

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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

Petitioner,

vs.

Case No. 15-7339PL

ANTONIO L. REQUEJO,

Respondent.

_____ /

RECOMMENDED ORDER

On February 15, 2016, a hearing was held by video teleconference at locations in Lauderdale Lakes and Tallahassee, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sorin Ardelean, Esquire
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-2202

For Respondent: No Appearance

STATEMENT OF THE ISSUES

Whether Respondent performed an act which assisted an entity in engaging in the prohibited uncertified and unregistered practice of contracting or whether he abandoned a

construction project in which he was engaged or under contract as a contractor, in violation of section 489.129(1), Florida Statutes, as set forth in the Administrative Complaint, and, if so, what is the appropriate sanction.

PRELIMINARY STATEMENT

On July 23, 2013, Petitioner, Department of Business and Professional Regulation (Department or Petitioner), issued an Administrative Complaint against Respondent, Antonio L. Requejo (Mr. Requejo or Respondent), on behalf of the Construction Industry Licensing Board (Board). The complaint charged Respondent with: (1) performing an act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting; and (2) abandoning a construction project in which the contractor is engaged or under contract as a contractor. Respondent disputed material facts alleged in the complaint and requested an administrative hearing.

At hearing, Petitioner offered nine exhibits, admitted as Exhibits P-1 through P-9. Official recognition was given to an order of the Board imposing prior discipline. Petitioner offered the testimony of Ms. Carmen Goehrig, complainant and owner of real property; Mr. Goehrig, husband of complainant; Mr. Claudio Grande, chief building official of the city of

Tamarac; Mr. Andre Chestnut, who entered into a construction contract with Ms. Goehrig; and Ms. Norma Fishner, investigative specialist with the Department. Respondent did not appear at the hearing. In response to Mr. Chestnut's representation at hearing that Respondent had contacted him that morning and was having difficulty finding the hearing, the case was placed in abeyance, and an Order to Show Cause was issued to Respondent asking why the hearing should not be concluded on the existing record. Respondent did not respond and the hearing was closed by an Order issued on February 26, 2016. The Transcript of the February 15, 2016, hearing was filed on February 26, 2016. Petitioner's Proposed Recommended Order, filed on March 4, 2016, was considered in the preparation of this Recommended Order.

Unless otherwise indicated, citations to the Florida Statutes or rules of the Florida Administrative Code refer to the versions in effect in early 2012, when violations were allegedly committed.

FINDINGS OF FACT

1. The Board is the state agency charged with regulating the practice of construction contracting pursuant to section 20.165 and chapters 455 and 489, Florida Statutes.

2. At all times material to this proceeding, Mr. Requejo was licensed as a certified general contractor in the state of Florida, having been issued license number CGC 1504266.

3. Mr. Requejo's address of record is 15941 Southwest 53rd Court, Southwest Ranches, Florida 33331.

4. At all times material to this proceeding, Mr. Requejo was the primary qualifying agent of ReCol, Inc.

5. Mr. Andre Chestnut was formerly a registered contractor in the state of Florida. He testified credibly that he used to have nine licenses. At all times relevant to this case, he held no state licensure as a contractor. Consistent with Department records, he testified that his license had been revoked sometime around August 2003. USA Screens was incorporated in December 2011 to perform "any and all lawful business," with Mr. Chestnut as the incorporator, registered agent, and president. Records of the Department contain no evidence that USA Screens, Inc., has ever been qualified by a licensed contractor or had an active license as a construction business.

6. Ms. Carmen Goehrig owned real property at 6300 Pinehurst Circle East in Tamarac, Florida. She wished to install a screen enclosure on the property. On January 21, 2012, she entered into a construction contract with USA Screens,

Inc., signed by Mr. Chestnut. This constituted the practice of contracting by Mr. Chestnut and USA Screens, Inc.

7. Mr. Chestnut testified that he had been working in conjunction with Mr. Requejo on various projects for the past nine years. He credibly testified that he received the template for the contract he entered into with Ms. Goehrig from Mr. Requejo. That contract template contains the full name and address for both Recol, Inc., and USA Screens, Inc., at the top of the contract in large type, but shows only one contractor's license number, that of Mr. Requejo, under the address for Recol, Inc. No contractor's license number is shown under the USA Screens, Inc., address.

8. Having worked with Mr. Chestnut for nine years, and having prepared the template contract that they used for common projects, Mr. Requejo had reasonable grounds to know that USA Screens, Inc., was uncertified and unregistered, as suggested by the contract itself.

9. The contract mentioned that it was contingent upon both homeowner association and government approvals, and included a handwritten provision that there would be "no material purchases until association approval." Ms. Goehrig signed two checks to USA Screens, Inc.: the first in the amount of \$500.00 for the

application; the other in the amount of \$3,000.00 for materials. Both checks were cashed on January 24, 2012.

10. On February 14, 2012, Mr. Requejo, d/b/a Recol, Inc., timely filed building permit application 12-636 for construction of the screen enclosure at 6300 Pinehurst Circle East with the city of Tamarac, using his general contractor's license number. Recol, Inc., is listed as the general contractor in the city's records.

11. In filing for a permit from the city of Tamarac for the construction, Mr. Requejo assisted USA Screens, Inc., and Mr. Chestnut in engaging in the prohibited uncertified and unregistered practice of contracting.

12. Mr. Claudio Grande is the chief building official for the city of Tamarac. He oversees permitting and is the custodian of records. He testified that permit 12-636 was denied due to zoning restrictions and structural issues.

13. Mr. Chestnut testified that he made numerous calls trying to get the permit approved. He testified that the problem was that the screen enclosure encroached on a utility easement.

14. As Mr. Goehrig testified:

They applied for the permit. He showed us the drawings, Andre, and to my knowledge, submitted the permit application. And then we noticed that the second check was cashed,

so we started calling him about that. And all he would say is, "Don't worry, don't worry, don't worry."

And then the permit was denied and then we went back and tried to do something to get it approved and it was denied. And then zoning finally denied it again. So three times, we tried to fix it to make it work. And we finally, you know, the zoning department finally came down and said, "No, end of story, no good."

So we went to him and said, "Okay, we can't get the permit, please just give us our money back and we'll go on our way." And of course, his answer was, "No, you're not getting any money back, I spent your money, goodbye."

After the permit was finally denied and Mr. Chestnut refused to return their money, the Goehrigs contacted Mr. Requejo to get their money back, again to no avail.

15. It was not shown that the project was terminated without just cause or that it was terminated without proper notification to Ms. Goehrig.

16. It is clear from the filed complaint, as well as the testimony that Ms. Goehrig was aware that the project could not be permitted, and sought a return of the money that had been paid. "The permit was denied and [Chestnut] refuses to refund our deposit."

17. The Department failed to prove that Mr. Requejo abandoned a construction project in which he was engaged or under contract as a contractor.

Prior Discipline

18. On February 13, 2013, a Final Order Adopting Settlement and Vacating Prior Orders was filed by the Board. The Order incorporated a settlement agreement imposing discipline for allegations in several earlier Administrative Complaints. The October 2012 settlement agreement required the payment of fines, investigatory costs, and restitution to six individuals, as well as continuing education and a six-year period of probation. The Order constitutes prior discipline within the meaning of the disciplinary guidelines.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

20. Petitioner has authority to investigate and file administrative complaints charging violations of laws regulating the construction industry. § 455.225, Fla. Stat.

21. Section 489.1195(1) (a) provided that 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. Shimkus v. Dep't of Bus. & Prof'l Reg., 932 So. 2d 223, 224 (Fla. 4th DCA 2005).

22. Petitioner seeks disciplinary action against Respondent's license. A proceeding to suspend, revoke, or impose other discipline upon a license is penal in nature. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Petitioner must therefore prove the charges against Respondent by clear and convincing evidence. Fox v. Dep't of Health, 994 So. 2d 416, 418 (Fla. 1st DCA 2008) (citing Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996)).

23. The clear and convincing standard of proof has been described by the Florida Supreme Court:

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 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.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

24. Disciplinary statutes and rules "must always be construed strictly in favor of the one against whom the penalty would be imposed and are never to be extended by construction." Griffis v. Fish & Wildlife Conser. Comm'n, 57 So. 3d 929, 931 (Fla. 1st DCA 2011); Munch v. Dep't of Prof'l Reg., Div. of Real Estate, 592 So. 2d 1136 (Fla. 1st DCA 1992).

Count One

25. Respondent is charged with performing an act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, in violation of section 489.129(1)(d). Proof of this charge requires that Respondent knew, or had reasonable grounds to know, that the person or entity was uncertified and unregistered.

26. The evidence showed that Respondent applied for a building permit for the screen enclosure from the city of Tamarac. This act assisted USA Screens, Inc., and Mr. Chestnut, neither of whom was certified or registered as a contractor, to engage in the practice of contracting.

27. It was further clearly shown that Respondent had reasonable grounds to know that neither USA Screens, Inc., nor

Mr. Chestnut were certified or registered. Respondent had worked with Mr. Chestnut for nine years. He had prepared the contract template containing information on both Recol, Inc., and USA Screens, Inc., which contained only his own contractor's license number. He filed the building permit application under his contractor's license.

28. Petitioner proved by clear and convincing evidence that Respondent assisted a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, in violation of section 489.129(1)(d).

Count Two

29. Respondent was charged with violation of section 489.129(1)(j), which provided that discipline may be imposed for:

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.

30. The abandonment statute is not violated every time a construction project is not completed. For example, the provision "does not purport to punish inept business conduct." Hunter v. Dep't of Prof'l Reg., 458 So. 2d 842, 844 (Fla. 2d DCA

1984) (project was not abandoned within the meaning of section 489.129 where contractor went out of business and was unable to perform the contract).

31. The statute contains a presumption: if it is shown either that a project was terminated without just cause or that it was terminated without proper notification to the owner, it is presumed that the project was abandoned. Here, however, Petitioner presented no evidence of either predicate fact.

32. In any event, the evidence at hearing clearly showed that the permit was denied by the city of Tamarac, that construction could not legally begin, and that the Goehrigs requested their money back. In Department of Business and Professional Regulation v. Douglas J. Ringold, Jr., d/b/a Alpha Restoration, Inc., Case No. 08-4491 (Fla. DOAH Feb. 10, 2009; Fla. DBPR July 15, 2009), the Board held that there was no abandonment under similar circumstances involving a denied permit. The original construction permit in Ringold could not be issued because metal tile roofs were not approved for use in Miami-Dade County, as the client was later informed. The Board held--despite unreasonable delays in even applying for the permit--that no abandonment of the original construction project was shown because the client eventually understood the project could not be permitted and then sought to modify the contract to

provide for a non-metal tile roof (although the Board did ultimately find abandonment of the later, modified contract).

33. The evidence with respect to Count Two of the Administrative Complaint showed that Respondent was legally unable to begin the contract, that the Goehrigs were aware of this, and that they demanded a return of their deposit.

34. Whatever other provisions Respondent may have violated in not returning money to the Goehrigs, he did not abandon the project. He promptly applied for the permit, the governing statute did not allow him to proceed on the job without obtaining permits, and the contract itself was contingent upon government approvals.

35. Petitioner failed to show by clear and convincing evidence that Respondent abandoned the Goehrig construction project in violation of section 489.129(1)(j).

Penalty

36. Penalties in a licensure discipline case may not exceed those in effect at the time a violation was committed. Willner v. Dep't of Prof'l. Reg., Bd. of Med., 563 So. 2d 805, 806 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 295 (Fla. 1991).

37. Section 455.2273, Florida Statutes, requires the Board to adopt disciplinary guidelines for specific offenses.

38. Penalties imposed must be consistent with any disciplinary guidelines prescribed by rule. See Parrot Heads, Inc. v. Dep't of Bus. & Prof'l Reg., 741 So. 2d 1231, 1233-34 (Fla. 5th DCA 1999).

39. The Board adopted Florida Administrative Code Rule 61G4-17.001(1)(d), which provided that the penalty for assisting an unlicensed person to evade provisions of chapter 489 shall range from a \$2,500.00 fine and/or probation or suspension to a \$10,000.00 fine and revocation.

40. Rule 61G4-17.001(4) provided that the Board shall assess the costs of investigation and prosecution, excluding costs related to attorney time.

41. Rule 61G4-17.001(5) also provided that the Board shall order the contractor to make restitution in the amount of financial loss suffered by a consumer to the extent not in violation of federal bankruptcy law.

42. There were some aggravating circumstances to be considered under rule 61G4-17.002, including the fact that Respondent has previously been disciplined and monetary damage to Ms. Goehrig, but no circumstances were shown that would warrant deviation from the range of penalties already allowed under the guidelines.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Construction Industry Licensing Board enter a final order finding Mr. Antonio L. Requejo in violation of section 489.129(1)(d), Florida Statutes; suspending his contractor's license for a period of six months, followed by a period of probation deemed advisable by the Board; imposing a fine of \$7,000.00; and directing that he make restitution in the amount of \$3,500.00 to Carmen Goehrig.

DONE AND ENTERED this 17th day of March, 2016, in Tallahassee, Leon County, Florida.

F. Scott Boyd

F. SCOTT BOYD
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 17th day of March, 2016.

COPIES FURNISHED:

Sorin Ardelean, Esquire
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-2202
(eServed)

Antonio L. Requejo
11826 B. Miramar Parkway
Miramar, Florida 33025

Daniel Biggins, Executive Director
Construction Industry Licensing Board
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399
(eServed)

William N. Spicola, General Counsel
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399
(eServed)

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.