

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
CONSTRUCTION INDUSTRY LICENSING )  
BOARD, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-5211PL  
 )  
VICTOR HARRIS, d/b/a, VICTOR'S )  
ROOFING CO., INC. OF FLORIDA )  
KEYS, )  
 )  
Respondent, )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on December 1, 2009, by video teleconference between Miami and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Sorin Ardelean, Esquire  
Assistant General Counsel  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street, Suite 42  
Tallahassee, Florida 32399-2022

For Respondent: Victor Harris, pro se  
1134 Ensenada Street  
Marathon, Florida 33050

STATEMENT OF THE ISSUE

Whether Respondent committed the offenses alleged in the Administrative Complaint and, if so, the penalties that should be imposed.

PRELIMINARY STATEMENT

On September 18, 2008, Petitioner filed an Administrative Complaint against Respondent, which alleged certain facts pertaining to Respondent's dealings with a consumer named Claude Johnson. Those factual allegations focused on roofing work done and on subsequent drywall repair on rental property owned by Mr. Johnson at 3214 Harriet Avenue, Key West, Florida. Based on those factual allegations, Petitioner charged Respondent in three Counts with the violations that are at issue in this proceeding.

Petitioner alleged in paragraphs 13 and 14 (Count I) that Respondent's license should be disciplined on the following grounds:

13. Section 489.113, Florida Statutes,<sup>[1]</sup> requires that any person who desires to engage in contracting on a statewide basis shall, as a prerequisite thereto, establish his or her competency and qualifications to be certified pursuant to this part.

14. Based on the foregoing, Respondent violated section 489.129(1)(i), Florida Statutes, by failing in any material respect to comply with the provisions of Chapter 489, Part I, Florida Statutes, or violating a rule or lawful order of the board, by

having violated section 489.113, Florida Statutes.

Petitioner alleged in paragraph 16 (Count II) that Respondent's license should be disciplined on the following grounds:

16. Based upon the foregoing, the Respondent violated Section 489.129(1)(o), Florida Statutes, by failing to obtain the necessary permits, pass all inspections and finalize the necessary permits.

Petitioner alleged in paragraph 18 (Count III) that Respondent's license should be disciplined on the following grounds:

18. Based on the foregoing, Respondent violated section 489.129(1)(m), Florida Statutes, by committing incompetence or mismanagement in the practice of contracting.

Respondent timely requested a formal administrative hearing, the matter was duly referred to DOAH, and this proceeding followed.

At the formal hearing, Petitioner presented the testimony of Idelmis Del Rio (an investigator employed by Petitioner) and Mr. Johnson. Petitioner offered seven sequentially-marked Exhibits, each of which was admitted into evidence. Respondent testified on his own behalf and offered one Exhibit, which was admitted into evidence.

A Transcript of the proceeding was filed December 21, 2009.

The deadline for the filing of post-hearing submittals was set for ten days following the filing of the transcript. Petitioner timely filed a Proposed Recommended Order (PRO), which has been duly-considered by the undersigned in the preparation of this Recommended Order. Respondent has not filed a PRO as of the entry of this Recommended Order.

#### FINDINGS OF FACT

1. At all times relevant to this proceeding, Respondent has been licensed by the Petitioner as a roofing contractor, having been issued license number CCC 57995 by the Florida Construction Industry Licensing Board.

2. At all times relevant to this proceeding, Respondent was the qualifier for and did business as "Victor's Roofing Co., Inc. of the Fla. Keys" (Victor's Roofing).

3. At all times relevant to this proceeding, Mr. Johnson was an owner of property located at 3214 Harriet Avenue, Key West, Florida (the subject property). Mr. Johnson lives in Hollywood, Florida. The subject property is rental property.

4. Respondent and his company are not licensed to do drywall work in Key West, Florida, and they are not licensed with Petitioner other than as a roofing contractor.

#### ROOFING WORK

5. On November 3, 2008, Respondent, on behalf of Victor's Roofing, entered into a contract with Mr. Johnson to re-roof the

subject property. The proposal submitted by Respondent to Mr. Johnson contained Victor's Roofing's full corporate name; its office address in Marathon, Florida; two telephone numbers; and a fax number. The proposal was signed by Respondent. The proposal described in some detail the scope of the work. The price of the work was \$7,000.00. Mr. Johnson accepted the proposal.

6. Victor's Roofing completed the roofing job to Mr. Johnson's satisfaction. A leak developed after the roof was completed and Victor's Roofing promptly repaired the leak to Mr. Johnson's satisfaction.

7. Petitioner's Administrative Complaint alleged that Victor's Roofing had failed to obtain a permit for the roofing job on the subject property and that it had failed to obtain required inspections. Those allegations were the result of an error by Petitioner's investigator. Ms. Del Rio obtained records from the City of Key West Building Department for the wrong address. Instead of obtaining the permit history for the subject property (3214 Harriet Avenue) she requested and obtained the permit history for 3314 Harriet Avenue.

8. Respondent applied for a permit for the roofing job on the subject property on November 11, 2006, and he obtained an inspection of the roof on November 27, 2007 [sic]. There was

insufficient evidence to establish that any other permit or any other inspection was required for the roofing work.

DRYWALL WORK

9. After the roofing job had been completed (but before the inspection on November 27, 2007),<sup>2</sup> Mr. Johnson informed Respondent by telephone that he needed someone to replace drywall that had been damaged during the period of time the subject property's roof leaked. Mr. Johnson asked Respondent whether he knew anyone who could do the job. Respondent replied in the affirmative and told Mr. Johnson he would have someone contact him about doing the work.<sup>3</sup>

10. Thereafter, Respondent's brother, Early Harris, contacted Mr. Johnson and the two of them verbally agreed on a price of \$4,000. At the time Respondent put Early Harris in touch with Mr. Johnson, Respondent knew that Early Harris was not licensed to do drywall work in Key West. After giving Mr. Johnson's telephone number to Early Harris, Respondent had no further involvement with the drywall work on the subject property.

11. The price of the drywall work escalated to \$9,000.00 after the work began. On November 25, 2006, Early Harris and Mr. Johnson signed a written proposal agreeing to the price of \$9,000.00.<sup>4</sup> This was a form proposal with the following:

Victor's Roofing Co., Inc.  
2nd Generation  
Serving South Florida  
Licensed & Insured  
Marathon, Fla.

12. The only telephone number on the proposal other than Mr. Johnson's, was the number for Early Harris' cell phone.

13. The contract signed by Respondent on November 3, 2006, for the roofing work was on a different form and utilized a different font than the contract signed by Early Harris on November 25, 2006.

14. The name of the corporation on the proposal for the drywall work, while similar to the name of Respondent's company, was different.

15. Early Harris has worked for Respondent's business for several years, but there was no clear and convincing evidence that Early Harris had the authority to contract on behalf of Respondent's business in November 2006. There was no evidence that Early Harris is a part owner of Respondent's business or that he is an officer or director of Respondent's business. Respondent testified, credibly, that Early Harris was not authorized to contract on behalf of Respondent's business at the times relevant to this proceeding. There was no clear and convincing evidence to refute Respondent's assertion that Earl

Harris had no authority to contract on behalf of Respondent's business.

16. Early Harris did the drywall work on the subject property.

17. Mr. Johnson paid Early Harris \$9,000.00 for the drywall work. Mr. Johnson could not find the check(s) he wrote for the drywall work and, consequently the check(s) were unavailable as an exhibit. His recollection as to the name of the payee of the check(s) was not clear. Respondent testified, credibly, that neither he nor his business received any of the money for the drywall work.

18. The drywall work Early Harris did was not to Mr. Johnson's satisfaction. Mr. Johnson had to pay \$600.00 to a drywall contractor for corrective work. In addition, Mr. Johnson had to pay \$600.00 for a permit to have the repair work done.<sup>5</sup>

19. The total investigative costs of this case to Petitioner, excluding costs associated with any attorney's time, was \$191.16.

#### CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties hereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

21. Petitioner has the burden of proving the allegations



against Respondent by clear and convincing evidence. See § 120.57(1), Fla. Stat.; Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112 (Fla. 1st DCA 1989); Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994); and Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

22. Petitioner's argument that Respondent and/or his company should be held accountable for the drywall work, while plausible, does not constitute clear and convincing evidence of the fact in contention. The circumstantial evidence and the credible direct evidence set forth in the record of this proceeding do not establish by clear and convincing evidence that either Respondent or his company is responsible for the drywall repairs on the subject property.

23. Count I of the Administrative Complaint is based on Petitioner's contention that Respondent and his company violated the provisions of Section 489.113, Florida Statutes, by doing drywall work without the requisite license. Petitioner failed to prove the facts that underpin that allegation.

24. Count II of the Administrative Complaint is based on Petitioner's contention that Respondent and his company violated the provisions of Section 489.129(1)(o), Florida Statutes, by failing to obtain the necessary permits, pass all inspections

and finalize the necessary permits. These alleged failures pertain to the roofing work and the drywall work. The allegations as to the roofing work resulted from a mistake by Petitioner's investigator. Respondent obtained a permit for the roofing work and at least one inspection was made of the roofing work. Petitioner failed to establish that an additional inspection for the roof was required. Respondent and his company are not responsible for the drywall work.

25. Count III of the Administrative Complaint is based on Petitioner's contention that Respondent and his company violated the provisions of Section 489.129(1)(m), Florida Statutes, by committing incompetence or mismanagement in the practice of contracting. These allegations are based on the problems with the drywall work. Respondent and his company are not responsible for the drywall work.

26. Petitioner has failed to meet its burden of proof as to Counts I, II, and III of the Administrative Complaint. Respondent should be found not guilty of the violations alleged in the Administrative Complaint.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Department of Business and Professional Regulation, Construction Industry Licensing Board, enter a final order finding Respondent not guilty of the

violations alleged in Counts I, II, and III of the Administrative Complaint.

DONE AND ENTERED this 14th day of January, 2010, in Tallahassee, Leon County, Florida.



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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of January, 2010.

ENDNOTES

<sup>1/</sup> All statutory references are to Florida Statutes (2009). All references to rules are to the version of the rule published in Florida Administrative Code as of the date of this Recommended Order. There has been no change in any applicable statute or rule between the dates of the acts discussed in this Recommended Order and the date of entry of this Recommended Order.

<sup>2/</sup> Respondent testified that he thought the call occurred around November 20, 2006.

<sup>3/</sup> Mr. Johnson testified that Respondent told him that he was licensed to do drywall work. Because of his inability to clearly recall his dealings with Respondent and with Early Harris, Mr. Johnson's testimony is not as credible as Respondent's testimony that he made no such statement.

<sup>4/</sup> The removal of the old drywall revealed extensive rotten wood that had to be repaired. That damage, which had not been revealed when Early Harris and Mr. Johnson verbally agreed to a

price of \$4,000.00, caused the increased price. Mr. Johnson agreed to the increased price.

<sup>5/</sup> The record was unclear as to the license(s) or permit(s) required to do drywall work in Key West.

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.