

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY CONSTRUCTION)
LICENSING BOARD,)
)
Petitioner,)
)
vs.) Case No. 10-0096
)
PAUL W. BOURDON,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case for the Division of Administrative Hearings (DOAH) on April 6, 2010, by video teleconference in Tallahassee and St. Petersburg, Florida.

APPEARANCES

For Petitioner: Jason Ester, Esquire
Pinellas County Attorney's Office
315 Court Street, Sixth Floor
Clearwater, Florida 33756-5165

For Respondent: J. Scott Taylor, Esquire
2909 West Bay to Bay Boulevard, Suite 405
Tampa, Florida 33629-8177

STATEMENT OF THE ISSUE

The issue is whether Respondent violated Subsection 489.129(1)(q), Florida Statutes (2008),¹ by allegedly failing to satisfy within a reasonable time the terms of a civil judgment relating to the practice of the licensee's profession.

PRELIMINARY STATEMENT

Petitioner issued an Administrative Complaint against Respondent on October 15, 2009. Respondent requested an administrative hearing, and Petitioner referred the matter to DOAH to conduct the hearing.

At the hearing, Petitioner presented the testimony of one witness and submitted six exhibits for admission into evidence. Respondent cross-examined Petitioner's witness, did not testify, presented the testimony of no other witnesses, and submitted no exhibits for admission into evidence.

The identity of the witnesses and exhibits, and any attendant rulings, are reported in the record of the hearing. The parties did not request a transcript of the hearing. Respondent timely filed his Proposed Recommended Order (PRO) on April 8, 2010. Petitioner timely filed its PRO on April 16, 2010.

FINDINGS OF FACT

1. Petitioner is the agency charged with regulating building contractors in Pinellas County, Florida. Respondent is a building contractor, pursuant to license number C-6811 (RB0042337).²

2. Respondent is the primary qualifying agent for Timberlore Construction, Inc. (Timberlore). The business

address of Timberlore is 2142 B Palm Harbor Boulevard, Palm Harbor, Florida 34683.

3. On February 14, 2002, Timberlore contracted with Cox Air Conditioning and Heating, Inc. (Cox), for the installation of an air-conditioning system at a construction site at 19636 Gulf Boulevard, Indian Shores, Florida 33785. A dispute arose between Timberlore, as the general contractor, and Cox, as the subcontractor.

4. As a result of the dispute, Timberlore sued Cox for breach of contract and negligence and for attorney's fees and costs. After a non-jury trial, the court entered two final judgments.

5. The first final judgment, entered on December 4, 2008, was a determination of liability. The court found that Cox was not liable for the failure of the air-conditioning unit that Cox had installed. Rather, the court found that excessive humidity caused the failure of the air-conditioning unit and damage to the premises and that the condition was aggravated by Timberlore. The court found that Cox was the prevailing party entitled to attorney's fees and costs from Timberlore.

6. The second final judgment against Timberlore determined the amount of attorney's fees and costs. The court ordered Timberlore to pay attorney's fees of \$80,775.00 and costs of \$30,423.79 plus annual interest of eight percent.

7. Timberlore repaired the damaged air-conditioning system at the construction site. There is no harm to the consumer.

8. Respondent disputes whether attorney's fees and costs awarded by a court in a dispute between a contractor and a subcontractor relate to the practice of the licensee's profession within the meaning of Subsection 489.129(1)(q). The only evidence relevant to this issue was the testimony of Petitioner's witness.³

9. The fact-finder finds the testimony of Petitioner's witness after cross-examination to be credible and persuasive and agrees that the judgment for attorney's fees and costs, under the facts and circumstances in this case, relates to the practice of the licensee's profession. Respondent has failed to satisfy a civil judgment obtained against the business organization qualified by the licensee within a reasonable time in violation of Subsection 489.129(1)(q).

CONCLUSIONS OF LAW

10. DOAH has jurisdiction over the parties and subject matter in this proceeding. § 489.131(7)(b); §§ 120.569 and 120.57, Fla. Stat. (2009). DOAH provided the parties with adequate notice of the final hearing.

11. Petitioner has the burden of proof. Petitioner must show by clear and convincing evidence that Respondent committed the acts alleged in the Administrative Complaint and the

reasonableness of any proposed penalty. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

12. For the reasons stated in the Findings of Fact, Petitioner satisfied its burden of proof. A contractor is subject to license discipline under Subsection 489.129(1)(q), when the contractor fails to satisfy a civil judgment arising from litigation between the contractor and a subcontractor, and the judgment includes attorney's fees and costs. See Jonas v. Florida Department of Business and Professional Regulation, 746 So. 2d 1261 (Fla. 3d DCA 2000)(involving judgment by subcontractor against general contractor for \$17,585.66 plus interest, costs, and attorney's fees).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Pinellas County Construction Licensing Board enter a final order finding Paul W. Bourdon guilty of violating Subsection 489.129(1)(q) and suspending Paul W. Bourdon's license until the judgment is satisfied.

DONE AND ENTERED this 27th day of April, 2010, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of April, 2010.

ENDNOTES

^{1/} References to subsections, sections, and chapters are to Florida Statutes (2008), unless otherwise stated.

^{2/} License number RB0042337 is the state registration number for Respondent. Petitioner includes state registration information in the record of local license discipline proceedings in order to comply with the reporting requirements in Subsection 489.117(4)(a). However, this administrative proceeding is limited to local license number C-6811 and does not reach the state registration certificate.

^{3/} The witness is executive director of the Pinellas County Construction Licensing Board. He has been a licensed contractor in Florida since 1968 and has extensive practical experience in the industry.

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.