

BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES OF THE STATE OF OREGON

IN THE MATTER OF:)
)
SCOTT MCNAMARA,) **FINAL ORDER UPON DEFAULT**
AN INDIVIDUAL)
) **OAH Case No.: 90165**
RESPONDENT) **Agency Case No.: 2008-0271**
)

HISTORY OF THE CASE

On April 24, 2009, the Director of the Department of Consumer and Business Services of the State of Oregon, Building Codes Division (BCD), issued a Notice of Proposed Assessment of Civil Penalty and Notice of Intent to Suspend Residential Electrician License No. 706LR of Scott McNamara (Respondent), and Final Order upon Default (Notice). On May 4, 2009, Respondent requested a hearing.

On May 13, 2009, BCD referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) A. Bernadette House was assigned to preside at hearing and a hearing was held on July 24, 2009. The BCD was represented by Assistant Attorney General Katharine M. Lozano, but Respondent failed to appear. A finding of default on the part of Respondent was called by the ALJ. The record closed on July 24, 2009.

On August 18, 2009, the BCD filed an Amended Notice of Proposed Assessment of a Civil Penalty and Intent to Suspend Limited Residential Electrician License No. 706LR (Amended Notice), pursuant to OAR 137-003-0530(4). In the Amended Notice, the BCD corrected scrivener's marks under Finding of Fact 8. With the filing of the Amended Notice, Respondent was provided with a "Notice of Rights in Regard to the Amended Notice," including notice that, "If no hearing is held on these new matters or if you fail to appear at a scheduled hearing, the Director will issue a Final Order on Default. Under these latter circumstances, as you failed to appear at the original hearing, the Division's file on this matter became record and will remain so."

The Respondent failed to request a hearing on the Amended Notice. The BCD file on this matter remained the record.

FINDINGS OF FACT

1. Respondent is licensed limited residential electrician holding license #706LR.
2. During or about the month of August 2008, at 694 Manbrin Drive N, Keizer, Oregon, Respondent engaged in the business of replacing an electrical service panel, for the account of Richard and Leslie Mikan, without an Oregon electrical contractor's license.

3. During or about the month of August 2008, at 694 Manbrin Drive N, Keizer, Oregon, Respondent replaced an electrical service panel, for the account of Richard and Leslie Mikan, while not under the supervision, direction or control of a general supervising electrician.
4. During or about the month of August 2008, at 694 Manbrin Drive N, Keizer, Oregon, Respondent replaced an electrical service panel, for the account of Richard and Leslie Mikan, without first obtaining a valid electrical permit¹.
5. On or about July 27, 2008, Respondent applied for an electrical permit for work to be performed at 694 Manbrin Drive N, Keizer, Oregon from Marion County Public Works using false information.
6. During or about the month of June 2008, at 8913 SE Morrison St., Portland, Oregon, Respondent engaged in the business of replacing an electrical service panel, for the account of Marie Magno, without an Oregon electrical contractor's license.
7. During or about the month of June 2008, 8913 SE Morrison St., Portland, Oregon, Respondent replaced an electrical service panel, for the account of Marie Magno, while not under the supervision, direction or control of a general supervising electrician.
8. During or about the month of June 2008, at 8913 SE Morrison St., Portland, Oregon, Respondent replaced an electrical service panel, for the account of Marie Magno, without first obtaining a valid electrical permit.
9. During or about the period February 1, 2009 through April 1, 2009, at 905 Barnes Rd. SE, Salem, Oregon, Respondent engaged in the business of replacing circuit breakers, and installing a light fixture, electrical outlet and ceiling fan, for the account of Rose Miller, without an Oregon electrical contractor's license.
10. During or about the period February 1, 2009 through April 1, 2009, at 905 Barnes Rd. SE, Salem, Oregon, Respondent replaced circuit breakers, and installed a light fixture, electrical outlet and ceiling fan, for the account of Rose Miller, while not under the supervision, direction or control of a general supervising electrician.
11. During or about the period February 1, 2009 through April 1, 2009, at 905 Barnes Rd. SE, Salem, Oregon, Respondent replaced circuit breakers, and installed a light fixture, electrical outlet and ceiling fan, for the account of Rose Miller, without first obtaining a valid electrical permit.
12. During or about the period February 1, 2009 through April 1, 2009, at 905 Barnes Rd. SE, Salem, Oregon, Respondent extended a branch circuit with a final termination at a new electrical outlet using undersized wiring in violation of minimum safety standards, specifically the National Electric Code (NEC) 210.20(b) and NEC 240.4(D)(3)². The undersized wiring caused the potential of overheating creating a hazard to people and property.

¹ A permit was obtained for the work but was not transferable to Respondent pursuant to OAR 918-309-0000(5).

CONCLUSIONS OF LAW

1. Replacing an electrical service panel, circuit breakers and installing a light fixture, an electrical outlet and a ceiling fan, as outlined in the Findings of Fact, are electrical installations under ORS 479.530(10).
2. By engaging in the business of making electrical installations without an Oregon electrical contractor's license, as outlined in Findings of Fact (2), (6) and (9), Respondent violated ORS 479.620(1) on three occasions.
3. By making electrical installations while not under the supervision, direction or control of a general supervising electrician, as outlined in Findings of Fact (3), (7) and (10), Respondent violated OAR 918-282-0180(1)(b) on three occasions.
4. By making electrical installations without first obtaining a valid electrical permit, as outlined in Findings of Fact (4), (8) and (11), Respondent violated ORS 479.550(1) on three occasions.
5. By applying for an electrical permit using false information, as outlined in Finding of Fact (5), Respondent violated OAR 918-309-0000(1).
6. By making an electrical installation that did not meet minimum safety standards, as outlined in Finding of Fact (12), Respondent violated ORS 479.710(1).

FINAL ORDER

1. Pursuant to ORS 455.895(2) and OAR 918-001-0036, the Director finds Respondent violated ORS 479.620(1) on three occasions and is assessed a \$3,000 civil penalty per occasion for a total penalty of \$9,000.
2. Pursuant to ORS 455.895(2) and OAR 918-001-0036, the Director finds Respondent violated OAR 918-282-0180(1)(b) and ORS 479.550(1) on three occasions and is assessed a \$2,500 civil penalty per occasion for a total penalty of \$7,500.
3. Pursuant to ORS 455.895(2) and OAR 918-001-0036, the Director finds Respondent violated OAR 918-309-0000(1) and is assessed a \$3,000 civil penalty.
4. Pursuant to ORS 455.895(2) and OAR 918-001-0036, the Director finds Respondent violated ORS 479.710(1) and is assessed a \$3,000 civil penalty

² The NEC is adopted in Oregon as the minimum safety standard pursuant to OAR 918-305-0100.

Total civil penalty assessed is \$22,500.

5. Pursuant to ORS 455.129, the Director suspends Respondent's limited residential electrician's license number 706LR for a period of four (4) years beginning the date a final order is issued in this matter.

Dated this 15th day of September, 2009.

**For the Director of the Department of Consumer and Business Services
State of Oregon**



Elizabeth Browder
Enforcement Manager
Building Codes Division

APPEAL

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See ORS 183.480 et seq.