STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, CONSTRUCTION INDUSTRY LICENSING BOARD,

Petitioner,

vs. Case No. 10-8075

LINDA R. RATLIFF, d/b/a SUNCOAST ROOFING OF POLK COUNTY, INC.,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case by video teleconference at sites in Lakeland and Tallahassee, Florida, on October 29, 2010, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Thomas Campbell, Esquire
Assistant General Counsel
Department of Business and
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1940 North Monroe Street
Tallahassee, Florida 32399

For Respondent: Kevin P. Cox, Esquire
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, Linda Ratliff, d/b/a Suncoast Roofing of Polk County, Inc. (Respondent), violated provisions of Chapter 489, Florida Statutes (2009),[1] as alleged in the Administrative Complaint dated June 21, 2010, issued by Petitioner, Department of Business and Professional Regulation, Construction Industry Licensing Board (Petitioner or Department), and, if so, what penalties should be imposed.

PRELIMINARY STATEMENT

Petitioner filed a seven-count Administrative Complaint against Respondent that alleged specific violations of Chapter 489, Florida Statutes, in connection with a roofing contract for a consumer named Ray Noble. At the hearing, Petitioner voluntarily dismissed one count, but presented proof as to other alleged violations. More specifically, Petitioner maintained that Respondent had committed mismanagement or misconduct in the practice of contracting, that caused financial harm to a customer in violation of Subsection 489.129(1)(g)2., Florida Statutes. Petitioner claimed Respondent had abandoned a construction project, in which the contractor was engaged or under contract, as a contractor in violation of Subsection 489.129(1)(j), Florida Statutes. Petitioner argued Respondent had committed fraud or deceit in the practice of

contracting in violation of Subsection 489.129(1)(l), Florida Statutes, and had failed to obtain proper inspections on the project in violation of Subsection 489.129(1)(o), Florida Statutes. Finally, Petitioner averred Respondent was incompetent or committed misconduct in the practice of contracting in violation of Subsection 489.129(1)(m), Florida Statutes. Respondent timely challenged all material factual allegations of the Administrative Complaint and requested an administrative hearing in connection with the matter.

The case was forwarded to the Division of Administrative Hearings (DOAH) for formal proceedings on August 20, 2010. The case was scheduled for hearing, and the parties were afforded an opportunity to exchange witness lists and exhibits prior to the hearing.

At the hearing, Petitioner presented testimony from Herman Blom, deputy building official for the City of Lakeland; Elden Stover, a building inspector for Lakeland; and Ray Noble, the property owner for whom Respondent was to install a new roof. Petitioner's Exhibits A through H were admitted into evidence. Respondent testified in her own behalf and offered additional testimony from her son, Johnny Ratliff (identified in the record as J. Ratliff).

The Transcript of the proceeding was filed with DOAH on November 12, 2010. The parties were afforded ten days from the

filing of the transcript within which to file proposed recommended orders. Petitioner’s Proposed Recommended Order was filed on November 19, 2010, and has been considered in the preparation of this Recommended Order. Respondent did not file a proposed order.

FINDINGS OF FACT

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

2. Respondent is, and has been at all times material to the allegations of this case, a certified roofing contractor, license number CCC 058307. Respondent’s license is currently in “probation, active” status.

3. Respondent’s address of record is 2023 Shoreland Drive, Auburndale, Florida 33823.

4. Linda Ratliff, individually, is the licensed, primary qualifying agent for Suncoast Roofing of Polk County, Inc. (Suncoast). J. Ratliff works in the family business, and has done so for approximately 17 years.

5. As the primary qualifying agent for Suncoast, Linda Ratliff is responsible for the supervision of all operations of the business. Such operations include, but are not limited to, field work at contract sites, financial responsibility for the entity, and all contractual obligations of the company. In this

case, the only contractual obligation in dispute is in relation to a contract between Respondent and Ray and Loretta Noble.

6. On or about February 25, 2009, Respondent entered into a contract (the contract) with Ray and Loretta Noble. The contract described the work to be performed. The address for the property was identified as 1021 and 1023 Brunell Road, Lakeland, Florida. The Noble property was a duplex, and the contract required the owner to pay $6,800.00 "when finish with work."

7. The terms of the contract specified that Respondent would: remove the old, flat roofing; replace felt with glass base; fix any rotten wood; recover the roof with 1.5 Iso Board installation and Rubber Bitumen; replace roof stacks with new stacks; obtain the permit; torch down Bitumen; install 12-year manufacturer warranty on shingles, 12 years on Rubber Bitumen, 15 TPO; provide a five-year warranty on labor; clean-up and haul off all trash from roof; roll yard with magnetic roller; provide professional job supervision, and re-shingle the front of the apartment.

8. Respondent applied for and received a building permit for the Noble contract on or about February 27, 2009. Thereafter, Respondent proceeded with work on the property.

9. On or about March 3, 2009, Respondent requested payment from Mr. Noble regarding completion of the roof. J. Ratliff,

acting in his capacity as an agent for Respondent, represented to Mr. Noble that the job was finished and that payment was due and owing. Based upon Mr. Ratliff's representations, Mr. Noble believed that the roof had passed inspection, and that the roof had been installed as presented in the contract. Accordingly, Mr. Noble paid Respondent the full contract price for the job.

10. Unbeknownst to Mr. Noble, the new roof did not pass inspection. In fact, the roof never passed inspection. Initially, Respondent failed to perform minor work to ensure that the roof was water tight. For each deficiency identified by a city inspector, Respondent returned to the job site and made minor repairs.

11. Ultimately, the job could not pass inspection due to the placement of air-conditioning units on the roof of the structure. Respondent did not remove the units prior to installing the new roofing system. In order to assure a water-tight roof, the units would have needed to be removed so that roofing materials could be place underneath. Afterward, the units would have to be re-positioned on the roof. Instead, Respondent sealed around the existing air conditioners as best as could be done, but Respondent's work did not prevent water from intruding below.

12. After a series of failed inspections, on or about July 7, 2009, city officials, Respondent, and the property owner

met at the job site to determine what could be done to cure the roof problems. City officials advised the property owner that the air-conditioning units would need to be moved to allow the installation of roofing material and re-set afterwards.
Mr. Noble did not want to incur the cost of the additional project.

13. Respondent also refused to correct the job so that it could pass inspection. Respondent advised Mr. Noble that it would cost an additional $800.00 to have a licensed person remove the units and re-set them. Respondent and Mr. Noble reached an impasse and neither would compromise. Respondent never returned to the job site, and did not obtain an acceptable inspection for the work performed.

14. Eventually, Mr. Noble had another company re-roof the structure and incurred an additional $7,400.00 in roofing expenses.

15. Respondent did not refund any of Mr. Noble’s money, nor did Respondent honor the terms of the contract. The roof failed not fewer than seven inspections and several of the failures were unrelated to the issue associated with the air-conditioning units.

16. The investigative costs for this case totaled $325.90.

17. Respondent has prior disciplinary action against the license, as noted in Petitioner’s Exhibit C.

18. Respondent's claim that an additional licensee would have been required to remove the air-conditioning units and re-set them, is not mitigation of the circumstances of this case. Respondent had the option of not undertaking a project that required the removal of the air-conditioning units, in order to assure a water-tight result. As the licensed party, Respondent knew or should have known how to install a water-tight roofing system.

CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

20. Section 489.129, Florida Statutes, 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:

*   *   *

(c) Violating any provision of chapter 455.

*   *   *

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

*   *   *

(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 terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

*   *   *

(l) Committing fraud or deceit in the practice of contracting.

*   *   *

(2) If a registrant or certificate holder disciplined under subsection (1) is a

> qualifying agent or financially responsible officer for a business organization and the violation was performed in connection with a construction project undertaken by that business organization, the board may impose an additional administrative fine not to exceed $5,000 per violation against the business organization or against any partner, officer, director, trustee, or member if such person participated in the violation or knew or should have known of the violation and failed to take reasonable corrective action.
>
> (3) The board may specify by rule the acts or omissions which constitute violations of this section.
>
> (4) In recommending penalties in any proposed recommended final order, the department shall follow the penalty guidelines established by the board by rule. The department shall advise the administrative law judge of the appropriate penalty, including mitigating and aggravating circumstances, and the specific rule citation.

21. Section 489.1195, Florida Statutes, provides in part:

> (1) A qualifying agent is a primary qualifying agent unless he or she is a secondary qualifying agent under this section.
>
> (a) All primary qualifying agents for a business organization are jointly and equally responsible for supervision of all operations of the business organization; for all field work at all sites; and for financial matters, both for the organization in general and for each specific job.

22. Subsection 455.227(1)(a), Florida Statutes, provides that making misleading, deceptive, or fraudulent representations

in or related to the practice of the licensee's profession is grounds for disciplinary action.

23. Petitioner has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

24. Clear and convincing evidence is an "intermediate standard." To meet this burden of proof, Petitioner must present more than a "preponderance of the evidence" but less than "beyond and to the exclusion of a reasonable doubt." See In re Graziano, 696 So. 2d 744 (Fla. 1997).

25. Clear and convincing evidence as a level of proof entails both a qualitative and quantitative standard. The evidence must be credible, the memories of the witnesses must be clear and without confusion, and the sum total of the evidence must be of sufficient weight to convince the trier of fact, without hesitancy. See Dep't of Children & Families v. F.L., 880 So. 2d 602, 614 (Fla. 2004); Matrix Employee Leasing and FCIC/First Commercial Claims Service v. Sharon Pierce, 985 So. 2d 631 (Fla. 1st DCA 2008).

26. In this case, Petitioner has presented evidence to violations of law. All of the alleged conduct dealt with the

contract between Respondent and Ray and Loretta Noble. In no particular order, the following conclusions are made:

A. Respondent through employee, J. Ratliff, made misleading and deceptive representations to Ray Noble. Specifically, J. Ratliff led Mr. Noble to believe that the roof had passed inspection, when it had not. J. Ratliff led Mr. Noble to believe that the roof would pass inspection, when it could not.

B. Respondent abandoned the job when city officials advised the roof could not pass inspection, unless the air-conditioning units were removed and the roof re-surfaced underneath the air-conditioning units.

C. Ray and Loretta Noble paid for a new roof for the structure twice.

D. Respondent obtained the required permit for the roofing job, but did not achieve a successful inspection. Implicit in a requirement for inspection is the verification that the work performed will pass inspection.

E. Respondent did not competently perform the roofing work for the consumer since the roof would not pass inspection.

27. Petitioner has established by clear and convincing evidence that Respondent's conduct in this case constitutes a violation of state law and the rules governing roofing contractors.

28. Linda R. Ratliff is individually responsible for the business entity licensed through her qualifications. Her son, J. Ratliff, acted on behalf of the business entity. J. Ratliff misrepresented the status of the work performed under the contract. The roof was not completed; it could not pass inspection. If J. Ratliff had assessed the roof correctly, Mr. Noble would have known from the outset of the transaction that the air-conditioning units would have to be removed and returned in order to achieve a water tight seal under them. J. Ratliff led Mr. Noble to believe it was not necessary to make the additional expenditure since the sealing around the air-conditioning units would be acceptable. Clearly, it was not. Additionally, when city officials advised Respondent, regarding what would be required to pass inspection, Respondent walked off the job. As the licensed entity that pulled the permit for the job, Respondent should have completed the job and achieved a successful inspection. The debate of who would pay for the additional expenses would have been resolved as contemplated in the contract.

29. For purposes of this order, Counts I and IV of the Administrative Complaint are, in essence, the same violation. It is found that Petitioner has established by clear and convincing evidence that Respondent made misleading and deceptive, or committed deceit in the practice of contracting in

violation of law, as alleged in Counts I and IV of the Administrative Complaint.

30. Additionally, Petitioner established by clear and convincing evidence that Respondent abandoned the job without just cause, or failed to complete the work without just cause for 90 consecutive days. Respondent did not complete the roof, and failed to work the job after June 16, 2009. On that date, the inspection noted that seams were not properly lapped and sealed. Respondent never returned to complete the job despite the inspection failure in July 2009. The abandonment and subsequent financial injury to the customer establishes the violations set forth in Counts II and III of the Administrative Complaint.

31. Counts VI and VII are deemed cumulative and repetitive of the same violations stated elsewhere. The factual basis for all violations stem from the single contractual relationship between Respondent and Ray and Loretta Noble.

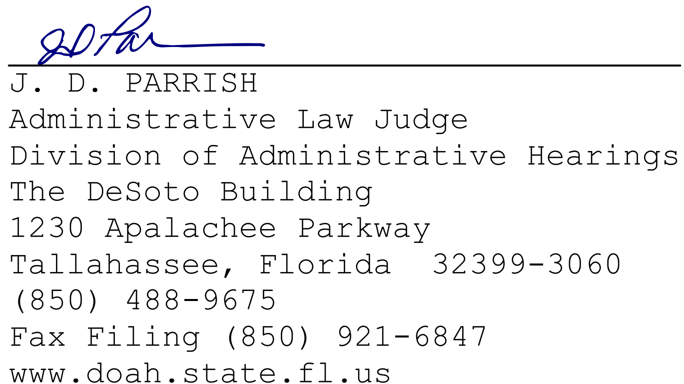
32. As to the appropriate penalty for the violations noted above, it is determined that Respondent’s past history of disciplinary actions must be considered in the recommendation of an appropriate penalty. Probation and administrative fines imposed in the past have not resulted in correction to Respondent’s business practice. In reaching the recommendation

below, due consideration has been given to the provisions of Florida Administrative Code Chapter 61G4-17.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding Respondent guilty of violating the provisions of law found in Counts I, II, III, IV, VI, and VII. Based upon the guidelines, past disciplinary actions against the Respondent, and a totality of the circumstances, it is further recommended that an administrative fine in the amount of $5000.00 be imposed for the violations noted above. Also, it is recommended that Respondent's license be suspended for six months. Finally, it is recommended that Respondent be required to reimburse Petitioner for the investigative and other costs incurred in this case to the full extent allowed by law.

DONE AND ENTERED this 30th day of December, 2010, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 30th day of December, 2010.

ENDNOTE

[1/] All statutory references are to Florida Statutes (2009), unless otherwise indicated.

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.