

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TERRENCE DAVIS,

Petitioner,

vs.

Case No. 13-4671

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
ELECTRICAL CONTRACTOR'S
LICENSING BOARD,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Todd P. Resavage for final hearing by video teleconference on March 26, 2014, at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Terrence A. Davis, Pro se
7905 Southwest Seventh Place
North Lauderdale, Florida 33068

For Respondent: Deborah B. Loucks, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to licensure as a certified contractor pursuant to the "grandfathering" provisions of section 489.514, Florida Statutes.

PRELIMINARY STATEMENT

On or about July 23, 2013, Petitioner, Terrence A. Davis, a locally-licensed electrical contractor doing business in Broward County, Florida, applied to Respondent, Electrical Contractor's Licensing Board ("Board"), which is a board under the jurisdiction of the Department of Business and Professional Regulation ("Department"), for licensure as a certified electrical contractor. By a Notice of Intent to Deny, dated October 18, 2013, the Board denied Petitioner's application for two reasons: (1) within the previous five years, Petitioner's contracting license was suspended for failure to pay child support; and (2) Petitioner's application failed to demonstrate that he had the requisite financial stability as required by Florida Administrative Code Rule 61G6-5.005(3) and requisite net worth as required by Florida Administrative Code Rule 61G6-5.004.

Petitioner timely requested a formal hearing, and the matter was referred to the Division of Administrative Hearings on December 4, 2013. The case was assigned to the undersigned, who set the final hearing for January 13, 2014. On January 6, 2014, the parties requested and were granted a continuance of the final hearing. The final hearing was rescheduled to March 26, 2014.

The final hearing took place as scheduled. Petitioner appeared pro se and the Board was represented by counsel. The

final hearing Transcript was filed on April 10, 2014. The identity of the witnesses and exhibits and the rulings regarding each are as set forth in the Transcript. Petitioner and the Board timely filed proposed recommended orders, which were considered in preparing this Recommended Order. Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the application process.

FINDINGS OF FACT

1. At all times material hereto, Petitioner held a Registered Electrical Contractors license, No. 13012890, and a Registered Alarm System Contractors I license, No. 12000229, that authorized him to engage in the same in Broward County, Florida.

2. Petitioner's licenses are active and in good standing; he has not been the subject of any complaints filed with, or discipline imposed by, the local licensing authority. Petitioner operates a business named "D" Electrician Technical Services, Inc., in Pompano Beach, Florida.

3. In the case styled State v. Terrance Davis, Case No. 082026CCFICA, in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, Petitioner was charged with burglary of a structure with assault or battery and felony battery. Petitioner's unrefuted testimony was that after his arrest in October 2008, he was detained without bond pending his trial.^{1/}

4. On November 17, 2009, the Florida Department of Revenue ("DOR") issued to Petitioner a Notice of Non-Compliance with Support Order and Intent to Suspend License for the nonpayment of a previously existing child support order. The notice was sent to 7906 Southwest Seventh Place, North Lauderdale, Florida 33068. At the time the notice was sent, Petitioner claims to have been detained in the Broward County jail.

5. The criminal charge of felony battery was nol prossed on December 14, 2009. On December 15, 2009, Petitioner proceeded to trial on the remaining charge and was acquitted by a jury.

6. On December 27, 2009, DOR issued a Notice to Suspend License for Nonpayment of Support to the Division of Professions. Said notice provided that, "[w]e gave [Petitioner] notice of nonpayment and intent to suspend license(s) more than 30 days ago. [He has] not complied with the support order, a written agreement if there is one, or timely contested the action." The notice further directed that, "[u]nder section 409.2598(5)(b), Florida Statutes, you must suspend the license, permit or certificate that allows the person to engage in an occupation, business or recreation."

7. In January 2010, during the course of a traffic stop, Petitioner was advised by a law enforcement officer that his Florida driver's license was suspended. On February 8, 2010, Petitioner entered into a Written Agreement for Past Due Support

with DOR wherein he agreed to make a lump-sum payment and additional monthly payments. DOR agreed that it would not suspend or deny his driver's license as long as Petitioner complied with the terms of the agreement.

8. Petitioner credibly testified that thereafter, when he "resumed his Articles of Incorporation," he realized his professional licenses had also been suspended.

9. On February 25, 2010, DOR issued a Request to Reinstate License to the Division of Professions. Said request provided as follows:

The license(s) of the parent named below, was suspended for nonpayment of support. Please reinstate the license(s). The parent is paying as agreed or ordered, the circuit court has ordered reinstatement, or the parent is otherwise entitled to have the license(s) reinstated under section 409.2598(4)(b), Florida Statutes.

Court Case Number: 060015893CA-06

Parent's Name: TERRENCE A DAVIS

Mailing Address: 7905 SW 7th Pl, North
Lauderdale, FL 33068-2123

License Number(s) and Type(s): 12000229 Reg.
Alarm System Contractors I (EY), 13012890
Reg. Electrical Contractors (ER)

10. On or about July 23, 2013, Petitioner applied for certification as an electrical contractor pursuant to the "grandfathering" provisions of section 484.514, Florida Statutes.^{2/} Included with Petitioner's application, was a

personal financial statement wherein Petitioner itemized his assets and liabilities. Petitioner's personal financial statement concluded that his personal net worth was \$56,400.00. Also included in Petitioner's application was a business financial statement for "D" Electrician Technical Services, Inc., that similarly itemized Petitioner's business assets and liabilities. Petitioner's business financial statement concluded that the business's net worth was \$35,945.

11. By a Notice of Intent to Deny, dated October 18, 2013, the Board denied Petitioner's application for two reasons:

(1) within the previous five years, Petitioner's contracting license was suspended for failure to pay child support; and
(2) Petitioner's application failed to demonstrate that he had the requisite financial stability as required by rule 61G6-5.005(3) and requisite net worth as required by rule 61G6-5.004.

12. Petitioner credibly testified as to the figures supporting the itemization of both his personal and business assets and liabilities and respective net worth contained in the application. Petitioner conceded that a credit report, dated July 8, 2013, documents that he had a late mortgage payment in April 2010; that in 1997, his child support arrearage was placed in collection; and that an account, with a current balance of \$3110.00, was placed for collection. Petitioner contends said account concerned a one-year lease that he was unable to satisfy

at the time due to his detainment for the above-noted criminal charges.

13. Respondent presented the testimony of Clarence Kelly Tibbs. Mr. Tibbs is a state-certified electrical contractor who served on the Board for approximately 13 years. Mr. Tibbs was not on the Board at the time the Board considered and rejected Petitioner's application.

14. The undersigned deemed Mr. Tibbs as an expert in electrical contracting. Mr. Tibbs did not testify concerning the areas of his expertise (electrical contracting), but rather, offered opinions on the propriety of the Board's denial of Petitioner's application.

15. Mr. Tibbs testified that, "as an ex-Board member," looking at Petitioner's personal and business financials, there were several problems. After itemizing his concerns, Mr. Tibbs concluded that, "[h]owever, looking at the financials that you've got in front of me, although I have some problems with them, I could probably go ahead and approve them."

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

17. As an applicant for licensure, Petitioner bore the burden at hearing of going forward initially with proof of his

fitness for certification; he also was required to shoulder the ultimate burden of persuasion. See Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1st DCA 1996).

18. The "grandfathering" provision under which Petitioner seeks certification is section 489.514, Florida Statutes, which provides as follows:

489.514 Certification for registered contractors; grandfathering provisions.--

(1) The board shall, upon receipt of a completed application, appropriate fee, and proof of compliance with the provisions of this section, issue:

(a) To an applying registered electrical contractor, a certificate as an electrical contractor, as defined in s. 489.505(12);

(b) To an applying registered alarm system contractor, a certificate in the matching alarm system contractor category, as defined in s. 489.505(2) (a) or (b); or

(c) To an applying registered electrical specialty contractor, a certificate in the matching electrical specialty contractor category, as defined in s. 489.505(19).

(2) Any contractor registered under this part who makes application under this section to the board shall meet each of the following requirements for certification:

(a) Currently holds a valid registered local license in the category of electrical contractor, alarm system contractor, or electrical specialty contractor.

(b) Has, for that category, passed a written, proctored examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(c) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required under this subsection.

(d) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended in the last 5 years, or been assessed a fine in excess of \$500 in the last 5 years.

(e) Is in compliance with the insurance and financial responsibility requirements in s. 489.515(1)(b).

(3) An applicant must make application by November 1, 2015, to be licensed pursuant to this section.

19. Section 489.515(1)(b), Florida Statutes, provides as follows:

The board shall certify as qualified for certification any person who satisfies the

requirements of s. 489.511 and who submits satisfactory evidence that he or she has obtained both workers' compensation insurance or an acceptable exemption certificate issued by the department and public liability and property damage insurance for the health, safety, and welfare of the public in amounts determined by rule of the board, and furnishes evidence of financial responsibility, credit, and business reputation of either himself or herself or the business organization he or she desires to qualify.

20. Subsection 489.507(3), Florida Statutes, grants to the Board rulemaking authority to implement the provisions of Part II of chapter 489, Florida Statutes. Pursuant to its rulemaking authority, the Board has promulgated Florida Administrative Code Rule 61G6-5.004, which provides, in pertinent part:

In order that the Board may carry out its statutory duty to investigate the financial responsibility, credit, and business reputation of an applicant proposing to engage in contracting as a partnership, corporation, business trust, or other legal entity other than a sole proprietorship, an applicant shall be required to forward the following to the Department for review by the Board:

(1) A comprehensive financial statement reflecting the financial condition of the business organization in its previous fiscal year; provided, however, that the statement be prepared within 12 months of the date of filing of the application. The financial statement shall be prepared in accordance with generally accepted accounting principles, as defined by Rule 61H1-20.007, F.A.C. (February, 2004). The financial statement must indicate a minimum net worth

as indicated below for the following categories:

(a) Unlimited electrical and alarm contractor
\$10,000.00

(b) Specialty Contractor \$5,000.00

(2) A report on the business organization from any recognized credit bureau which includes but is not limited to credit history, ability to be bonded, liens, judgments, suits, bankruptcy, and assignment of receivers obtained from county, state and federal records. The credit report must be dated within twelve (12) months of the date of filing the application.

21. The Board has also promulgated Florida Administrative Code Rule 61G6-5.005, which provides as follows:

(1) For purposes of this rule, the phrase "financial responsibility" is defined as the ability to insure that the public, the laborers, the materialmen, the supplier and other parties with whom the applicant will do business as a contractor, will not sustain economic losses resulting from the contractor's inability to pay his obligations to them.

(2) The following factors will be reviewed when examining the financial responsibility of the applicant:

(a) Evidence that the applicant or any of its corporate officers, or any of its shareholders holding 10% or more of the corporate stock has filed or been a party to voluntary or involuntary bankruptcy within the past five years preceding its application, arising out of the electrical contracting operations of said applicant, corporate officer or 10% shareholder.

(b) The existence, within the past five years preceding the application, of a court judgment rendered against the applicant or any of its corporate officers, or any of its shareholders holding 10% or more of its corporate stock, based upon the failure of the applicant or any of its corporate officers or 10% shareholders to pay their obligations to materialmen, laborers, suppliers or any other parties with whom the applicant or corporate officer or 10% shareholder conducted business as a contractor.

(c) The existence of any liens of record by the United States Internal Revenue Service or the State of Florida Corporation Tax Division against the applicant or any of its corporate officers or any of its 10% shareholders.

(d) An unfavorable credit history as indicated by any of the documents submitted pursuant to Rule 61G6-5.004, F.A.C.

(3) A determination by the Board that the applicant lacks the financial stability necessary to assure compliance with the standards set forth in subsection (1) of this rule. As guidelines for the determination of financial stability the Board shall consider the responses to the questions set forth in subsection 61G6-5.004(3), F.A.C., and the documents submitted pursuant to Rule 61G6-5.004, F.A.C.

22. Section 489.514, Florida Statutes, makes clear that to become certified under the "grandfathering" provisions, an applicant shall meet each of the requirements of section 489.514(2), including subsection (2)(d)—that the contractor has not had his contractor's license suspended in the last five years. It is undisputed that Petitioner's registered electrical

contractor's license was suspended within the five years preceding his application for the failure to pay child support. Accordingly, Petitioner has failed to meet his burden of fitness for certification, as set forth in section 489.514(2).^{3/}

23. The undersigned concludes that Petitioner met his burden concerning his compliance with the financial responsibility requirements, as set forth in the above-referenced Florida Statutes and Florida Administrative Code Rules.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that

The Department of Business and Professional Regulation, Electrical Contractor's Licensing Board, enter a final order denying Petitioner's application for licensure as a certified electrical contractor.

DONE AND ENTERED this 7th day of May, 2014, in Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of May, 2014.

ENDNOTES

^{1/} The undersigned observes that the circuit court judge entered an order vacating Petitioner's pretrial release conditions on December 15, 2009. The record is silent concerning the specifics of Petitioner's pretrial release.

^{2/} Registration and certification are distinct forms of licensure under Part II of chapter 489, Florida Statutes, which deals with the regulation of electrical and alarm system contractors.

^{3/} Petitioner's registered electrical contractor's license was reinstated on February 25, 2010, and, therefore, Petitioner may reapply on February 25, 2015.

COPIES FURNISHED:

Deborah B. Loucks, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

Terrence A. Davis
7905 Southwest Seventh Place
North Lauderdale, Florida 33068

Daniel Biggins, Executive Director
Electrical Contractor's Licensing Board
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-2201

J. Layne Smith, General Counsel
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-2201

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.