

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

DOAH Case No.: 16-3900
DBPR Case No.: 2015-004685
ULA CONSTRUCTION

IAN TUTTLE,

Respondent.

FINAL ORDER

The Department of Business and Professional Regulation (“Department”) hereby enters this Find Order against Ian Tuttle (“Respondent”) in the above-styled matter. This cause came before the Department for the purpose of considering the Recommended Order issued by Administrative Law Judge Yolonda Y. Green (“Judge Green”) on October 26, 2016, in Division of Administrative Hearings (“DOAH”) case number 16-3900, a copy of which is attached as Exhibit “A” and incorporated herein by reference. Respondent did not timely file exceptions to Recommended Order with the Department.

Background

On June 10, 2016, the Department filed an Amended Administrative Complaint in this matter, alleging that Respondent violated Section 489.13(1), Florida Statutes, by performing an activity requiring licensure as a construction contractor, without the requisite license. Respondent disputed the allegations contained in the Amended Administrative Complaint, and the case was referred to DOAH to conduct a hearing pursuant to Section 120.57(1), Florida Statutes. On September 8, 2016, Judge Green presided over the Final Hearing in this matter,

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/7/2017
File #	2017-01003

which was held in Tallahassee, Florida. Respondent appeared at the Final Hearing in person. On October 26, 2016, Judge Green issued a Recommended Order, recommending the Department enter a final order finding Respondent committed the violations alleged in the Amended Administrative Complaint, and imposing administrative fines and investigative costs on Respondent.

Respondent filed exceptions to the Recommended Order with the DOAH Clerk's Office on November 10, 2016, and provided a copy by e-mail to the Department's counsel on November 11, 2016. After a complete review of the record in this matter, the Department rules as follows:

AGENCY STANDARD FOR REVIEW

Pursuant to Section 120.57(1)(l), Florida Statutes, the Department may not reject or modify findings of fact unless it first determines, from a review of the entire record, and states with particularity, that the findings of fact were not based on competent substantial evidence. "Competent substantial evidence is such evidence that is 'sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.'" Comprehensive Medical Access, Inc. v. Office of Ins. Regulation, 983 So. 2d 45, 46 (Fla. 1st DCA 2008)(quoting DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957)).

Pursuant to Section 120.57(1)(l), Florida Statutes, when rejecting or modifying conclusions of law or interpretations of administrative rules, the Department must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rules and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

RULINGS ON RESPONDENT'S EXCPECTIONS

1. Section 120.57(1)(k), Florida Statutes, provides:

The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

2. Rule 28-106.217(1), Florida Administrative Code, provides, in pertinent part:

Parties may file exceptions to findings of fact and conclusions of law contained in recommended orders with the agency responsible for rendering final agency action within 15 days of entry of the recommended order Exceptions shall identify the disputed portion of the recommended order by page number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record.

3. Judge Green's Recommended Order contained a Notice that "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."

4. Respondent filed his exceptions with the DOAH Clerk's Office within 15 days of the date of the Recommended Order. However, Respondent failed to file his exceptions with the Department, as required by Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217(1), Florida Administrative Code, and as directed by the Notice in the Recommended Order.

5. Respondent did not provide his exceptions to the Department within 15 days of the date of the Recommended Order, and never requested that they be filed with the Department.

6. Nevertheless, Respondent's exceptions have been considered on the merits, and are rejected entirely.

FINDINGS OF FACT

7. The Findings of Fact contained in the Recommended Order, as set forth in Exhibit "A", are hereby approved, adopted, and incorporated herein by reference. Those findings are supported by competent and substantial evidence.

CONCLUSIONS OF LAW

8. The Conclusions of Law contained in the Recommended Order, as set forth in Exhibit "A", are hereby approved, adopted, and incorporated herein by reference.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

9. Respondent violated Section 489.13(1), as alleged in Counts I and II of the Amended Administrative Complaint.

10. Respondent must pay a total administrative fine of \$6,000.00 (\$3,000.00 for Count I and \$3,000.00 for Count II), pursuant to the penalty/disciplinary guidelines of Rule 61-5.007, Florida Administrative Code.

11. Respondent must pay investigative costs in the amount of \$415.95, pursuant to Section 455.227(3)(a), Florida Statutes.

12. Payment of the fine and costs by check or money order issued to the Department of Business and Professional Regulation must be received by the Department of Business and Professional Regulation, Revenue Unit, 2601 Blair Stone Road, Tallahassee, Florida 32399 within 365 calendar days of the effective date of this Final Order. **Case number 2015-004685 must be referenced clearly when making payment.**

13. This Final Order is effective on the date it is filed with the Agency Clerk of the Department of Business and Professional Regulation, as indicated on the first page of this Final Order.

DONE AND ORDERED this 31st day of January, 2017.

Matilde Miller
Matilde Miller, Interim Secretary
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this Final Order may seek judicial review by filing an original Notice of Appeal with the Agency Clerk of the Department of Business and Professional Regulation at 2601 Blair Stone Road, Tallahassee, Florida 32399 (AGC.Filing@myfloridalicense.com), and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was provided to Respondent at 212 Wildflower Lane, Crawfordville, Florida 32327, by Certified U.S. Mail this

7th day of February, 2017.


OFFICE OF THE AGENCY CLERK

Copy(s) Furnished to:

Andrew J. Pietrylo, Assistant General Counsel - ULA