

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LENARD HANDSEL,

Petitioner,

vs.

Case No. 16-7146

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
ELECTRICAL CONTRACTORS'
LICENSING BOARD,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing on March 3, 2017, in Miami, Florida.

APPEARANCES

For Petitioner: Giorgio Luigi Ramirez, Esquire
Giorgio L. Ramirez, P.A.
7300 North Kendall Drive, Suite 520
Miami, Florida 33156

For Respondent: Deborah Bartholow Loucks, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner has provided persuasive evidence of his capacity and intent to adequately supervise the additional business organization he seeks to

qualify, the failure of which would warrant Respondent's denial of Petitioner's application for qualification.

PRELIMINARY STATEMENT

By Notice of Intent to Deny dated October 12, 2016, Respondent Department of Business and Professional Regulation, Electrical Contractors' Licensing Board, notified Petitioner Lenard Handsel that it intended to deny his application to qualify an additional business organization, based on a finding that Mr. Handsel had failed to present persuasive evidence of his capacity and intent to perform the duties of a qualifying agent.

Mr. Handsel timely requested a formal hearing, and, on December 2, 2016, Respondent referred the matter to the Division of Administrative Hearings ("DOAH"), where an Administrative Law Judge was assigned to conduct a formal hearing.

The in-person hearing took place at the Office of the Attorney General ("OAG") in Miami as scheduled on March 3, 2017. Shortly before the starting time, DOAH contacted the parties to advise that due to the recent relocation of the Miami OAG, the Amended Notice of Hearing mistakenly directed participants to the wrong (former) address, and that everyone should proceed to the OAG's new address a few blocks away. This regrettable, but minor, inconvenience prevented no one from attending the hearing, and in fact everyone except Mr. Handsel arrived at the

correct location (which is within walking distance of the old office) at or before 9:00 a.m.

Mr. Handsel had gone to the OAG's former office pursuant to the Amended Notice of Hearing, which was reasonable. Upon being notified of the change of address, however, he refused to head over to the correct location, which was not reasonable. The undersigned explained to Mr. Handsel's attorney (who was present at the hearing site) that he was willing to wait a reasonable amount of time for Petitioner to travel the short distance between the old and new offices, or alternatively to allow Mr. Handsel to participate by telephone, but not to cancel or continue the hearing, as both Respondent's counsel and the undersigned had traveled nearly 500 miles (from Tallahassee) for the proceeding. Mr. Handsel declined both options. The undersigned made it very clear that the hearing would proceed without Mr. Handsel in attendance, if he elected not to accept one of the two reasonable options on offer. Mr. Handsel expressly rejected these options, and so the undersigned convened the hearing without him.

No witnesses testified. Respondent's Exhibits 1 through 7, which include Mr. Handsel's deposition, were received in evidence. Neither party ordered the final hearing transcript. Proposed recommended orders were due on March 14, 2017, and each party timely filed one.

Unless otherwise indicated, citations to the official statute law of the state of Florida refer to Florida Statutes 2016, except that all references to statutes or rules defining disciplinable offenses or prescribing penalties for committing such offenses are to the versions that were in effect at the time of the alleged wrongful acts.

FINDINGS OF FACT

1. Petitioner Lenard Handsel ("Handsel") is a certified electrical contractor holding licenses authorizing him to qualify two business organizations, O & J Electrical Corp. and HF Electric, Inc. Handsel would like to qualify an additional business organization named CMG Electrical Contractor, Inc. ("CMG"). To accomplish this, Handsel must submit an application to the Electrical Contractors' Licensing Board (the "Board"), together with "evidence of supervisory ability and financial responsibility of [the business] organization." § 489.521(8), Fla. Stat. On or about May 9, 2016, Handsel submitted his application (the "Application"), using the appropriate form, which is titled "Certified Electrical Worksheet" (the "Form").

2. The Board's authority to deny a request to qualify an additional business is limited to three grounds: (a) the licensee's failure to provide the information required under section 489.521(8), Florida Statutes; (b) "a finding that such information or evidence as is supplied is incomplete or

unpersuasive in showing the licensee's capacity and intent to [adequately supervise each business organization]"; and (c) the licensee's failure "to adequately supervise the operations of a business organization in accordance with s. 489.522(1)." Any of these is sufficient to support an adverse determination. See § 489.521(8), Fla. Stat.

3. On October 12, 2016, the Board issued a notice informing Handsel that it intended to deny the Application based on a finding that he had furnished unpersuasive proof of his capacity and intent to adequately supervise CMG. Because Handsel offered little, if any, additional supporting evidence at hearing, the ultimate factual issue in dispute is whether the information in his Application persuasively shows the requisite capacity and intent.

4. Turning, then, to the information Handsel presented, the Form, which he completed, contains six yes/no background questions, which ask an applicant about potential red flags in his past (such as criminal convictions), and requires an explanation of each "yes" answer, together with supporting documents as appropriate. In his Application, Handsel answered "yes" four times, disclosing a criminal conviction; an adverse civil judgment; an unfavorable administrative determination; and a project that he had begun, which a third party needed to complete.

5. Handsel did not provide much of an explanation for any of these negative items. He was the most forthcoming (relatively speaking) about the "Shake-a-Leg Project" in Coconut Grove that went bad, in 2010, when an electrician under his supervision failed to place conduits in certain columns before concrete was poured, which resulted in increased costs from remedial work. Handsel fired the electrician, whom he blamed for the mess, and refused to pay him. The electrician then sued Handsel, obtaining a judgment that Handsel never paid, which led to the imposition of administrative discipline against Handsel's license. In deposition testimony for this case, Handsel made it clear he had no intention of ever paying the man and expressed indignation at the idea of satisfying the judgment.

6. In the Application, Handsel stated that he had been convicted of lewd and lascivious "inappropriate touching" in 1986, for which he was sentenced to ten years' probation and required to undergo counseling. Before the Board, Handsel testified that the victim of this crime was a 25-year-old adult, and in deposition he clarified that the offense was a misdemeanor. This is essentially all the information available in the record regarding Handsel's criminal conviction.

7. In deposition, Handsel was confronted with a handful of civil judgments, ten or so, against him or his business, which had not been disclosed in the Application. Handsel denied knowledge

of these judgments, though not very credibly, and his failure to disclose them arguably constituted a material misrepresentation by omission. In its Notice of Intent to Deny, however, the Board did not allege with particularity that Handsel had made a material misrepresentation in his Application, see section 120.60(3), Florida Statutes, and arguably (if anomalously) section 489.521(8) does not unambiguously authorize the denial of a request to qualify on the basis of a material omission unless (as did not happen here) the Board has deemed the information provided by the applicant *incomplete*. To be fair, the Board apparently was unaware of the other judgments until finding out about them during this litigation, but the better practice would have been to seek leave to amend the Notice of Intent to Deny based on the newly discovered information. At any rate, it is unnecessary to consider the undisclosed judgments in making the ultimate factual determination in this case, and the undersigned has not done so.

8. Handsel also failed to disclose at least one final administrative order imposing discipline against him. For the reasons stated in the preceding paragraph, however, it is arguably improper to consider this particular omission, and it is unnecessary to do so. The undersigned, therefore, has placed no weight on the undisclosed discipline.

9. Looking solely at the negative items that Handsel *did* disclose in his Application, especially the circumstances

surrounding, and the fallout from, the "Shake-a-Leg Project," the undersigned finds that there is good reason to doubt Handsel's supervisory ability. More important, it is determined, as a matter of ultimate fact, that—in view of the negative items disclosed in the Application—the information Handsel has presented is unpersuasive in showing his capacity and intent to comply with the requirements of section 489.521(8).

CONCLUSIONS OF LAW

10. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1).

11. As the applicant for a license or similar form of authorization required by law, see section 120.52(10), Handsel bears the ultimate burden of proving by a preponderance of the evidence that the Board should approve his Application.

Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

12. Section 489.521 provides in pertinent part as follows:

(8) Each qualifying agent shall pay the department an amount equal to the original fee for certification or registration to qualify any additional business organizations. If the qualifying agent for a business organization desires to qualify additional business organizations, the board shall require him or her to present evidence of supervisory ability and financial responsibility of each such organization. Allowing a licensee to qualify more than one business organization shall be conditioned upon the licensee showing that the licensee

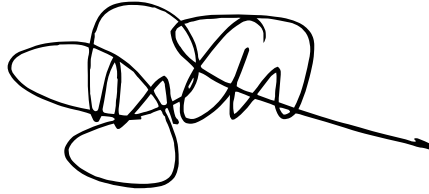
has both the capacity and intent to adequately supervise each business organization in accordance with s. 489.522(1). The board shall not limit the number of business organizations which the licensee may qualify except upon the licensee's failing to provide such information as is required under this subsection or upon a finding that such information or evidence as is supplied is incomplete or unpersuasive in showing the licensee's capacity and intent to comply with the requirements of this subsection. . . . Failure of the responsibility to adequately supervise the operations of a business organization in accordance with s. 489.522(1) shall be grounds for denial to qualify additional business organizations.

13. As discussed above, the undersigned determined that the information or evidence which Handsel supplied is unpersuasive in showing his capacity and intent to comply with the requirements of section 489.521(8). As a matter of law, this failure of proof constitutes grounds to deny Handsel's request to qualify an additional business organization.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, Electrical Contractors' Licensing Board, enter a final order denying Handsel's Application for authorization to qualify an additional business organization.

DONE AND ENTERED this 23rd day of March, 2017, in
Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
Administrative Law Judge
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Filed with the Clerk of the
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this 23rd day of March, 2017.

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.