

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD
OF ARCHITECTURE AND INTERIOR
DESIGN,

Petitioner,

vs.

Case No. 14-4747

CHARLES JACKSON AND CHARLES
JACKSON ARCHITECTURAL DESIGNS,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 25, 2015, by video teleconference between Miami and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: David Minacci, Esquire
Smith, Thompson, Shaw,
Minacci and Colon, P.A.
3520 Thomasville Road, Fourth Floor
Tallahassee, Florida 32309

For Respondent: Charles Jackson, pro se
Charles Jackson Architectural Design
101 East Blue Heron Boulevard, Suite 204
Riviera Beach, Florida 33404

STATEMENT OF THE ISSUES

Whether Charles Jackson and/or Charles Jackson Architectural Designs (Respondents) committed the offenses alleged in the subject Administrative Complaint, and if so, the penalties that should be imposed.

PRELIMINARY STATEMENT

Charles Jackson has never been licensed as an architect in Florida or any other jurisdiction. The Department of Business and Professional Regulation, Board of Architecture and Interior Design (Petitioner), filed an Administrative Complaint against Respondents on July 28, 2014, that alleges Respondents offered and provided architectural services without being duly licensed to engage in the practice of architecture. Petitioner also issued a "Notice and Order to Cease and Desist" against Respondents dated July 31, 2014.

Respondents timely requested a formal administrative hearing to challenge the allegations of the Administrative Complaint. On October 14, 2014, the matter was referred to DOAH, and this proceeding followed. The matter was set for hearing on December 17, 2014. On Petitioner's written motion, the matter was rescheduled for hearing on January 22, 2015. On Petitioner's ore tenus motion, the matter was re-scheduled for hearing on February 25, 2015. The matter was transferred to the undersigned on February 18, 2015.

At the formal hearing, Petitioner presented the testimony of Charles Jackson, Trent Manausa (an architect), and M.H. Allen (an investigator for the Petitioner). Petitioner offered pre-numbered Exhibits 1 through 6 and 8 through 10, each of which was admitted into evidence. Pre-numbered exhibit 7 was not moved into evidence.

Respondents presented no additional testimony, but offered 16 Exhibits, lettered A through P, each of which was admitted into evidence.

A Transcript of the proceedings was filed on March 18, 2015. Petitioner and Respondents filed proposed recommended orders, which have been duly-considered by the undersigned in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to Florida Statutes (2012), and all references to rules are to the version thereof in effect as of the entry of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, the Department of Business and Professional Regulation, Board of Architecture and Interior Design, is the agency of the State of Florida charged with the duty and responsibility to regulate the practice of architecture pursuant to chapters 20, 455, and 481, Florida Statutes.

2. Respondent, Charles Jackson (Mr. Jackson), has never

been licensed or certified as an architect in Florida or any other jurisdiction. Respondent, Charles Jackson Architectural Designs, has never been licensed as an architectural business in Florida or any other jurisdiction.

3. At times relevant to this proceeding, Mr. Jackson did business in Palm Beach County, Florida, as Charles Jackson Architectural Designs.^{1/} Mr. Jackson also did business as "Charles Jackson Design Construction" and "Charles Jackson Design."

4. At some time prior to October 8, 2012, Mr. Jackson entered into a contract with the owners of a residence located in Riviera Beach, Florida, to prepare drawings for an addition to the residence. The addition was a simple storage area.

5. Mr. Jackson prepared the drawings, which he dated October 8, 2012. Mr. Jackson gave the drawings to the owners of the residence so they could obtain a building permit.

6. The City of Riviera Beach requires a duly-licensed architect to sign and seal drawings for any addition to a residence before issuing a building permit for the addition.^{2/} The building department for the City of Riviera Beach rejected Mr. Jackson's drawings because they were not signed and sealed by a licensed Florida architect.

7. The owners brought the drawings back to Mr. Jackson, and told him that the drawings had been rejected because they were

not signed and sealed by an architect. Mr. Jackson did not advise the owners that they should hire an architect to sign and seal the drawings. Instead, Mr. Jackson took it upon himself to get the drawings signed and sealed by a Florida licensed architect named Michael Hall.

8. Michael Hall died on October 15, 2012.

9. When Mr. Jackson returned the drawings to the owners, a seal and signature purporting to be the seal and signature of Michael Hall had been affixed to the drawings. The seal and signature were dated November 5, 2012.^{3/}

10. The owners thereafter took the drawings to the building department for the City of Riviera Beach to obtain a permit for the addition. The drawings were rejected because the building officials knew that Michael Hall died prior to November 5, 2012, the date he purportedly signed and sealed the drawings.

11. When the owners confronted Mr. Jackson with the news that the permit had been rejected, Mr. Jackson refunded to the owners the sum of \$350.00, the amount they had paid him for the drawings.

12. On July 31, 2014, Petitioner entered against Respondents a "Notice and Order to Cease and Desist" which included an order that Mr. Jackson cease and desist doing business as "Charles Jackson Architectural Designs."

CONCLUSIONS OF LAW

13. DOAH has jurisdiction over the subject matter of and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014).

14. Petitioner has the burden of proving by clear and convincing evidence that Respondents committed the violations as alleged and the appropriateness of any fine and penalty resulting from the alleged violations. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Dep't of Agric. & Consumer Servs., 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994).

15. In Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), the court held that:

Clear and convincing evidence requires more proof than a "preponderance of the evidence" but less than "beyond and to the exclusion of a reasonable doubt." In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). It is an intermediate standard. Id. For proof to be considered "clear and convincing" . . . 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 in 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.

16. Section 481.223(1)(a), Florida Statutes, provides that

a person may not knowingly practice architecture unless the person is an architect or a registered architect.

17. Section 481.203(6) defines the term "architecture" as follows:

(6) "Architecture" means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

18. Petitioner proved by clear and convincing evidence that Respondents rendered or offered to render architectural services in violation of section 481.223(1)(a) by preparing drawings that were required to be signed and sealed by an architect and by doing business as "Charles Jackson Architectural Designs."

19. Section 455.228(1), Florida Statutes, authorizes Petitioner to impose against Respondents an administrative fine not to exceed \$5,000.00 for a violation of section 481.223(1)(a). Petitioner seeks the amount of \$5,000.00 in its Proposed Recommended Order. However, Petitioner does not discuss the penalty guidelines in Florida Administrative Code rule 61-5.007. In the absence of aggravating or mitigating circumstances, \$3,000.00 is the penalty guideline set forth in Rule 61-5.007(6)(a) for a first violation of practicing a profession

without holding the requisite license.

20. Section 455.228(3)(c) authorizes Petitioner to "recover the costs of investigation, in addition to any penalty" for a violation of section 481.223(1)(a). Petitioner presented no evidence at the formal hearing as to its costs of investigation. On March 17, 2015, Petitioner's counsel executed and filed an affidavit that compiled Petitioner's cost as of that date in the amount of \$2,663.82. That affidavit is a statement made outside the formal hearing to prove the truth of the matter asserted, namely, the amount of costs incurred by Petitioner in the prosecution of this proceeding. The affidavit is hearsay that cannot be the sole basis of a finding of fact as to Petitioner's costs. See §§ 90.801(1) and 120.57(1)(c), Fla. Stat.

RECOMMENDATION

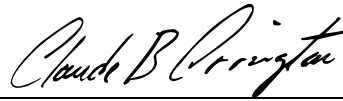
Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Department of Business and Professional Regulation, Board of Architecture and Interior Design, enter a final order that adopts the Findings of Fact and Conclusions of Law set forth herein.

It is FURTHER RECOMMENDED that the final order find Respondent, Charles Jackson, guilty of violating section 481.223(1)(a), Florida Statutes, as alleged in the Administrative Complaint and impose an administrative fine in the amount of \$3,000.00 for that violation.

It is FURTHER RECOMMENDED that the final order require Respondent, Charles Jackson, to cease and desist doing business as Charles Jackson Architectural Design.

It is FURTHER RECOMMENDED that the final order require Charles Jackson to pay the costs of its investigation.^{4/}

DONE AND ENTERED this 8th day of April, 2015, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of April, 2015.

ENDNOTES

^{1/} Mr. Jackson stated in separate writings to Petitioner's counsel on three occasions that his company name was Charles Jackson Architectural Designs. Mr. Jackson paid intangible taxes in Palm Beach County under the name of "Jackson Charles Architectural Design" [sic].

^{2/} Mr. Jackson knew or should have known that the City of Riviera Beach required drawings of residential additions to be signed and sealed by an architect.

^{3/} While the circumstances of how the drawings came to be signed and sealed by someone purporting to be Michael Hall are

suspicious, the Administrative Complaint does not charge Mr. Jackson, or anyone else employed by Mr. Jackson, with forging Michael Hall's signature and affixing his seal to the drawings. Consequently, it is not necessary to determine how the signature and seal of a deceased individual came to be on Mr. Jackson's drawings, and it is not necessary to determine the credibility of Mr. Jackson's testimony regarding those circumstances.

(Mr. Jackson testified that he met Michael Hall's associate at a restaurant and left the drawings with the associate. Mr. Jackson expected the associate to take the drawings to Michael Hall for Mr. Hall to sign and seal the drawings. Mr. Jackson further testified that when he met the associate one or two days later to pick up the drawings from the associate, the drawings contained Mr. Hall's purported signature and seal. Mr. Jackson testified that he paid the associate \$50.00 for that service.)

^{4/} Should Respondents dispute the amount of Petitioner's investigative costs, the matter should be remanded to DOAH for an evidentiary hearing.

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.