

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
ELECTRICAL CONTRACTORS)
LICENSING BOARD,)
)
Petitioner,)
)
vs.) Case No. 10-3089
)
STEVEN SCOTT CLARK, d/b/a)
E.A.S. INDUSTRIES, INC., d/b/a)
A.B. FIRE SYSTEMS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On October 20, 2010, a final hearing was held in this case at video teleconference sites in Port St. Lucie and Tallahassee, Florida, before Administrative Law Judge Eleanor M. Hunter.

APPEARANCES

For Petitioner: LeChea C. Parson, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street suite 42
Tallahassee, Florida 32399-2202

For Respondent: Steven Scott Clark, pro se
Steven Scott Clark, d/b/a E.A.S.
Industries, Inc., d/b/a
A.B. Fire Systems
4500 Lakeview Drive
Sebring, Florida 33870

STATEMENT OF THE ISSUE

The issue whether Respondent violated subsections 489.533(1)(m)3., and/or 489.533(1)(f), Florida Statutes (2010),¹ as alleged in the Administrative Complaint, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On February 2, 2010, Petitioner filed a two-count Amended Administrative Complaint against Respondent alleging violations of section 489.533. More specifically, Count I charged Respondent with committing financial mismanagement or misconduct that causes financial harm to a customer in violation of section 489.533(1)(m)2., and Count II charged Respondent with committing fraud or deceit, or negligence, incompetency, or misconduct in the practice of electrical or alarm system contracting in violation of section 489.533(1)(f).

On May 3, 2010, Respondent executed an Amended Election of Rights form disputing the allegations in the Amended Administrative Complaint and requesting an administrative hearing. On June 3, 2010, Respondent referred the case to the Division of Administrative Hearings for the assignment of an administrative law judge. Initially assigned to Administrative Law Judge Daniel M. Kilbride, the case was transferred to the undersigned who scheduled the hearing for August 20, 2010. The

parties filed a Joint Motion for Continuance, on August 12, 2010, and the case was re-scheduled for October 20, 2010.

At hearing, Petitioner presented the testimony of Norma Fishner and Cheryl Deats. Petitioner's Exhibits 1-10 and 11 (pages 1 and 2) were received into evidence. Official recognition was taken of sections 489.533(1)(m)3., 489.533(1)(f), and 455.227(3)(a). Respondent testified on his own behalf.

Respondent's Proposed Recommended Order was filed December 1, 2010, and Petitioner's Proposed Recommended Order was filed December 3, 2010. The Transcript of the hearing was filed December 6, 2010.

FINDINGS OF FACT

1. Petitioner is the Electrical Contractors Licensing Board within the Department of Business and Professional Regulation (Petitioner or DBPR).

2. At all times material to the allegations in the Amended Administrative Complaint, Respondent, Steven Scott Clark, was a certified alarm systems contractor one, holding Electrical Contractor's Licensing Board's License Number EF1255.

3. As a licensed contractor, Clark was the person who possessed the required skills, knowledge, and experience to be responsible for an alarm systems business or, in other words, to serve as its qualifying agent.² Clark was the qualifying agent

for E.A.S. Industries (E.A.S.), d/b/a A.B. Fire Systems (A.B. Systems).

4. On January 23, 2006, A.B. Fire Equipment, Inc., (A.B. Equipment) submitted a proposal, signed on its behalf by Dick Sorbye, for work on fire alarm equipment at Crosswinds Apartment at 1300 N. Ocean Boulevard in Pompano Beach (Crosswinds). None of the three license numbers listed on the proposal is the same as Clark's. A.B. Equipment is not a licensed or qualified alarm contractor. Below the name of A.B. Equipment, which is checked on the proposal form, is the name of "A.B. Fire Systems/ALARM DIVISION" which is, in fact, the same company as A.B. Systems. The proposal for a total contract cost of \$6,610.00, included the following language:

We hereby propose to furnish the material necessary for completion of the following:
Repair wiring short and replace the following devices. 9 weather proof horn strobes @ \$95.00 ea. -- \$855.00

5. A horn strobe is the small red rectangular-shaped, wall-mounted device which emits the siren sound and flashes a strobe light when a fire alarm is triggered.

6. Because A.B. Equipment is not a licensed fire alarm contractor, it subcontracted with A.B. Systems, based on a verbal agreement, to perform work at Crosswinds. Employees of A.B. Systems wear shirts identifying them as employees of "A.B. Fire Systems." Crosswinds is located within 500 feet of the

ocean and, because of that, regularly experiences substantial salt corrosion of metal. Horn strobes have metal parts and must be replaced regularly due to corrosion.

7. As required in the proposal, half of the total contract cost or \$3,305.00 was paid by Crosswind's representative on January 24, 2006, to A.B. Equipment. The receipt from A.B. Equipment with the same date has the name of A.B. Systems on the form and Respondent's license number next to that name.

8. On January 31, 2006, Crosswinds issued a check for \$1,650.00 to A.B. Equipment. The back of the first check was stamped for deposit in the account of E.A.S., the parent company of A.B. Systems.

9. Another check designated "final payment" in the amount of \$1,655.00 was dated February 8, 2006, but it was not deposited until March 9, 2006. That check was apparently held up by the then-president of the Crosswinds Board, Patricia Abujar, who questioned the need for an inspection of the alarm system by the fire department. Once the check was tendered, it was deposited, as directed by hand-written instructions on the back of the check, in the same account number as that for E.A.S.

10. On February 28, 2006, Crosswinds received an invoice that had three license numbers on it, including Clark's. The invoice from A.B. Equipment was for an additional \$704.90 for replacement of wires, a conduit, and the panel that was damaged

by a shortage. The damage was caused by a construction company that was simultaneously making repairs at Crosswinds.

Crosswinds had sustained substantial damage from Hurricane Wilma in October 2005.

11. On February 28, 2006, Crosswinds also received an invoice from A.B. Equipment for one additional corroded horn strobe for \$95.00 plus \$5.70 for the sales tax. The invoice was identical to the one for damage by the construction company and also included Clark's license number.

12. On March 15 and 18, 2006, respectively, Clark and Oakley Blevins, who was then the Crosswinds Board president, signed a City of Pompano Beach Building Permit Application for an after-the-fact permit for the replacement of a fire alarm panel at Crosswinds. Until the panel had to be replaced, no permit had been required. On the line on the form for the name of the contractor, "A. B. Fire Systems, Inc." was crossed out and the name "E.A.S. IND." was written.

13. The application was not accepted by the building department until October or November 2006. The City delayed receipt of applications and issuance of permits because it was inundated after the hurricane.

14. In the meantime, on October 6, 2006, Clark returned to Crosswinds in response to a service call. At the time, he replaced a corroded horn strobe, as he had done on an ongoing

basis since beginning work at Crosswinds in 2004. Clark had a disagreement with Blevins, apparently over who from A.B. Systems would be providing service to Crosswinds in the future and over where a worker parked a company truck. Clark never returned to the site.

15. A City of Pompano Beach document dated November 20, 2006, entitled "Plan Review Corrections Report," was transmitted by facsimile from A.B. Systems to Crosswinds' representative on December 14, 2006.

16. Having last had a fire alarm inspection in February 2006, Crosswinds received a proposal dated February 19, 2007, from another company, Bass Fire & Security Systems, Inc. (Bass), to "trouble shoot and repair fire alarm system short program, test and certify" for \$340.00. The work by Bass would qualify as the annual inspection for 2007.

17. On March 30, 2007, Bass billed Crosswinds \$726.05 for replacement of an outdoor horn strobe. In addition to trip and labor charges, there was also a charge for a mini-monitor module, a device used to identify each "pull station" that will cause a shortage if it becomes defective.

18. Crosswinds paid Bass for its inspection work and subsequent repairs in a single check in the amount of \$1,086.45 on April 10, 2007.

19. Bass, on April 6, 2007, offered to "replace (seven) [corroded] weatherproof horn strobe units @ \$89.00 ea[ch], [with] installation labor and misc[ellaneous] hardware" for a quoted total cost of \$1156.00 plus tax. For that, Crosswinds paid Bass \$1225.36 on April 23, 2007.

20. On May 27, 2008, Crosswinds was inspected by a City fire inspector who noted on his report that it was an inspection of a new fire alarm system and that "A.B. Fire System is unlicenses [sic] contractor" and "Note ESA Industries Inc. will be the only person on jobsite to complete the test."

21. On June 5, 2008, Crosswinds received another quote from Bass to "make necessary repairs for fire dept. final inspection" for a total of \$1905.00 plus tax. The quote included a "change of contractor fee [for the] (Pompano Beach Building Department)" and installation of a horn strobe on the first floor breezeway.

22. Clark was still listed with the City as the only authorized alarm systems contractor at Crosswinds. Following City-mandated procedures, then-president of the Crosswind Board, Cheryl Deats, notified Clark by certified letter of a change of contractors in June 2008. She received no response from Clark. Deats testified that she believes that Clark's company, A.B. Systems performed work incompetently or negligently prior to having obtained a permit, causing financial harm to Crosswinds

in the amount of \$2,311.81 (1,086.45 plus 1,225.36) that it had to pay Bass to make repairs before time for the next inspection.

23. Other than Deats' assumption that the work done by Bass was the result of Clark's company's negligence or incompetence, there is no evidence to support that finding. In fact, the evidence tends to support a finding that work done in March and April 2007, more than a year after Clark's work, was necessitated by corrosion due to the proximity of Crosswinds to the ocean.

24. There is no evidence that the Crosswinds' Board was deceived and not aware that Clark was the subcontractor working on the fire alarm system. Regardless of whether they knew the name of his parent company, E.A.S., at least two previous Board presidents had direct interactions with him and saw his employees wearing shirts identifying A.B. Systems.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2009).

26. Petitioner is the state agency charged with licensing and regulating electrical contractors, including specialty fire alarm contractors such as Respondent, pursuant to section

20.165(4)(a)7., and chapters 455 and 489, part II, Florida Statutes.

27. Petitioner seeks to take disciplinary action against Respondent's license. Because disciplinary actions are considered penal proceedings, Petitioner bears the burden of proof to demonstrate the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

28. The Florida Supreme Court has held that:

Clear 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 testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 797, 800 (Fla. 4th DCA 1983)).

29. Count I of the Administrative Complaint charged Respondent with violating section 489.533(1)(m)(3), Florida Statutes, which makes it a disciplinary violation for:

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

* * *

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;

30. Clear and convincing evidence was not presented to support a finding that Respondent committed the violation alleged in Count I. The more persuasive evidence is that frequent repair and replacement of fire alarm system parts was required because of ocean air corrosion.

31. Count II of the Administrative Complaint alleged that Respondent violated section 489.533(1)(f). That subsection provides that a licensee may be disciplined for

Committing fraud or deceit, or negligence, incompetency, or misconduct in the practice of electrical or alarm system contracting.

32. Clear and convincing evidence was not presented to demonstrate that there was any violation of this provision. Crosswinds was not deceived about who was servicing its fire alarm system. The Board presidents at Crosswinds regularly interacted with Clark from 2004 until October 2006.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED that the Electrical Contractors Licensing Board enter a Final Order dismissing the Amended Administrative Complaint filed on June 3, 2010, against Steven Scott Clark, d/b/a E.A.S. Industries, Inc., d/b/a A.B. Fire Systems.

DONE AND ENTERED this 4th day of January, 2011, in Tallahassee, Leon County, Florida.



ELEANOR M. HUNTER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of January, 2011.

ENDNOTES

1. Unless otherwise indicated, references to Florida Statutes are to the 2010 edition.
2. See section 489.521, Florida Statutes.

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.