

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Petitioner,

vs.

Case No. 17-5781

RYAN D. KIRKLAND, a/k/a RYAN DEE  
LON KIRKLAND,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on November 22, 2017, by video teleconference at sites in Miami and Tallahassee, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Alphonse Antonio Cheneler, Esquire  
Joseph Klein, Esquire  
Department of Business and  
Professional Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399

STATEMENT OF ISSUES

Whether Respondent violated section 489.13(1), Florida Statutes (2016)<sup>1/</sup>, by offering, contracting, or performing regulated construction services, for compensation, as charged in

the Administrative Complaint; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On August 25, 2017, the Department of Business and Professional Regulation ("Petitioner" or "DBPR") filed an Administrative Complaint against Ryan D. Kirkland, a/k/a Ryan Dee Lon Kirkland ("Respondent" or "Kirkland") alleging Respondent violated section 489.13(1) by offering to perform regulated construction contracting services without holding an active and valid certification or registration.

Respondent filed a timely request for hearing contesting the Administrative Complaint. Subsequently, the case was referred to the Division of Administrative Hearings ("DOAH"). Pursuant to notice, the matter proceeded to hearing as scheduled on November 22, 2017.

At the final hearing, Petitioner presented the testimony of Sonnya Roa-Zaiter, DBPR's unlicensed activity investigative specialist. Petitioner's Exhibits numbered 1, 2-A, 5, and 7 were admitted into evidence. Respondent did not appear at the final hearing.

The one-volume Transcript was filed on January 3, 2017. Petitioner filed its Proposed Recommended Order, which has been considered in the preparation of this Recommended Order. Respondent did not file any post hearing pleadings.

## FINDINGS OF FACT

1. Petitioner is the state agency charged with the licensing and regulation of the construction industry, pursuant to section 20.165 and chapters 455 and 489, Florida Statutes.

2. On September 29, 2016, by letter, the Broward County Environment Protection and Growth Management Department forwarded a complaint to DBPR indicating the subject matter "appears to fall within your area of jurisdiction."

3. The complaint alleged that Ryan D. Kirkland, d/b/a The Shining Light Construction, Inc., represented himself as a licensed contractor, provided a quote, and cashed the check from the victim, Rayon Richards ("Richards").

4. DBPR assigned Sonya Roa-Zaiter ("Roa-Zaiter"), investigator, to investigate the complaint.

5. During the investigation, Roa-Zaiter interviewed individuals and reviewed several documents to determine Respondent's licensure status and relationship with Richards.

6. Roa-Zaiter discovered that on July 20, 2016, Respondent presented Richards with a written proposal ("proposal") to perform construction work at Richard's rental property, located at 3234 Northwest 31st Terrace, Oakland Park, Florida 33309.

7. In the proposal, Respondent offered to perform regulated services for compensation in the amount of \$1,500.00.

8. Specifically, Respondent offered to replace a kitchen faucet, remove a dishwasher, install a new water line and replace exhaust fans.

9. Respondent's proposal listed the company as "State License Insured," but contained the license number CGC 1518408, which is a certified general contractor license number that belongs to Bernard Forges.

10. Bernard Forges did not give Respondent permission to use his license number.

11. Respondent is not licensed and has never been certified or registered as a construction contractor in the State of Florida.

12. Additionally, at all times material to the allegations in this matter, The Shining Light Construction, Inc., has not been an entity properly qualified or licensed in the practice of construction in the State of Florida.

13. Roa-Zaiter also discovered during the investigation that on or about July 22, 2016, Respondent accepted \$750.00 as partial payment to perform the services listed in the proposal and cashed the check for the services without performing any of the work.

14. After DBPR completed the investigation, it was determined that Respondent offered to perform a regulated service for compensation without a license contrary to Florida law.

15. On November 1, 2016, DBPR issued Respondent a Notice to Cease and Desist, which notified Respondent that he "may be practicing as a CONTRACTOR (in any trade) without the professional license or certification required by Florida law."

16. On April 25, 2017, DBPR issued an Administrative Complaint charging Respondent with violation of section 489.13(1) for offering to perform regulated construction contracting services for compensation without holding an active and valid certification or registration.

17. Respondent contested the Administrative Complaint and requested a hearing.

18. Roa-Zaiter spent 18 hours and four minutes investigating Respondent's case. DBPR incurred \$624.78 for the investigation relating to Respondent's actions in this case, excluding costs relating to any attorney's time.

#### CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the subject matter of the proceeding and the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2017).

20. Petitioner has authority over the unlicensed practice of construction contracting pursuant to sections 455.227, 455.228, and 489.13, Florida Statutes.

21. DBPR regulates the construction industry in order to protect the health, safety, and welfare of the public. See

§ 489.101, Fla. Stat.; Earth Trades, Inc. v. T&G Corp., 108 So. 3d 580, 584 (Fla. 2013).

22. Petitioner bears the burden of proving by clear and convincing evidence the allegations against Respondent. See § 120.57(1)(j), Fla. Stat.; Dep't of Banking & Fin., Div. of Sec. & Inv'r Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (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. The Administrative Complaint charged Respondent with a violation of section 489.13(1), which provides in pertinent part:

Any person performing an activity requiring licensure under this part as a construction contractor is guilty of unlicensed contracting if he or she does not hold a valid active certificate or registration authorizing him or her to perform such activity, regardless of whether he or she holds a local construction contractor license or local certificate of competency. Persons

working outside the geographical scope of their registration are guilty of unlicensed activity for purposes of this part.

25. Section 489.105(3) defines a contractor and provides in pertinent part:

"Contractor" means . . . . the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. . . .

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one

uninhabitable story and accessory use structures in connection therewith.

26. Section 489.127 sets forth the prohibition against acting as a construction contractor without a license, and provides in pertinent part:

(1) No person shall:

\* \* \*

(f) Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified[.]

27. In this matter, Petitioner has proven by clear and convincing evidence that the unlicensed Respondent offered regulated services for compensation by presenting a proposal to Richards for a contract price of \$1,500.00. The evidence is also undisputed that by Respondent offering to replace exhaust fans, a kitchen faucet, remove a dishwasher, and install a new water line, for compensation, without possessing the requisite state license is a violation of section 489.13(1) because a licensed contractor should be performing such work.

28. The legislature set parameters for penalties for unlicensed practice. Section 489.13 provides in pertinent part:

(3) Notwithstanding s. 455.228, the department may impose an administrative fine of up to \$10,000 on any unlicensed person guilty of unlicensed contracting. In addition, the department may assess



reasonable investigative and legal costs for prosecution of the violation against the unlicensed contractor. The department may waive up to one-half of any fine imposed if the unlicensed contractor complies with certification or registration within 1 year after imposition of the fine under this subsection.

29. Florida Administrative Code Rule 61-5.007 sets forth the Disciplinary Guidelines for Unlicensed Activity to be followed by DBPR. In the absence of aggravating or mitigating circumstances, DBPR is to impose a penalty consistent with the guidelines outlined therein. See Id.

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

31. Rule 61-5.007(6) provides, in pertinent part: "For practicing a profession without holding the requisite license to do so, the following penalties shall apply: (a) First violation - \$3000 administrative fine[.]"

32. In Petitioner's Proposed Recommended Order, DPBR requests imposition of the guideline penalty amount of \$3,000.00, plus the costs of DBPR's investigation in the amount of \$624.78.

33. Petitioner presented compelling evidence that DBPR incurred \$624.78 in investigative costs in this case, excluding costs related to any attorney's time.

34. No circumstances were shown that would warrant departure from the penalty guidelines in rule 61-5.007(6).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation enter a final order: finding Respondent, Ryan D. Kirkland, a/k/a Ryan Dee Lon Kirkland, guilty of violating section 489.13(1), Florida Statutes; imposing an administrative fine of \$3,000.00; and assessing costs in the amount of \$624.78.

DONE AND ENTERED this 19th day of January, 2018, in Tallahassee, Leon County, Florida.



---

JUNE C. MCKINNEY  
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 19th day of January, 2018.

ENDNOTE

<sup>1/</sup> Unless otherwise noted, all statutory references are to the Florida Statutes (2016).

COPIES FURNISHED:

Alphonse Antonio Cheneler, Esquire  
Joseph Klein, Esquire  
Department of Business and  
Professional Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399  
(eServed)

Ryan D. Kirkland  
Ryan D. Kirkland, a/k/a Ryan  
Dee Lon Kirkland  
2961 Northwest 172nd Terrace  
Miami Gardens, Florida 33056

Roger R. Maas, Esquire  
Department of Business and  
Professional Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2202  
(eServed)

Alison Parker, Deputy General Counsel  
Office of the General Counsel  
Department of Business and  
Professional Regulation  
Capital Commerce Center  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2202  
(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.