

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY CONSTRUCTION )  
LICENSING BOARD, )  
 )  
Petitioner, )  
 )  
vs. ) Case Nos. 10-1133  
 ) 10-1134  
LOUISE WOLD-PARENTE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in these cases before J. D. Parrish, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on September 3, 2010, by video teleconference between sites in St. Petersburg and Tallahassee, Florida.

APPEARANCES

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

For Respondent: Warren J. Knaust, Esquire  
Knaust & Associates, P. A.  
2167 Fifth Avenue, North  
St. Petersburg, Florida 33713-8013

STATEMENT OF THE ISSUES

The issues in these cases are whether Respondent, Louise Wold-Parente (Respondent), committed the violations alleged in

the Administrative Complaints dated January 30, 2010, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

Petitioner, Pinellas County Construction Licensing Board (Petitioner or Board), entered an Administrative Complaint on January 30, 2010, against Respondent that alleged she had assisted a person or entity in the practice of contracting that was neither certified nor registered to practice contracting. More specifically, Petitioner claimed that Respondent submitted a permit application for the construction of a single-family residence, that a permit was issued for the construction, but that a non-licensed person or entity was to build the home. The home is designated as the "Levitz" home in the record. This Administrative Complaint was forwarded to DOAH for formal proceedings and assigned DOAH Case No. 10-1133.

A second Administrative Complaint filed by Petitioner on January 30, 2010, made the same allegations and related to a home designated in the record as "Wendlek." The Administrative Complaint pertinent to the Wendlek home was also forwarded to DOAH and assigned DOAH Case No. 10-1134. The cases were consolidated for hearing.

As to both cases, Respondent timely challenged the material factual allegations. Only the allegations related to Count I of

each complaint remain at issue. Petitioner voluntarily dismissed Counts II and III of each of the complaints.

At the hearing, three witnesses testified on behalf of Petitioner: Rodney Fischer, executive director for Petitioner; Connie Wendlek, a property owner for whom a home was to be built; and Alan Levitz, another property owner for whom a home was to be constructed. Petitioner's Exhibits A through D were admitted into evidence. Respondent appeared with counsel for the hearing.

A transcript of the proceeding has not been filed. The parties were afforded the opportunity to file proposed recommended orders. The parties timely filed proposed orders that have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner is the entity charged by law to regulate and discipline locally-licensed contractors doing business in Pinellas County, Florida.

2. At all times material to the allegations of these cases, Respondent held a license as a general contractor, license number I-CGC1251933, issued by Petitioner.

3. On or about November 30, 2005, Respondent, on behalf of Signature Built Construction, filed a permit application for a single-family home to be constructed for Richard and Constance

Wendlek. The contract for the construction of the Wendlek home identified Signature Built by David Helms, Inc., as the "builder" or "seller" of the home. Further, the contract stated that Signature Built Construction, Inc., license numbers CBC1251933/QB32131, was the "contractor/builder" of record for Signature Built by David Helms, Inc.

4. On or about August 14, 2006, Respondent filed a permit application for a single-family home to be built for Alan and Elaine Levitz. The contractor for the permit was identified as Signature Built Construction. The contract for the Levitz home was executed between Signature Built by David Helms, Inc., as "builder" or "seller" with Signature Built Construction, Inc., license numbers CBC1251933/QB32131, as the "contractor/builder" of record for Signature Built by David Helms, Inc.

5. At all times material to the allegations, Respondent was not the qualifying contractor for Signature Built by David Helms, Inc. There is no evidence that Respondent and Signature Built by David Helms, Inc., have entered into an agreement to engage Respondent as the qualifying contractor for Signature Built by David Helms, Inc. Further, there is no evidence that David Helms individually, or through Signature Built by David Helms, Inc., was authorized to act on behalf of Signature Built Construction, Inc., or Respondent.

6. Respondent did not execute the contracts with Levitz and Wendlek. There is no evidence that anyone associated with Signature Built Construction, Inc., executed the contracts with Levitz and Wendlek. Neither Levitz nor Wendlek knew Respondent or had any dealings with her.

7. The Levitz and Wendlek contracts were negotiated and performed (to the extent that they were performed) by David Helms or Signature Built by David Helms, Inc.

8. Respondent is the qualifying agent for Signature Built Construction, Inc., but neither Respondent nor Signature Built Construction, Inc., was bound by the contracts with Levitz and Wendlek.

9. The Administrative Complaints filed against Respondent claim that she improperly obtained the building permits for the Wendlek and Levitz homes. It is determined that Respondent facilitated an unlicensed entity or individual, David Helms or Signature Built by David Helms, Inc., to engage in contracting without first being properly licensed or authorized as provided by law.

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of these proceedings. See §§ 120.569 and 120.57(1), Fla. Stat. (2010).

11. Petitioner bears the burden of proof to establish by clear and convincing evidence that Respondent engaged in the conduct complained of in Count I of the Administrative Complaints. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

12. "Clear and convincing evidence," as defined in Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116 n. 5 (Fla. 1st DCA 1989), 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 or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 800 (Fla. 4th DCA 1983).

13. Respondent may impose administrative sanctions against any licensee found to be in violation of law. Pinellas County Code Section 26-129(b)(5) authorizes disciplinary action against a licensee for:

. . . performing any act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, if the certificate holder or registrant knows or has reasonable grounds to know that the person or entity was uncertified and unregistered.

14. Section 489.129, Florida Statutes (2009), provides, 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 for financial harm directly related to a violation of a provision of this part, 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, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

\* \* \*

(d) Performing any act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, if the certificate holder or registrant knows or has reasonable grounds to know that the person or entity was uncertified and unregistered.

(e) Knowingly combining or conspiring with an uncertified or unregistered person by allowing his or her certificate or registration to be used by the uncertified or unregistered person with intent to evade the provisions of this part. When a certificate holder or registrant allows his or her certificate or registration to be used by one or more business organizations without having any active participation in the operations, management, or control of such business organizations, such act

constitutes prima facie evidence of an intent to evade the provisions of this part.

(f) Acting in the capacity of a contractor under any certificate or registration issued hereunder except in the name of the certificate holder or registrant as set forth on the issued certificate or registration, or in accordance with the personnel of the certificate holder or registrant as set forth in the application for the certificate or registration, or as later changed as provided in this part.

15. Subsection 489.117(4)(c), Florida Statutes (2009), authorizes Petitioner to discipline locally-licensed contractors such as Respondent.

16. By obtaining the building permits for the Levitz and Wendlek homes, Respondent assisted an uncertified and unregistered person or entity to practice contracting in violation of law. Petitioner has established by clear and convincing evidence that Respondent must be disciplined for such violation.

17. Disciplinary guidelines for Petitioner are located in Pinellas County Code Section 26-129(e)(3) and authorize the imposition of suspension, revocation, administrative fine, restitution, and/or reasonable investigative and legal costs. In this case, Petitioner has proposed an administrative fine in the amount of \$1,000.00 per case with the assessment of legal and investigative costs added thereto. While such penalty seems



excessively lenient to the undersigned, it is within the guidelines set forth by the Pinellas County Code.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board enter a final order finding Respondent in violation of Count I as to both Administrative Complaints, dismissing the other abandoned counts, and imposing an administrative fine in the amount of \$2,000.00 together with legal and investigative costs of the proceedings.

DONE AND ENTERED this 20th day of October, 2010, in Tallahassee, Leon County, Florida.



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J. D. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of October, 2010.

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.