

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
ELECTRICAL CONTRACTORS)
LICENSING BOARD,)
)
Petitioner,)
) Case No. 11-3817
vs.)
)
BOBBY SEROTA, D/B/A ACADEMY)
ELECTRIC INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on October 27, 2011, at video teleconferencing sites in West Palm Beach and Tallahassee, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings, in accordance with the authority set forth in sections 120.569 and 120.57(1), Florida Statutes (2011).¹

APPEARANCES

For Petitioner: C. Erica White, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399

For Respondent: Bobby Serota, pro se
9438 Peabody Court
Boca Raton, Florida 33496

STATEMENT OF THE ISSUES

In this disciplinary proceeding, the issues are:

- (1) Whether Respondent committed the violations alleged in the Amended Administrative Complaint issued by Petitioner; and
- (2) Whether disciplinary penalties should be imposed on Respondent if Petitioner proves one or more of the violations charged in its Amended Administrative Complaint.

PRELIMINARY STATEMENT

On March 25, 2011, the Department of Business and Professional Regulation, Electrical Contractors Licensing Board ("Petitioner" or "Department"), issued a two-count Amended Administrative Complaint against Bobby Serota, d/b/a Academy Electric Inc., wherein it was alleged that Respondent had violated various provisions of chapter 489, Florida Statutes. Respondent timely requested a formal hearing to contest these allegations, and the matter was referred to the Division of Administrative Hearings on July 29, 2011.

The presiding administrative law judge set the final hearing for October 6, 2011. Pursuant to an order, the case was continued and re-scheduled. The case then proceeded as re-scheduled on October 27, 2011. Both parties appeared at the appointed place and time.

At hearing, Petitioner presented the testimony of two witnesses: Valeda Jennings, Investigation Specialist II; and

Thomas Moreland Sheats, the Complainant in this matter. Petitioner Exhibits 1 through 3, 5 through 7, 9 through 11, and 13, 14, and 1A were offered and received into evidence. Respondent testified on his own behalf. Respondent Exhibits 1 through 10 were offered and received into evidence.

At the request of the Petitioner, official recognition was taken of the applicable statutory provisions.

The proceeding was recorded and transcribed. The Transcript of the record was filed on November 10, 2011, with the Division of Administrative Hearings. The parties filed timely Proposed Recommended Orders, which have been considered in the preparation of the Recommended Order.

FINDINGS OF FACT

1. Respondent, Bobby Serota ("Serota" or "Respondent"), was issued license number EC 1485 by Petitioner. He has been an electrician for over 60 years.

2. Serota was first licensed in Florida on April 16, 1994. Serota's license expires on August 31, 2012.

3. Approximately 10 years ago Serota opened a company, Academy Electric Inc. The company provides electrical types of installation work for commercial, industrial, and residential clients.

4. Serota is the qualifier for Academy Electric. Inc. and the company is named on Respondent's electrical contractors' license.

5. In January 2007, Serota answered an advertisement² in the Sun Sentinel for an "Exp Master 5-10 yrs \$30hr start+profit sharing" by submitting his resume. Rescue Me Electrician, LLC ("Rescue Me") hired Serota as a project manager employee.

6. Rescue Me is not licensed to perform electrical contracting in the State of Florida.

7. Serota accepted the job with Rescue Me knowing the company was not licensed to practice electrical contracting in the State of Florida. Serota accepted the position and informed the owners that he would help them establish their business in Florida.

8. Thomas Sheats ("Sheats") is the homeowner of a residence at 14501 Old Sheridan Street ("residence"). Sheats contacted Rescue Me for a price quote to perform electrical work to fix his residence which was damaged by Hurricane Wilma.

9. In March 2007, Renaldo Morales ("Morales"), the owner of Rescue Me, sent Serota to Sheats' residence to evaluate the cost, time and materials required to complete the job.

10. Sheats provided Serota a rough sketch of the work. Serota informed Sheats a better set of plans was needed to fully evaluate the job because the rough sketch was incomplete, but he

would provide a price based on what he thought the work involved for the residence restoration.

11. On or about March 13, 2007, Sheats entered a Home Improvement Contract with Rescue Me for residential restoration "as per the updated 'rough' draft."³

12. The contract listed the parties as "Rescue Me Electrical, LLC 'DBA' Academy Electric ('Contractor') and Mr. and Mrs. Tom Sheat[s] ('Owner')." ⁴

13. Serota witnessed and initialed the changes in the contract that Sheats made to the terms in the payment schedule and down payment sections. The total contract price was \$15,000.00.

14. Serota's license number EC 1485 and Rescue Me Electrician, LLC appeared at the top of the contract.

15. Morales signed the final contract with Sheats.

16. On or about March 14, 2007, Sheats paid Rescue Me a deposit of \$7,500.00, 50 percent of the restoration project costs. Sheats gave the check to Serota.

17. Sheats obtained and paid for all the building permits for the residential restoration.

18. After the contract was signed, Serota made several trips back and forth to Sheats' residence attempting to get a complete set of plans and to check on the progress in order to determine when the electrical work could begin. Once the roof

was closed in, Sheats allowed Serota to go in and start doing rough electrical installation.

19. In August 2007, Rescue Me began the electrical work at the Sheats residence earlier than Sheats wanted by installing the receptacle boxes and wiring between them.

20. Rescue Me completed approximately 25 to 35 percent of the work. However, the parties came to a standstill at some point and could not agree on how to move forward on the electrical job.

21. On or about September 7, 2007, Rescue Me could not proceed without changes and Serota sent proposed changes by fax to Sheats, including costs and what was involved to complete the work. The fax heading included Rescue Me named as the company and Serota's license number EC 1485.⁵

22. Sheats disagreed with the proposed changes. On or about September 25, 2007, Sheats faxed Morales the following instructions: "No changes are authorized from original permit drawing and your bid. Please complete specified work in its entirety within the next 2 weeks."⁶

23. Morales and Sheats faxed back and forth regarding their differences. Serota tried to explain the different plan but Sheats refused to change very far from the original plans.

24. Rescue Me stopped the work at the Sheats residence when it terminated Serota and paid him his last check for the week of September 13, 2007, through September 19, 2007.

25. In October, the Rescue Me and Sheats tried to resolve their differences. On October 3, 2007, Sheats met with Rescue Me to discuss the contents of the September 7, 2007, fax. Sheats informed Rescue Me that he did not want any changes made because of the pricing and Rescue Me was to do the rough electrical as specified in the original bid.

26. On or about October 13, 2007, Sheats sent a fax to Morales which stated:

I am not paying a restart fee of any kind. I never asked you prior to our meeting on 10/3/07 to start this job. I went out of my way to accommodate you getting a "head start" in August. When you were insistent on it.

I have delayed progress on the job from October 8 until October 15 to accommodate you doing another job before you started on mine.

If your crew is not on the jobsite Monday 10/15/07, I shall conclude you have abandoned the job. Subsequently, I shall hire a replacement contractor and then pursue legal remedy against you for recovery of costs including the \$7500 I paid you in March and attorneys fees.

Tom Sheats^[7]

27. Rescue Me did not do any further work on the Sheats' residence.

28. On October 18, 2007, Sheats paid a deposit of \$5,500.00 and hired Carefree Constuction to complete the electrical work Rescue Me did not complete. Carefree Construction cashed the check on October 24, 2007. Sheats paid a second installment in the amount of \$5,200.00 by check dated November 2, 2007, and the final amount of \$1,000.00 on February 28, 2008, for a total of \$11,700.00.⁸

29. Sheats filed a complaint with Petitioner regarding Rescue Me not completing the job.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011).

31. Section 489.533(1)(1), under which Respondent has been charged in Count I, sets forth the acts for which the Petitioner may impose discipline. This statute provides, in pertinent part:

(1) The following acts shall constitute grounds for disciplinary actions as provided in subsection:

* * *

(1) Acting in the capacity of a contractor under any certificate or registration issued hereunder except in the name of the certificateholder or registrant as set forth on the issued certificate or registration or

in accordance with the personnel of the certificateholder or registrant as set forth in the application for the certificate or registration or as later changed as provided in this part.

32. Section 489.533(1)(p), under which Respondent has been charged in Count II, sets forth the acts for which the Petitioner may impose discipline. This statute provides, in pertinent part:

(p) Abandoning a project which the contractor is engaged in or is under contractual obligation to perform. A project is to be considered abandoned after 90 days if the contractor terminates the project without just cause or without proper notification to the prospective owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

33. A proceeding, such as this one, to suspend, revoke, or impose other discipline upon a professional license is penal in nature. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Being penal in nature, section 489.533 "must be construed strictly, in favor of the one against whom the penalty would be imposed." Munch v. Dep't of Prof'l Reg., Div. of Real Estate, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992).

34. Here, Petitioner seeks to discipline Respondent's license and/or to impose an administrative fine. Accordingly, Petitioner has the burden of proving the allegations charged in

the Administrative Complaint against the Respondent by clear and convincing evidence. Dep't of Banking and Fin. Div. of Sec. and Investor Prot. v. Osborne Stern and Co., 670 So. 2d 932, 933-34 (Fla. 1996) (citing Ferris v. Turlington, 510 So. 2d 292, 294-95 (Fla. 1987)); Nair v. Dep't of Bus. & Prof'l Reg., 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

35. Regarding the standard of proof, in Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), the Court of Appeal, Fourth District, canvassed the cases to develop a "workable definition of clear and convincing evidence" and found that of necessity such a definition would need to contain "both qualitative and quantitative standards." The court 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 explicit and the witnesses must be lacking 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 a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Id.

36. A licensee is charged with knowing the practice act that governs his/her license. Wallen v. Fla. Dep't of Prof'l Reg., Div. of Real Estate, 568 So. 2d 975 (Fla. 3d DCA 1990).

37. In this case, Petitioner met its burden of establishing that Respondent contracted in a name other than his

licensed name, Academy Electric. Even though Serota was an employee of Rescue Me, he allowed Rescue Me to use his license number on several business documents during transactions with Sheats. Further, Serota's company Academy Electric was specifically listed as a party to the contract signed on or about March 13, 2007, to which Serota witnessed and initialed the changes. Therefore, Respondent acted in the capacity of a contractor in a name other than as licensed by contracting under the auspices of Rescue Me Electrician, LLC. in violation of section 489.533(1)(1).

38. As to Count II, Petitioner failed to present sufficient credible evidence to demonstrate Respondent abandoned the Sheats electrical job in violation of section 489.533(1)(p). The record demonstrates that Sheats and Rescue Me met on October 3, 2007, to discuss how the job was to proceed and the parties disagreement was still ongoing as late as October 13, 2007, when Sheats sent another fax to Rescue Me. It was only five days later on October 18, 2007, that Sheats contracted with the new contractor to complete the electrical job. Consequently, the record is void of evidence to show Rescue Me was absent from the job for the minimum 90-day period of no work required under the statute since Serota last worked on the residence in September 2007. Therefore, Petitioner failed to

meet its burden and show Respondent in violation of section of 489.533(1) (p) .

Disciplinary Guidelines

39. Pursuant to Florida Administrative Code Rule 61G6-10.002, Petitioner established disciplinary guidelines with a range of penalties that will be imposed on licensees guilty of violating chapter 489.

40. The record is void of any previous discipline against Respondent. Rule 61G6-10.002(3) (1) sets the range of punishment for the first offense of a violation of section 489.533(1) (1) . It mandates punishment "[f]rom noncompliance up to a citation." Hence, based on Serota's 17-year clean licensure record, the undersigned recommends the minimum penalty of a notice of noncompliance for Respondent's violation of section 489.533(1) (1) .

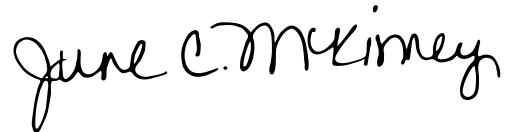
41. Petitioner failed to present any evidence that Respondent should pay either restitution or costs for the investigation or prosecution. Consequently, since there is no proof of the aforementioned, no determination of restitution, investigation or prosecution costs may be made or awarded.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Petitioner enter a final order that: (a) finds Respondent guilty as charged in Count I of the

Amended Administrative Complaint, imposing a notice of noncompliance and (b) finds Respondent not guilty as charged in Count II of the amended Administrative Complaint.

DONE AND ENTERED this 12th day of December, 2011, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of December, 2011.

ENDNOTES

¹ / Unless otherwise indicated, all references are to the 2007 Florida Statutes and 2007 Florida Administrative Code.

²/ Respondent's Exhibit 7.

³/ Petitioner's Exhibit 5.

⁴/ Respondent denied any knowledge of his license number or Academy Electric being used by Rescue Me. Such testimony is rejected as not being credible.

⁵/ Petitioner's Exhibit 3.

⁶/ Respondent's Exhibit 3.

⁷/ Respondent's Exhibit 1.

⁸/ Petitioner's Exhibit 14.

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.