

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)
)
 Petitioner,)
)
 vs.) Case No. 10-9214PL
)
 ARLENDER MILLER, A LICENSED)
 SEPTIC TANK CONTRACTOR AND)
 QUALIFIER FOR MS. ROOTER, INC.,)
 A FLORIDA CORPORATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee, Florida, on December 3, 2010. The agency, attorney for the agency, witnesses, and court reporter participated by videoconference in Miami, Florida. Respondent made no appearance at the hearing.

APPEARANCES

For Petitioner: Jenea M. Reed, Esquire
Miami-Dade County Health Department
8323 Northwest Twelfth Street, Suite 214
Miami, Florida 33126

For Respondent: no appearance

STATEMENT OF THE ISSUES

The issues are whether Respondent has violated the standards of practice in septic tank contracting, Florida

Administrative Code rule 64E-6.022, and, if so, the penalty.

(All references to Respondent are to Arlender Miller. All references to Ms. Rooter are to Ms. Rooter, Inc.)

PRELIMINARY STATEMENT

By Administrative Complaint dated February 13, 2009, Petitioner alleged that, at all material times, Respondent was a registered septic tank contractor and qualifier for Ms. Rooter, Inc., for which he also served as vice president. The Administrative Complaint alleges numerous violations arising from three jobs.

The first alleged job concerns property located at 14950 North Miami Avenue, Miami. The Administrative Complaint alleges that, on February 20, 2008, Ms. Rooter submitted to the owner of this property a "bill" for the installation of a 1000-square-foot drainfield and 300-gallon dosing tank and an immediate tank pump-out. Respondent and the property owner allegedly signed the "bill," which operated as a contract.

The "bill" allegedly stated a total contract price of \$10,000 and acknowledged a deposit of \$5,000 paid by the property owner by check dated February 21, 2008. The Administrative Complaint alleges that, on March 4, 2008, Respondent, as agent of the property owner, applied to Petitioner for a permit to repair the septic tank system. However, the application allegedly omitted any reference to any

dosing tank. On April 11, 2008, Petitioner allegedly issued a permit, which did not include the installation of any dosing tank. When Petitioner's inspector inspected the repaired septic tank system on April 23, 2008, the inspector allegedly did not observe a newly installed dosing tank. The Administrative Complaint alleges that the final bill sent by Ms. Rooter to the property owner included a charge for a 300-gallon dosing tank, even though none had been installed.

The Administrative Complaint alleges that Respondent thus violated Florida Administrative Code rule 64E-6.022(1)(b), (k), and (l), which, detailed below, generally prohibits, respectively, work without a permit, fraud, and gross negligence. Due to a miscitation, Petitioner alleged a violation of rule 64E-6.022(1)"(b)(2)e.," which is not a rule, but intended to allege a violation of rule 64E-6.022(1)(e), which prohibits false payment statements for work not performed.

The Administrative Complaint alleges that the permit required Respondent to install a 2,575-gallon septic tank. The Administrative Complaint alleges that Respondent's failure to include this item in the contract with the owner constituted either an attempt to defraud or gross negligence, as this requirement of Petitioner is allegedly well known among experienced septic tank contractors.

The Administrative Complaint alleges that Respondent installed two 1,200-gallon septic tanks in series on the property. The Administrative Complaint alleges that the substitution of two tanks with a total capacity of 2,400 gallons for a single 2,575-gallon septic tank constituted fraud or gross negligence, as well as a violation of Florida Administrative Code rule 64E-6.022(1)(p), which generally prohibits the repair, modification, or installation of a septic tank system that fails to meet the standards of section 381.0065 or 381.00655, Florida Statutes, or Florida Administrative Code chapter 64E-6--also detailed below. The Administrative Complaint alleges that Florida Administrative Code rule 64E-6.013(2) provides that, if two septic tanks are installed in series, the first must provide two-thirds of the required capacity for the tanks, and the total capacity of the tanks must equal or exceed the total required capacity. The Administrative Complaint alleges that Respondent's installation of two equal-sized septic tanks constituted fraud, gross negligence, or the repair, modification, or installation of a septic tank system that fails to meet the standards of section 381.0065 or 381.00655, Florida Statutes, or Florida Administrative Code chapter 64E-6.

Lastly, as to the first job, the Administrative Complaint alleges that Respondent abandoned the job, leaving unfinished a trench that had been excavated to run electrical service to the

unpermitted dosing tank. In November 2008, months after the last work had been performed by Respondent or Ms. Rooter, the property owner filled the trench to eliminate a potentially dangerous condition for pedestrians. The Administrative Complaint alleges that Respondent thus violated Florida Administrative Code rule 64E-6.022(1)(g), which prohibits the abandonment of a job for 30 consecutive days or more without good cause.

The second job concerns property located at 9999 Northeast Second Avenue, Miami. The Administrative Complaint alleges that, on September 26, 2008, Respondent, as agent for the property owner, submitted to Petitioner an application to repair a septic tank system for a 47,771-square-foot office building located on the property. The Administrative Complaint alleges that, prior to granting the permit, on October 1, 2008, Petitioner's inspector visited the property to verify commercial flow and found that Respondent had already commenced construction of the drainfield. Additionally, the inspector allegedly found a sanitary nuisance at the site of the drainfield that was under construction. The Administrative Complaint alleges that Petitioner's inspector posted on the property, on October 1, 2008, an Official Notice to Abate Sanitary Nuisance (ONASN). The ONASN allegedly described the inspector's findings of an "opened drainfield with contaminated

material, creating conditions capable of breeding flies, mosquitoes and other arthropods capable of transmitting diseases."

By letter dated October 2, 2008, Petitioner allegedly advised Respondent that, pursuant to section 381.0065, Florida Statutes, the Department of Environmental Protection, not Petitioner, had jurisdiction over the septic tank repair proposed for the property because the flow exceeded 5,000 gallons per day. The Administrative Complaint alleges that Respondent performed work without a permit, committed fraud, and committed gross negligence.

The third job concerns property located at 101 Northeast 195th Street, Miami. The Administrative Complaint alleges that, on September 2, 2008, Respondent submitted to the property owner a "bill"--again, a contract--to obtain a permit and install a new drainfield in return for a payment of \$2,600. The "bill" allegedly provided a 10-year warranty, if the owner arranged for Ms. Rooter to pump out the tank every two years, for which the charge would be \$325. The "bill" also provided that Respondent "will run line at no charge." The property owner allegedly signed the "bill" on September 2, 2008.

On September, 10, 2008, Respondent, as agent for the property owner, allegedly submitted to Petitioner an application for a permit to repair the septic tank system. On September 22,

2008, prior to the issuance of a permit, Petitioner received a complaint that, without a permit, Respondent had performed the drainfield work and run a water line. On the same day, Petitioner's inspector visited the site and allegedly discovered the installation of three drain lines servicing the drainfield, the covering of the system without an inspection by Petitioner, and the replacement of a damaged water line with a new water line over the drainfield.

On September 26, 2008, Petitioner allegedly issued a permit for the repair of the septic tank system at the property. On September 29, 2008, Petitioner allegedly approved the drainfield repair at the property. The Administrative Complaint alleges that Respondent thus performed work without a permit, committed fraud, and committed gross negligence.

The Administrative Complaint alleges that Respondent has previously been disciplined in the form of fines totaling \$4,750 for similar violations in 1999, 2000, 2002, 2004, and 2007. The Administrative Complaint requests the revocation of Respondent's license, the imposition of a fine of \$15,000, and the revocation of the right of Ms. Rooter to be qualified to perform septic tank contracting.

The relief sought against Ms. Rooter is problematic, if it purports to mean anything more than that the corporation would require a new qualifier if Respondent's registration were

revoked. Nothing in the Administrative Complaint suggests that it was served on Ms. Rooter. The Notice of Rights refers to "Respondent" and refers to Respondent as "he" and "him."

The present case arises out of an earlier Administrative Complaint that commenced DOAH Case No. 09-3508PL. The style of the two Administrative Complaints are identical in their description of a single respondent, although they identify the single respondent as "Respondents." Petitioner's subsequent pleadings refer in the style to "Respondent" in the singular. The sole request for hearing was completed by an attorney who represented only Respondent; thus, nothing of record suggests that Ms. Rooter, if aware of the case, ever requested a hearing.

The first case concluded when, on October 9, 2009, counsel for Petitioner and counsel for Respondent filed a joint motion for continuance based on pending settlement negotiations. The Administrative Law Judge then assigned to the case entered an Order Closing File. The next pleading was filed by Petitioner, on September 16, 2010, when it filed a motion to reopen the file due to the failure of settlement negotiations to resolve the dispute. The reopened case was assigned DOAH Case No. 10-9214PL.

At the hearing, Petitioner called three witnesses and offered into evidence 12 exhibits, which were all admitted. Respondent did not appear at the hearing.

The parties did not order a transcript. Petitioner filed a proposed recommended order on December 7, 2010.

FINDINGS OF FACT

1. At the times of the alleged jobs, Respondent was registered as a septic tank contractor and served as the qualifying agent for Ms. Rooter. At the time of all three jobs, Respondent had apparent authority to serve as the agent of Ms. Rooter in contracting for and performing the septic tank contracting work described below. However, nothing in the record establishes any relationship between Respondent and Ms. Rooter at the time of the issuance of the Administrative Complaint, so as to justify treating the notice of this proceeding, when served upon Respondent, as notice to Ms. Rooter.

2. Hans Seffer, who testified, is the son of the woman who owns the apartment complex located at 14950 North Miami Avenue, Miami. Mr. Seffer found Ms. Rooter on the internet and spoke with Carolyn Futch, operations manager of Ms. Rooter, about septic tank contracting services needed at the apartment complex. Respondent later met with Mr. Seffer at the property.

3. Initially, Mr. Seffer believed that the existing septic tank needed only to be pumped out. However, upon inspection, Respondent determined that the system also required a new drainfield, pump, and dosing tank. Accordingly, on February 20,

2008, Respondent, as "technician," and either Mr. Seffer or his mother signed a one-page contract on a form identifying the contractor as Ms. Rooter, license number SA0071430. The contract describes the following work:

Install 1,000 sq. ft. drainfield with 300 gallon dosing tank including immediate (2/21/08) tank pump out. Additionally if tank requires pumpout prior to securing all necessary permits, Ms. Rooter will perform pumpout at no additional cost. Manhole cover included.

Respondent and either Mr. or Mrs. Seffer initialed this section of the contract. The contract states that the total due for this work is \$10,500. Ms. Seffer paid \$5,000 by check on February 21, 2008, leaving a \$5,500 balance due.

4. On March 1, 2008, Respondent, as agent for Ms. Rooter and on behalf of the property owner, submitted to Petitioner an application for a construction permit for an onsite sewage disposal system. The application describes the property improvements as a multifamily complex with ten bedrooms and 5,284 square feet of building space. The site plan attached to the application states: "Replace drainfield only."

5. On April 2, 2008, Ms. Futch emailed Mr. Seffer to confirm an earlier discussion between them. The discussion addressed a requirement of Petitioner that Ms. Rooter install a second tank. The email states that the property owner will pay \$5,600 for the installation of a "2nd tank (1,050-gal)," so the

new total contract price is \$11,100. This email restates the scope of the work as the installation of a 1,000-square-foot drainfield and 300-gallon dosing tank. By return email two days later, Mr. Seffer agreed to the additional work.

6. On April 11, 2008, Petitioner issued to the property owner a construction permit that specifies a 2,575-gallon septic tank and a 1,000 square-foot drainfield. The permit states: "The licensed contractor installing the system is responsible for installing the minimum category of tank in accordance with sec. 64E-6.013(3)(f), F.A.C." This rule does not refer to tank capacities.

7. On April 23, 2008, Petitioner issued a "construction inspection and final approval" form that shows the installation of two 1,200-gallon septic tanks and a 1,005-square-foot drainfield. The form states that items bearing an "X" are "not in compliance with statute or rule and must be corrected." The construction and final system are approved by Petitioner's inspector.

8. During the course of the work, Respondent told Mr. Seffer that the existing tank was damaged and needed to be replaced, at an additional cost of \$5,000, so the remaining balance rose to \$16,100. Mr. Seffer agreed to this change. By email dated April 30, 2008, to Mr. Seffer, Ms. Futch confirmed the additional cost of \$5,000 for the second septic tank and

expressed "hope [that] Ms. Rooter has met your expectations." The email acknowledges, however, that "we must complete the electrical portion of the job."

9. On May 2, 2008, Mr. Seffer sent Ms. Rooter two checks totaling \$15,000, leaving a balance of \$1,100. On the same date, Mr. Seffer sent Ms. Futch an email that, pursuant to their agreement, he would retain this amount for the "electric and final raking work."

10. By email dated May 27, 2008, to Ms. Futch, Mr. Seffer noted that the manhole that Ms. Rooter had installed in the middle of the lawn was not level and was sunken, presenting a tripping hazard; the final grading was incomplete, leaving low spots and holes; a large rock remained near the palm tree and needed to be removed. Mr. Seffer sent Ms. Futch a reminder email on June 4, 2008, that resent the May 27 email.

11. Mr. Seffer sent another email to Ms. Futch on June 21, 2008. In it, he notes that a Ms. Rooter employee worked on digging an electrical trench on June 13, but left mid-day, and no work had been performed since that day. In the meantime, recent rains had revealed a lack of compaction in the backfilling done by Ms. Rooter, as the fill had settled and undermined a sidewalk. After failing to obtain a response, on July 26, 2008, Mr. Seffer sent a final email to Ms. Futch warning her that he would file complaints with governmental

agencies and advising that the unconnected pump was not pumping sewage throughout the entire system.

12. The record does not contain the contracts for the septic tank contracting services involved in the second and third jobs alleged in the Administrative Complaint. Also, Petitioner did not present the testimony of the property owners involved in these jobs. The record for these jobs is limited to the permitting documentation.

13. On September 26, 2008, as agent of Ms. Rooter and on behalf of the property owner, Shoreview Properties, Respondent submitted an application for a construction permit for an onsite sewage disposal system for 9999 Northeast 2nd Avenue, Miami Shores. This application describes the property as commercial with a 47,771 square-foot building.

14. On October 1, 2008, Petitioner's inspector inspected the property. The inspector found an opened drainfield area with contaminated material and other conditions capable of hosting various disease vectors. He also found a backhoe and worker, who claimed that someone else had excavated the drainfield. The inspector immediately posted an ONASN, pursuant to the authority of chapter 386, Florida Statutes, that required the immediate abatement of the listed insanitary conditions. The inspector also determined that the existing onsite sewage

disposal system exceeded Petitioner's jurisdictional threshold of 5,000 gallons per day.

15. On September 10, 2008, as agent of Ms. Rooter and on behalf of the property owner, Lisa Mullin, Respondent submitted to Petitioner an application for a construction permit for an onsite sewage disposal system for 101 Northeast 195th Street, Miami. This application describes the property as 0.19 acres, on which is situated a single family residence comprising 1,663 square feet and three bedrooms.

16. On September 22, 2008, an agent of the property owner called Petitioner and complained that Ms. Rooter had commenced the work without having first obtained a permit. Petitioner's inspector visited the site on the same day and found "very recent" earthwork. The owner informed the inspector that the contractor had installed three drainlines, cut an old water line, and installed a new water line over the drainfield. However, the record fails to establish the amount of time that elapsed between the work claimed to have been performed by Ms. Rooter and the report by the property owner.

17. Respondent has paid numerous fines imposed by Petitioner for improper septic tank contracting. In 1999, Respondent paid a fine in an unspecified amount for performing an unpermitted drainfield repair and making the repair without the required filter sand. On January 27, 2000, Respondent paid

a fine of \$250 for performing unpermitted system repairs. On February 4, 2000, Respondent was assessed a fine of \$1,000 for performing unpermitted and uninspected system repairs and failing to honor a warranty. On January 8, 2004, Respondent received a cease and desist order for qualifying more than one septic tank contracting business. In 2007, Respondent paid separate fines of \$1,500 and \$1,000 for illegal septic tank contracting work in Dade and Monroe counties, respectively.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2010).

19. Section 381.0065(3) (a) and (b), Florida Statutes, authorizes Petitioner to adopt rules and generally regulate onsite sewage disposal systems. Section 381.0065(3) (b) specifically authorizes Petitioner to review applications, conduct site inspections, and investigate complaints for residential onsite sewage disposal systems with estimated sewage flows of up to 10,000 gallons per day and commercial onsite sewage disposal systems with estimate sewage flows of up to 5,000 gallons per day. Section 381.0065(3) (h) authorizes Petitioner to enforce section 381.0065; part I of chapter 386, Florida Statutes; part III of chapter 489, Florida Statutes; and any rules adopted pursuant to any of these statutes. Section

381.0065(3)(h) authorizes Petitioner to impose fines, suspensions, revocations, and emergency orders, among other things, to enforce these provisions of law.

20. Section 381.0065(4), Florida Statutes, prohibits any person from construction, repairing, modifying, operating, or abandoning an onsite sewage disposal system without first obtaining a permit.

21. Section 386.02, Florida Statutes, authorizes Petitioner to notify the responsible party of a sanitary nuisance and require the party to remove or abate the nuisance.

22. Florida Administrative Code rule 64E-6.019(1) requires:

Persons subject to registration - A person shall be subject to the requirements of this rule if he or she contracts or advertises to provide services to the public or holds himself or herself out as being capable of performing services related to any of the following activities in the onsite sewage treatment and disposal industry regulated by the department:

- (a) Installation of onsite sewage treatment and disposal systems,
- (b) Repair of onsite sewage treatment and disposal systems,
- (c) Modification of onsite sewage treatment and disposal systems,
- (d) Maintenance of onsite sewage treatment and disposal systems,
- (e) Septic tank pumping and septage disposal services, excluding companies which only provide portable toilet or temporary holding tank services,
- (f) Abandonment of an onsite sewage treatment and disposal system.

23. Florida Administrative Code rule 64E-6.023 authorizes certification of corporations. However, this rule does not address the disciplining of the certificates of corporations. Of relevance to this case, rule 64E-6.023(3) provides only that, if a corporation loses its sole qualifier, it must obtain another qualifier within 60 days.

24. Florida Administrative Code rule 64E-6.022 provides:

(1) It shall be the responsibility of persons registered under this rule to see that work for which they have contracted and which has been performed by them or under their supervision is carried out in conformance with the requirements of all applicable Florida Statutes and Chapter 64E-6, F.A.C. The following actions by a person included under this rule shall be deemed unethical and subject to penalties as set forth in this section. The penalties listed shall be used as guidelines in disciplinary cases, absent aggravating or mitigating circumstances and subject to other provisions of this section

* * *

(b) Permit violations.

1. Contractor initiates work to install, modify, or repair a system when no permit has been issued by the department. A permit is issued after construction is started but prior to completion of the contracted work. No inspections are missed. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine and 90 day suspension or revocation.

2. Contracted work is completed without a permit having been issued, or no permit application is received until after contracted work was completed, resulting in

missed inspection or inspections. First violation, letter of warning or fine up to \$1,000; repeat violation, revocation.

* * *

(e) False payment statements which are the result of assessing charges to a customer for work not performed. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine and one year suspension or revocation.

* * *

(g) Abandoning for 30 consecutive days, without good cause, a project in which the contractor is engaged or under contractual obligation to perform. First violation, letter of warning or fine up to \$500; repeat violation, revocation.

* * *

(k) Practicing fraud or deceit, making misleading or untrue representations. First violation, letter of warning or fine up to \$500; repeat violation, revocation.

(l) Gross negligence, incompetence, or misconduct which:

1. Causes no monetary or other harm to a customer, or physical harm to any person. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine and 90 day suspension or revocation.

2. Causes monetary or other harm to a customer, or physical harm to any person. First violation, letter of warning or fine up to \$500 and 90 day suspension; repeat violation, \$500 fine and revocation.

* * *

(p) Installation, modification, or repair of an onsite sewage treatment and disposal system in violation of the standards of Section 381.0065 or 381.00655,

F.S., or Chapter 64E-6, F.A.C. First violation, letter of warning or fine up to \$500 per specific standard violated; repeat violation, 90 day suspension or revocation.

* * *

(t) The absence of any violation from this section shall be viewed as an oversight, and shall not be construed as an indication that no penalty is to be assessed.

(2) Circumstances which shall be considered for the purposes of mitigation or aggravation of penalty shall include the following:

(a) Monetary or other damage to the registrant's customer, in any way associated with the violation, which damage the registrant has not relieved, as of the time the penalty is to be assessed.

(b) Actual job-site violations of this rule or conditions exhibiting gross negligence, incompetence or misconduct by the contractor, which have not been corrected as of the time the penalty is being assessed.

(c) The severity of the offense.

(d) The danger to the public.

(e) The number of repetitions of the offense.

(f) The number of complaints filed against the contractor.

(g) The length of time the contractor has practiced and registration category.

(h) The actual damage, physical or otherwise, to the customer.

(i) The effect of the penalty upon the contractor's livelihood.

(j) Any efforts at rehabilitation.

(k) Any other mitigating or aggravating circumstances.

(3) As used in this rule, a repeat violation is any violation on which disciplinary action is being taken where the

same licensee had previously had disciplinary action taken against him or received a letter of warning in a prior case. This definition applies regardless of the chronological relationship of the violations and regardless of whether the violations are of the same or different subsections of this rule. The penalty given in the above list for repeat violations is intended to apply only to situations where the repeat violation is of a different subsection of this rule than the first violation. Where the repeat violation is the very same type of violation as the first violation, the penalty set out above will generally be increased over what is shown for repeat violations.

(4) Where several of the above violations shall occur in one or several cases being considered together, the penalties shall normally be cumulative and consecutive.

* * *

25. Petitioner must prove the material allegations by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern and Co., Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

26. Petitioner has proved three violations in the first job. In his initial quote, Respondent included a dosing tank, drainfield, and pump. But the application that he filed omitted a dosing tank, as did the ensuing construction permit. Had Respondent installed the dosing tank, this would have been work for which no permit was issued, in violation of Florida

Administrative Code rule 64E-6.022(1)(b). Because Respondent never installed the dosing tank, he violated rule 64E-6.022(1)(e) because he falsely billed for work that was not performed. This violation better describes the acts and omissions of Respondent in connection with the dosing tank than does the allegation of fraud or gross negligence.

27. The installation of two 1,200-gallon septic tanks to meet the permit requirement of septic tank with a capacity of 2,575 gallons violates Florida Administrative Code rule 62E-6.013(2)(a), which requires the first tank in a series of two to hold at least two-thirds of the required effective capacity, for systems handling less than 3,500 gallons per day. The record establishes that this multifamily system serves less than 3,500 gallons per day based on the inference that a flow of over 3,500 gallons per day would require a tank with a capacity much greater than 2,575--less than two-thirds of a day's worth--gallons of septage. Thus, Respondent has violated Florida Administrative Code rule 64E-6.022(1)(p), which prohibits a violation of section 381.0065, Florida Statutes. Respondent violated section 381.0065 by violating rule 64E-6.013(2)(a).

28. The argument that Respondent's installation of two equal-sized tanks in series constitutes gross negligence or fraud is unproved. Absent additional evidence of the extent to which this action departs from customary contractor practice, it

is impossible to characterize this action as sufficiently egregious, so as to constitute gross negligence or fraud, when Petitioner itself approved the installation of these two, equal-sized tanks in series. Due to the absence of evidence of the extent to which Petitioner's initial failure to quote a new septic tank departs from customary contractor practice, Petitioner has similarly failed to prove gross negligence or fraud in this failure by Respondent.

29. Respondent abandoned the job in violation of Florida Administrative Code rule 64E-6.022(1)(g). Given several chances to finish the electric trench, as well as the clean-up and surface recontouring, which were unalleged, Respondent failed to respond, except by supplying a laborer for part of a day. Over 30 days elapsed from this final performance of any work on the site, and, despite repeated requests from Mr. Seffer, Respondent abandoned the job without ever completing the electric trench.

30. Petitioner failed to link Respondent to the work performed in the second and third jobs. The complaining property owner in the third job did not testify, so his hearsay statement that Ms. Rooter had performed work without a permit cannot support a finding that Respondent is guilty of this act. Petitioner must therefore dismiss these charges, as well as the charges not proved in connection with the first job.

31. In addition to the lack of notice to Ms. Rooter discussed in the Preliminary Statement above, Petitioner failed to demonstrate a clear intent to charge Ms. Rooter for the acts and omissions of its qualifier. Petitioner must therefore dismiss any charges against Ms. Rooter, which, if still in existence, will remain subject to the requirement of having a registered qualifier in order to perform septic tank contracting services.

32. Fines have not deterred Respondent from continuing his practice of violating the requirements imposed on septic tank contractors. Although the injury done to Mrs. Seffer may not have been substantial, largely due to Mr. Seffer's vigilance in holding a retainage for the unfinished work, the multiple violations on this job alone demonstrate a shoddiness in contracting that Respondent has been unable or unwilling to correct for ten years. Respondent even failed to maintain contact with this proceeding through its conclusion. More fines or even a suspension would only award Respondent's blatant disregard of the regulatory framework imposed on septic tank contracting and Petitioner's efforts to discharge its statutory responsibilities within that framework.

RECOMMENDATION

It is

RECOMMENDED that Petitioner enter a final order finding Respondent guilty of the three violations identified in paragraphs 26, 27, and 29 above, dismissing the remaining charges against him, dismissing any charges against Ms. Rooter, and revoking Respondent's septic tank contracting registration.

DONE AND ENTERED this 31st day of January, 2011, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of January, 2011.

COPIES FURNISHED:

Arlender Miller
640 Northwest 129th Street
Miami, Florida 33168

Jenea Reed, Esquire
Miami Dade County Health Department
8323 Northwest 12th Street, Suite 214
Miami, Florida 33126

R.S. Power, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1701

E. Renee Alsobrook, Acting General Counsel
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1701

Shairi Turner, Deputy Secretary
Department of Health
4052 Bald Cypress Way, Bin A00
Tallahassee, Florida 32399-1701

Kim Berfield, Deputy Secretary
Department of Health
4052 Bald Cypress Way, Bin A00
Tallahassee, Florida 32399-1701

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 must be filed with the agency that will issue the final order in this case.