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BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

**NOTICE OF PROPOSED ASSESSMENT
OF CIVIL PENALTIES**

**SAUL ESCOBAR, AN INDIVIDUAL, DBA
SANTA FE CONSTRUCTION**

NOTICE OF FINAL ORDER ON DEFAULT

RESPONDENT.

BCD CASE C2015-0059

**IF YOU DO NOT REQUEST A HEARING IN WRITING WITHIN 20 DAYS
OF THE POSTMARK DATE OF THIS NOTICE,
THIS NOTICE WILL BECOME A FINAL ORDER**
More information about this Notice and how to request a hearing is included below.

Pursuant to Oregon Revised Statutes (ORS) 455.895(1)(a) and Oregon Administrative Rules (OAR) 918-001-0036, the State Plumbing Board of the State of Oregon (Board) proposes to assess civil penalties against Saul Escobar (Respondent) totaling \$5,000 because Respondent violated Building Codes Division (Division) statutes and rules as identified below.

Some of the terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 447.010(1)-(6), ORS 455.010(1)-(10), ORS 693.010(1)-(5), OAR 918-001-0005(1)-(4), OAR 918-030-0010(1)-(11), and OAR 918-690-0420(1)-(14).

FINDINGS OF FACT

1. At no relevant time did Respondent hold a plumbing contractor license.
2. During or about January 2015, at 427 H Street, Gearhart, Oregon (the property), Respondent hired and assisted Jerry Howe, a licensed journeyman plumber, to install an electric water heater and water service piping.
3. Respondent arranged for the water heater and piping installation with the property owner's representative.

APPLICABLE LAW

FINAL ORDER

As of: July 27, 2015

1. Under ORS 447.010(6), plumbing is defined as the art of installing, altering, or repairing pipes, fixtures, and other apparatus for bringing in the water supply and removing liquid and water-carried waste.
2. Under ORS 447.040(1), a person may not work as a plumbing contractor, or advertise or purport to be a plumbing contractor, without having obtained a plumbing contractor license.
3. OAR 918-030-0010(8) states that for purposes of ORS 447.040, 479.620, 480.630, and any other license regulated by ORS chapter 455, "engaging in the business" means to advertise or solicit, contract or agree to perform, or to perform work for which a license or permit is required under Oregon law, including but not limited to a single instance.
4. Under ORS 455.450(2), a person may not engage in, or procure or assist any other person to engage in, any conduct or activity for which a permit, label, license, certificate, registration or other formal authorization is required by any specialty code, any provision of ORS chapters 455 or 447, or any rule adopted or order issued for the administration and enforcement of those provision, without first having obtained such permit, label, license, certification, registration or other formal authorization.

CONCLUSIONS OF LAW

1. Installing a water heater and water service piping is plumbing as defined by ORS 447.010(6).
2. Contracting to install a water heater and water service plumbing requires an Oregon plumbing contractor license under ORS 447.040(1).
3. By engaging in the business of plumbing contracting without having a plumbing contractor license, Respondent violated ORS 447.040(1).
4. By hiring and assisting Jerry Howe, a licensed journeyman plumber, to install an electric water heater and water service piping, for which a license or permit is required under Oregon law that Respondent did not have, Respondent violated ORS 455.450(2).

1 **ORDER**

2 Pursuant to ORS 455.895(1)(a) and OAR 918-001-0036, the Board assesses a total of
3 \$5,000 in civil penalties as follows:

- 4 a. \$3,000 for violating ORS 447.040; and
5 b. \$2,000 for violating ORS 455.450(2).

6 **NOTICE OF RIGHT TO HEARING**

7 Respondent is entitled to a hearing as provided by the Administrative Procedures Act, ORS
8 chapter 183. If Respondent requests a hearing, the request must be in writing and postmarked no
9 later than 20 days from the date of service of this Notice. If the Notice was served on Respondent in
10 person, the date of service is the date Respondent received the Notice. If the Notice was served
11 through the mail, the date of service is the day the Notice was mailed, not the day it was received by
12 the Respondent. If a request for hearing is not received within the 20-day period, Respondent's right
13 to a hearing shall be considered waived. Mail hearing requests to Building Codes Division,
14 Enforcement Section, P.O. Box 14470, Salem, Oregon, 97309.

15 Respondent may be represented by legal counsel. Pursuant to ORS 183.457 and OAR 918-
16 001-0030, a corporate Respondent may be represented by an authorized representative at the
17 hearing. If Respondent requests a hearing, Respondent will be notified of the time and place of the
18 hearing. The Division will give Respondent information on the procedures, right of representation,
19 and other rights of parties relating to the conduct of the hearing before the commencement of the
20 hearing.

21 **NOTICE TO ACTIVE DUTY SERVICEMEMBERS**

22 Active duty servicemembers have a right to stay proceedings under the Federal
23 Servicemembers Civil Relief Act. Contact the Oregon State Bar at 800-452-8260 or the Oregon
24 Military Department at 800-452-7500 for more information. If Respondent needs help finding legal
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1 assistance, visit the United States Armed Forces Legal Assistance Legal Services Locator website at
2 <http://legalassistance.law.af.mil/content/locator.php>.

3 **NOTICE OF FINAL ORDER**

4 This Notice will become a final order by default if Respondent does any of the following:
5 fails to request a hearing in writing within 20 days from the date of service of this Notice;
6 withdraws a hearing request; notifies the Building Codes Division or the administrative law judge
7 that Respondent will not appear at a scheduled hearing; or fails to appear at a scheduled hearing. If
8 this Notice becomes a final order by default, the Division's file on the matter, including all
9 materials submitted by Respondent, becomes the record for the purpose of establishing a prima
10 facie case.

11 **RIGHT TO JUDICIAL REVIEW**

12 Respondent is entitled to judicial review of a final order in this matter. Judicial review may
13 be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after a
14 final order is served upon Respondent. See ORS 183.482. If a final order is served on Respondent in
15 person, the date of service is the date Respondent receives the order. If a final order is served
16 through the mail, the date of service is the day the order is mailed, not the day it is received by the
17 Respondent. If Respondent does not file a petition for judicial review within the 60-day time
18 period, Respondent will lose the right to appeal. The phone number for the Oregon Court of
19 Appeals is 503-986-5555.

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22 **FOR THE STATE PLUMBING BOARD**

23
24 Andrea Simmons for
Chair
State Plumbing Board
State of Oregon

Date: July 2, 2015