract does not provide for a price adjustment based on slab deficiencies. Moreover, the slab was code compliant, and passed final inspection, which clearly indicates that it was ready to be built upon.

47. Respondent failed to provide any explanation at the hearing as to any excusable reasons for his failure to complete the project, other than he completed 90% and he "left" after being paid 90% of the contract price. Even if we assume that he indeed performed 90% of his contract, Respondent still abandoned the contract without a reasonable justification.

48. Petitioner has proven by clear and convincing evidence that Respondent violated Subsection 489.129(1)(m), Florida Statutes, Count III of the Administrative Complaint. Respondent violated Subsections 489.129(1)(j) and (g)2., Florida Statutes. Florida Administrative Code Rule 61G4-17.001(m)2. provides that misconduct or incompetency in the practice of contracting, shall include violating any provision of Florida Administrative Code Chapter 61G4, or Chapter 489, Part I, Florida Statutes. Respondent violated Subsection 489.129(1)(m), Florida Statutes, by violating Subsections 489.129(1)(g)2. and (j), Florida Statutes, as provided in paragraphs 6 through 11 above.

49. Respondent is subject to disciplinary action by the CILB pursuant to Sections 455.227 and 489.129, Florida Statutes.

The disciplinary action under these statutes includes placing the license on probation, reprimanding the licensee, revoking suspending, denying the issuance or renewal of the certificate or registration, requiring financial restitution to the consumer, imposing an administrative fine not to exceed \$10,000.00 per violation, requiring continuing education and assessing costs associated with the investigation and prosecution.

50. Subsection 455.2273(5), Florida Statutes, states that the administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the CILB or department and must state in writing the mitigating or aggravating circumstances upon which recommended penalty is based.

51. Florida Administrative Code Rule 61G4-17.002 provides, in pertinent part, the following:

Circumstances which may be considered for the purpose 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 being 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.

52. Florida Administrative Code Rule 61G4-17.001 (2006) provides the following guidelines that are pertinent to this proceeding:

(1) The following guidelines shall be used in disciplinary cases, absent aggravating or mitigating circumstances and subject to the other provisions of this Chapter.

\* \* \*

(g) Section 489.129(1)(g), F.S.: Mismanagement or misconduct causing financial harm to the customer. First violation, \$1,500.00 to \$5,000.00 fine, and/or probation or suspension.

\* \* \*

(j) Section 489.129(1)(j), F.S.: Abandonment. First violation, \$2,500.00 to

\$7,500.00 fine and/or probation or suspension.

\* \* \*

(m) Misconduct or incompetency in the practice of contracting, shall include, but is not limited to:

\* \* \*

(2) Violation of any provision of Chapter 61G4, F.A.C., or Chapter 489, Part I., F.S.

\* \* \*

4. The following guidelines shall apply to cases involving misconduct or incompetency in the practice of contracting, absent aggravating or mitigating circumstances:

\* \* \*

b. Violation of any provision of Chapter 61G4, F.A.C., or Chapter 489, Part I., F.S. First violation, \$1,000.00 to \$2,500.00

53. There is no evidence that Respondent has been previously disciplined for violations under Chapter 489 or 455, Florida Statutes; therefore, the penalty guidelines that should be used are for a first violation.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is recommended that a final order be rendered by the CILB as follows:

1. Finding Respondent guilty of having violated Subsection 489.129(1)(g)2., Florida Statutes, as alleged in Count I of the

Administrative Complaint, and imposing as a penalty an administrative fine in the amount of \$2,500.00;

2. Finding Respondent guilty of having violated Subsection 489.129(1)(j), Florida Statutes, as alleged in Count II of the Administrative Complaint, and imposing as a penalty an administrative fine in the amount of \$1,000.00;

3. Finding Respondent guilty of having violated Subsection 489.129(1)(m), Florida Statutes, as alleged in Count III of the Administrative Complaint, and imposing as a penalty an administrative fine in the amount of \$1,000.00;

4. Suspending Respondent's license to practice contracting (CGC1507637) for three months, followed by probation for two years;

5. Requiring Respondent to pay financial restitution to the consumer, Alvin Coiner, in the amount of \$13,952.00 for consumer harm suffered due to payment of additional money to complete the job abandoned by Respondent. The consumer damages are calculated by adding the total payments to Respondent (\$34,955.00) to the payment for the completion of the contract to Scott White (\$17,250.00), and then subtracting the contract price (\$38,253.00);

6. Requiring Respondent to pay Petitioner's costs of investigation and prosecution, excluding costs associated with an attorney's time, in the amount of \$351.47; and

7. Requiring Respondent to complete continuing education hours and to meet such other conditions the CILB may require.

DONE AND ENTERED this 31st day of March, 2010, in Tallahassee, Leon County, Florida.



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DANIEL M. KILBRIDE  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of March, 2010.

ENDNOTE

<sup>1/</sup> All statutory references are to Florida Statutes (2006), unless otherwise noted.

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.