

1 **BEFORE THE PLUMBING BOARD OF THE STATE OF OREGON**

2 **IN THE MATTER OF:**

)
) **FINAL ORDER**
)

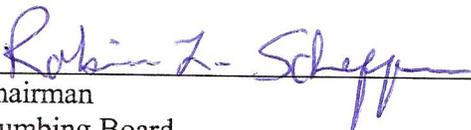
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4 **MARK D. REALE, AN INDIVIDUAL**

) **OAH CASE NO. 1303183**
) **BCD CASE NO. 2013-0018**
)

5 **RESPONDENT**
)
6)

7 _____
8 The PLUMBING BOARD of the State of Oregon adopts and incorporates by reference the
9 attached proposed order, dated June 11, 2013, for violation of ORS 447.040(1).

10 Dated this 15 day of August, 2013

11
12 
13 _____
14 Chairman
15 Plumbing Board
16 State of Oregon

17 **NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW (COURT OF APPEALS)**

18 You are entitled to judicial review of this Order pursuant to ORS 183.482. Judicial review may
19 be initiated by filing a petition for review with the Oregon Court of Appeals within 60 days from
20 the date this order was mailed to you.
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**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
PLUMBING BOARD OF THE STATE OF OREGON**

BUILDING
2013 JUN 14 A

IN THE MATTER OF:) **PROPOSED ORDER**
)
MARK D. REALE) OAH Case No. 1303183
) Agency Case No. 2013-0018

HISTORY OF THE CASE

On February 12, 2013, the Plumbing Board (Board) of the Building Codes Division (Division) issued a Notice of Proposed Assessment of a Civil Penalty and Final Order on Default to Mark D. Reale (Respondent). On February 19, 2013, Respondent requested a hearing.

On March 8, 2013, the Division referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Marni J. Davis was assigned to preside at the hearing.

ALJ Davis held a telephone hearing on May 1, 2013. Respondent represented himself and testified. Marion Smith represented the Division and testified. Homer Humelbaugh testified on behalf of the Division. The record closed at the end of the hearing.

ISSUES

- (1) Whether Respondent advertised to perform plumbing work for the account of another, without an Oregon plumbing contractor's license, in violation of ORS 447.040(1).
- (2) Whether the Division may impose a civil penalty of \$3,000 against Respondent.

EVIDENTIARY RULINGS

Exhibits A1 through A9 were admitted into the record without objection.

FINDINGS OF FACT

- (1) Mark D. Reale (respondent) is a not a licensed plumbing contractor. (Exs. A5, A6; test. of Respondent.)
- (2) On January 13, 2013, Respondent posted the following listing on craigslist.com:

“Hi. My name is Mark and I have 17+ years plumbing experience. I’m not licensed, but can do small jobs for half the price. I do great work, honest and clean.”

(Ex. A3; test. of Respondent.)

CONCLUSIONS OF LAW

- (1) Respondent advertised to perform plumbing work for the account of another without an Oregon plumbing contractor’s license.
- (2) The Division may impose a civil penalty of \$3,000 against Respondent.

OPINION

The Division contends that Respondent advertised to perform plumbing work without a plumbing contractor’s license. The Division also contends that, as a result, Respondent should be assessed a \$3,000 civil penalty. The Division has the burden to show, by a preponderance of the evidence, that Respondent committed the alleged violation, and that the proposed penalty is appropriate. ORS 183.450(2), *Harris v. SAIF*, 292 Or 683, 690 (1982). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor, Inc. v. Tandy Corp.*, 303 Or 390 (1987). Based on this record, the Division has met its burden.

Advertising to Perform Plumbing Work

The first issue is whether Respondent advertised to perform plumbing work without an Oregon plumbing contractor’s license.

ORS 447.040(1) provides:

A person may not work as a plumbing contractor, or advertise or purport to be a plumbing contractor, and a member or employee of a firm, partnership or corporation may not engage in the layout or superintending of plumbing installations, without having obtained the plumbing contractor license required under ORS 447.010 to 447.156[.]

OAR 918-030-0010(8) provides:

For purposes of ORS 447.040 * * * “engaging in the business” means to advertise or solicit, contract or agree to perform, work for which a license or permit is required under Oregon law, including but not limited to a single instance.

Respondent is not a licensed plumbing contractor. He testified that he was not aware that he needed a plumbing contractor’s license to place an advertisement to perform plumbing work. While he may not have known of the requirements to advertise to perform plumbing work in

Oregon, such knowledge is not required under the applicable statute. Additionally, Respondent argued that he was not advertising as a plumbing contractor because he said that he is not licensed and therefore, he should not be subject to a penalty. However, Respondent placed an advertisement to perform work as a plumber and he is not licensed by the State of Oregon. The Division has proven that Respondent advertised to perform plumbing work for another without the required license, in violation of ORS 447.040(1).

Civil Penalty

The Plumbing Board has adopted administrative rules to administer and enforce ORS chapter 693. OAR 918-001-0036 provides that the Board may develop a penalty matrix to use as a guideline for assessing civil penalties. The Board's penalty matrix provides for a civil penalty of \$3,000 for violating the licensing requirements of ORS 447.040(1). Therefore, the \$3,000 civil penalty proposed by the Division is appropriate.

ORDER

I propose the Plumbing Board of the Building Codes Division issue the following order:

Mark D. Reale shall pay a \$3,000 civil penalty for violating ORS 447.040(1).

/s/ Marni J. Davis

Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

This is the Administrative Law Judge's Proposed Order. You have the right to file written exceptions and argument to be considered per OAR 137-003-0650. Your exceptions and argument must be received within 20 calendar days after the service date of this Proposed Order. Send them to:

Building Codes Division
Manager, Enforcement and Licensing
PO Box 14470
Salem, OR 97309-0404

CERTIFICATE OF MAILING

On June 11, 2013, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1303183.

By: First Class Mail

Mark Reale
704 SW 206th Place
Aloha OR 97006

Homer Humelbaugh
Building Codes Division
PO Box 14470
Salem, OR 97309

Marion Smith
Building Codes Division (DCBS)
PO Box 14470
Salem OR 97309

Carol Buntjer
Administrative Specialist
Hearing Coordinator