

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs.

Case Nos. 21-1160
21-1161
21-1162

RODERICK R. AMAR,

Respondent.

FINAL ORDER

Administrative Law Judge ("ALJ") Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings ("DOAH") on May 14, 2021, by Zoom conference.

APPEARANCES

For Petitioner: Katie M. Pareja, Esquire
Heather Barnes Page, Esquire
Department of Business and
Professional Regulation
Office of the General Counsel
2601 Blair Stone Road
Tallahassee, Florida 32399-2202

For Respondent: Roderick Amar, pro se
11850 Northwest 18th Street
Plantation, Florida 33323

STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Respondent advertised himself or his business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified in violation of section 489.127(1)(f), Florida Statutes; whether Respondent acted as a home inspector without being licensed to do so in

violation of section 468.63, Florida Statutes; whether Respondent presented as his own, the home inspection, roofing, and electrical certificates or registrations of another in violation of section 489.127(1)(c); and, if so, what penalty should be imposed.

The one-volume Transcript of the final hearing was filed with DOAH on June 2, 2021. Petitioner presented the testimony of Petitioner's Unlicensed Activity Investigator Sonnya Roa-Zaiter ("Ms. Roa-Zaiter"). Petitioner's Exhibits lettered A through E, Bates stamped 1 through 430, and Exhibit L, Bates stamped 504 and 505 were entered into evidence. Respondent testified on his own behalf. Respondent offered a series of unnumbered exhibits, all of which were admitted into evidence.

As part of the Joint Pre-Hearing Stipulation, the parties jointly moved for summary proceedings. Upon consideration of the parties' discussion on the matter during the final hearing, and the briefing of the issue in Petitioner's Proposed Recommended Order, this case will be treated as a summary proceeding, pursuant to section 120.574, Florida Statutes. All references to the Florida Statutes are to the 2020 codification.

PRELIMINARY STATEMENT

The Department of Business and Professional Regulation ("Department" or "Petitioner") filed three Administrative Complaints ("Complaints") against Roderick R. Amar ("Respondent" or "Mr. Amar"). The Complaints alleged that Respondent violated sections 489.127(1)(f), 489.127(1)(c), and 468.83 by offering to perform regulated services for compensation by advertising himself as available to perform home inspection, roofing services, and presenting as his own the licenses of another.

Respondent disputed the allegations contained in the Complaints and requested a formal hearing pursuant to sections 120.569(2)(a) and 120.57(1). On March 29, 2021, Petitioner referred the case to DOAH for assignment of an ALJ. Upon motion, an Order of Consolidation consolidating all three pending cases was issued on April 14, 2021. The final hearing was held on May 14, 2021. Both parties submitted proposed recommended orders, which were duly considered in the preparation of this Final Order.

FINDINGS OF FACT

Based on the demeanor and credibility of the witnesses, the documentary evidence admitted, and the record as a whole, the following facts are found:

1. Petitioner is the state agency charged with regulating the practice of construction contracting, home inspection, and electrical contracting pursuant to section 20.165, Florida Statutes, and chapters 455, 468, and 489, Florida Statutes. Petitioner has jurisdiction over the unlicensed practices of construction contracting, home inspection, and electrical contracting pursuant to sections 489.13, 489.531, 468.83, 455.227, and 455.228.

2. Petitioner initiated this case after it received a complaint from Gregory Arias ("Mr. Arias" or "Complainant"), alleging that Respondent posted and advertised Mr. Arias's license on a Facebook page for Respondent's business, IAG Foundation ("IAG"), without Complainant's consent. Mr. Arias did not testify at the final hearing, making it impossible to assess his credibility.

3. The Facebook page for IAG said "State Certified Contractors" underneath the company name and listed Complainant's license numbers. The page identified Mr. Amar as "Client Relations Manager."

4. Neither Respondent, nor IAG, held licenses for construction, contracting, or home inspection. However, according to Mr. Amar's un rebutted testimony, the operations of IAG and the resulting Facebook

advertisement were planned with the cooperation of Mr. Arias, who provided his license numbers to Respondent for use in IAG's operations. Specifically, Mr. Amar testified that he and Mr. Arias agreed that Mr. Amar would handle the client relations aspect of the joint venture while Mr. Arias managed the contracting aspect. The joint venture, however, never actively operated, and was on hold pending a future hurricane season. Although it was not conclusively established that Mr. Arias allowed Respondent and IAG to use his licenses, the evidence presented by Mr. Amar was compelling enough to render Respondent's version of events plausible based on the evidence, and to cast doubt on Petitioner's allegations.

5. Ms. Roa-Zaiter, the Department's only live witness, was tentative throughout her testimony and was sometimes imprecise in her memory of the documents and events at issue. Overall, her testimony did not inspire a degree of confidence high enough to produce a firm belief or conviction in favor of the Department's version of the facts.

Ultimate Facts

6. In opening statements, counsel for the Department characterized Respondent's Facebook advertisement as "at best...confusing. And at worst...deceptive." Based on the evidence presented through the lens of the burden of proof applicable to this case, the undersigned is not clearly convinced that the advertisement at issue was anything more than simply confusing. Additionally, it remains murky what the business relationship was between Respondent and Complainant with respect to the intended provision of the advertised services. Under Mr. Amar's plausible version of events, Mr. Arias knowingly lent his licenses to the business venture in which Mr. Amar would refer customers. The Department proved that the Facebook advertisement at issue was inartful, but the Department did not prove, by clear and convincing evidence, that the advertisement constituted Mr. Amar advertising himself or his business to act in the capacity as a contractor in

violation of section 489.127(c) and (f). For the same reasons, the Department did not prove, by clear and convincing evidence, that Mr. Amar violated section 468.83.

CONCLUSIONS OF LAW

7. DOAH has jurisdiction over the parties and subject matter of this action, pursuant to section 120.57(1), Florida Statutes.

8. Because the Department seeks to levy an administrative fine against Mr. Amar, the Department is required to prove its allegations by clear and convincing evidence. *Dep't of Bank. & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla.1996).

9. 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). As stated 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 lacking in confusion as to the facts in issue. The evidence must be of such a 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, with approval, *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). "Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous." *Westinghouse Elec. Corp. v. Shuler Bros. Inc.*, 590 So. 2d 986, 988 (Fla. 1991).

10. Pursuant to section 489.105(3), the term "Contractor" is defined as a person who is qualified and responsible for enumerated services "for compensation."

11. Section 489.127 states, in pertinent part:

(1) No person shall:

* * *

(c) Present as his or her own the certificate or registration of another;

(d) 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[.]

12. The home inspection licensing program is within the Department under section 468.83.

13. The evidence presented by the Department was ambiguous as to whether Mr. Amar's Facebook page constituted either the presentation of another person's certificate or registration as his own or advertising himself or his business as available to act in the capacity of a contractor without the proper credentials. Although the advertisement could be read in a manner that violates the relevant statutory provisions, the opposite reading would also be reasonable. Thus, the Department's case against Mr. Amar was not clear and convincing. For the same reasons, the Department did not prove, by clear and convincing evidence, that Mr. Amar violated section 468.83.

14. Although there was evidence that the purported business venture between Respondent and Complainant was designed to make money at some point in the future, the Department failed to show that the Facebook advertisement was used in furtherance of any services "for compensation" at any time relevant to this case.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Administrative Complaints issued against Respondent, and all charges therein, are hereby dismissed.

DONE AND ORDERED this 21st day of June, 2021, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of June, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.