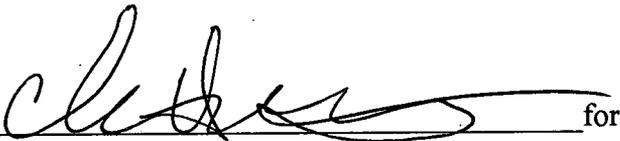


BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES OF THE STATE OF OREGON

IN THE MATTER OF:)
) FINAL ORDER
CHARLES W. DEGRAFFENREED, AN)
INDIVIDUAL,)
) OAH CASE NO. 1403631
RESPONDENT.) BCD CASE 2013-0131
)

The Director of the Department of Consumer and Business Services of the State of Oregon adopts and incorporates by reference the attached proposed order, dated November 7, 2014, assessing Respondent with civil penalties totaling \$10,000 for violating Oregon Revised Statutes (ORS) 479.620(3) and revoking Respondent's journeyman electrician license for failing to comply with the terms of the Stipulated Order in case 2013-0107. Respondent's Oregon journeyman electrician license 21968J is hereby revoked.

Dated this 16 day of December, 2014

 for
Director
Department of Consumer and Business Services
State of Oregon

NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW (OREGON COURT OF APPEALS)

Respondent is entitled to judicial review of this Final Order pursuant to ORS 183.482. Judicial review may be initiated by filing a petition for review with the Oregon Court of Appeals within sixty (60) days from the date this Final Order was mailed to Respondent.

2014 NOV 10 P 11: 06

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
BUILDING CODES DIVISION**

IN THE MATTER OF:) **PROPOSED ORDER**
)
CHARLES W. DEGRAFFENREED,) OAH Case No.: 1403631
Respondent) Agency Case No.: 2013-0131

HISTORY OF THE CASE

On December 2, 2013, the Building Codes Division (Division) mailed a Notice of Proposed Assessment of a Civil Penalty and Revocation of Journeyman Electrician License No. 21968J to Charles W. Degraffenreed (Respondent). On December 20, 2013, Respondent requested a hearing.

On March 20, 2014, the Division referred the hearing request to the Office of Administrative Hearings. Administrative Law Judge (ALJ) Marni J. Davis was assigned to preside at hearing.

ALJ Davis held a contested case telephone hearing on September 24, 2014. Respondent appeared on his own behalf. He did not testify. Tyler Anderson represented the Division. Jeffrey Rettig, Tania Close, Andrea Simmons, and Shawn Haggin testified for the Division. The record closed at the conclusion of the hearing.

ISSUES

- (1) Whether Respondent made electrical installations while not having a valid journeyman electrician's license, in violation of ORS 479.620(3).
- (2) Whether the Division may impose a civil penalty of \$10,000 against Respondent.
- (3) Whether Respondent failed to comply with the terms of the Stipulated Order in case number 2013-0107.
- (4) Whether the Division may revoke Respondent's journeyman electrician's license.

EVIDENTIARY RULINGS

Exhibits A1 through A18, offered by the Division, were admitted into the record without objection.

FINDINGS OF FACT

1. On September 3, 2004, the Division issued journeyman electrician's license no. 21968J to Charles W. Degraffenreed (Respondent). (Ex. A3.) Respondent is the owner of Axis Electric Corporation (Axis Electric). (Ex. A7.)

2. Between October 2, 2012 and December 19, 2012, Respondent's journeyman electrician's license was suspended. (Ex. A3.)

3. On November 5, 2012, Axis Electric received a permit to install an underground section of a feeder to a pumphouse at a jobsite located at 13925 S. Carus Road, Clackamas County, Oregon 97045. The inspection for this work was completed on November 8, 2012. (Ex. A9a.) Installing an underground section of a feeder to a pumphouse is an electrical installation under the Oregon Electrical Code. (Test. of Haggin.)

4. On December 11, 2012, Axis Electric mailed an invoice to 19995 SW Stafford Road, West Linn, Oregon 97068 for wiring a four-plex apartment to national electric code and Portland city code. Respondent is listed as the technician on the invoice. (Ex. A9f.) Wiring a four-plex apartment to national electric code and Portland city code is an electrical installation under the Oregon Electrical Code. (Test. of Haggin.)

5. On December 13, 2012, Axis Electric mailed an invoice to 226 Southwest Forest Cove Road, West Linn, Oregon 97068 for re-wiring a lighting circuit from the panel to the light switch, including one receptacle, one doorbell transformer, and one front garage light. Respondent is listed as the technician on the invoice. (Ex. A9b.) Re-wiring a lighting circuit from the panel to the light switch is an electrical installation under the Oregon Electrical Code. (Test. of Haggin.)

6. Between December 20, 2012 and December 26, 2012, Respondent's journeyman electrician's license was active. (Ex. A3.)

7. On December 27, 2012, Respondent's journeyman electrician's license expired. (Ex. A3.)

8. On January 2, 2013, Axis Electric received a permit to wire a shed with lights and plugs at a jobsite located at 425 E. Exeter St., Gladstone, Oregon 97027. The inspection for this work was completed on January 14, 2013. (Ex. A9d.) Wiring a shed with lights and plugs is an electrical installation under the Oregon Electrical Code. (Test. of Haggin.)

9. On April 3, 2013, Respondent renewed his license. Between April 3, 2013 and August 5, 2013, Respondent's journeyman electrician's license was suspended. (Ex. A3.)

10. On June 3, 2013, Jeffrey Rettig, the City of Gresham electrical inspector, arrived at 18901 E. Burnside St., Portland, Oregon 97233 to perform an electrical inspection. Mr. Rettig inspected an electrical panel that was replaced and he also inspected repairs made to circuits to an ice machine in the kitchen. Mr. Rettig asked Respondent for his journeyman electrician's

license. Respondent informed Mr. Rettig that his license was expired. (Ex. A9J; Test. of Rettig.) Replacing an electrical panel and making repairs to circuits to an ice machine are electrical installations under the Oregon Electrical Code. (Test. of Haggin.)

11. On August 5, 2013, claimant signed a Stipulated Order in case number 2013-0107 with the Department of Consumer and Business Services. Respondent agreed to cooperate with the Division's investigations by providing all information requested by the Director including invoices and work orders, and answering all questions fully and truthfully during any investigation or contested case process. Failure to cooperate fully would result in the revocation of Respondent's journeyman electrician's license. (Ex. A1; Test. of Simmons.)

12. On August 6, 2013, Tania Close, an enforcement officer for the Division, informed Respondent that he needed to provide copies of invoices or contracts for all electrical work he performed between October 1, 2012 and August 8, 2013. (Ex. A7; Test. of Close.)

13. On September 12, 2013, Andrea Simmons informed Respondent that he was in non-compliance with the stipulated order signed on August 5, 2013. (Ex. A5; Test. of Simmons.)

14. On October 2, 2013, Respondent provided copies of invoices and contracts to Ms. Close. (Ex. A7.)

15. On October 3, 2013, Respondent informed Ms. Close that he would mail additional copies of invoices that were not on his computer. He also informed Ms. Close that he was not licensed as a journeyman electrician at the time he performed the work. Ms. Close received no additional documentation from Respondent. (Ex. A6; Test. of Close.)

CONCLUSIONS OF LAW

- (1) Respondent made electrical installations while not having a valid journeyman electrician's license.
- (2) The Division may impose a \$10,000 civil penalty against Respondent.
- (3) Respondent failed to comply with the terms of the Stipulated Order in case number 2013-0107.
- (4) The Division may revoke Respondent's journeyman electrician's license.

OPINION

Making Electrical Installations without a Valid Journeyman Electrician's License:

The Division contends that Respondent made electrical installations without having a valid journeyman electrician's license. The Division has the burden to establish, by a preponderance of the evidence, that Respondent committed the alleged violation, and that the proposed penalty is appropriate. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position");

Harris v. SAIF, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

ORS 479.620(3) provides that a person may not *** make any electrical installation without a supervising or journeyman electrician's license.

ORS 479.530(10) provides in relevant part:

"Electrical installations" means the construction or installation of electrical wiring and the permanent attachment or installation of electrical products in or on any structure that is not itself an electrical product. "Electrical installation" also means the maintenance or repair of installed electrical wiring and permanently attached electrical products.

Respondent is the owner of Axis Electric, and he received a journeyman electrician's license on September 3, 2004. Between October 2, 2012 and August 5, 2013, his journeyman electrician's license was active for only approximately seven days, December 20, 2012 through December 26, 2012. His license was either suspended or expired during the remainder of that time period.

The Division presented evidence that Respondent performed electrical work on various occasions without having a valid journeyman electrician's license. On November 5, 2012, Axis Electric received a permit to install an underground section of a feeder to a pumphouse. On December 11, 2012, an invoice was mailed for the wiring of a four-plex apartment to national electric code and Portland city code. On December 13, 2012, an invoice was mailed for the re-wiring of a lighting circuit from the panel to the light switch. On January 2, 2013, Axis Electric received a permit to wire a shed with lights and plus. On June 3, 2013, City of Gresham electrical inspector Jeffrey Rettig spoke with Respondent about electrical work performed on the job site located at 18901 E. Burnside St. Mr. Rettig testified at hearing that on June 3, 2013, Respondent did not state that anyone else performed the electrical work at that jobsite. Additionally, the invoices that Axis Electric mailed on December 11 and 13, 2012 list Respondent as the person who performed the work. Respondent did not testify at the hearing and he presented no evidence to establish that anyone other than Respondent performed electrical work on any of the above-cited occasions.

The preponderance of the evidence establishes that Respondent made multiple electrical installations while not having a valid permit. As such, Respondent violated ORS 479.620(3).

Appropriate Civil Penalty:

The Division has adopted administrative rules to administer and enforce ORS chapter 693. OAR 918-001-0036 provides that the Division may develop a penalty matrix to use as a

guideline for assessing civil penalties. The Division's penalty matrix provides for a civil penalty of \$2,000 for each violation of ORS 479.620(3). While the Division presented evidence that Respondent had more than five occasions where he violated ORS 479.620(3), the Division only assessed a penalty for five occasions, for a total proposed civil penalty of \$10,000 (\$2,000 x 5). I find no reason to deviate from that amount. Therefore, the \$10,000 civil penalty proposed by the Division is appropriate.

Compliance with the Terms of a Stipulated Order:

On August 5, 2013, claimant signed a Stipulated Order in case number 2013-0107 with the Department of Consumer and Business Services. Respondent agreed to cooperate with the Division's investigations by providing all information requested by the Director including invoices and work orders, and answering all questions fully and truthfully during any investigation or contested case process. On October 2, 2013, Respondent provided copies of requested invoices and contracts to the Division. On October 3, 2013, Respondent informed Ms. Close that he would mail the rest of the requested invoices and contracts. However, the Division received no further documentation from Respondent. The record establishes that, by not providing documentation Respondent informed the Division he possessed, Respondent did not comply with the terms of the Stipulated Order.

Revocation of Respondent's Journeyman Electrician's License:

ORS 455.129(2) provides in relevant part:

Subject to ORS chapter 183, a regulatory body listed in subsection (3) of this section may * * * revoke * * * a license * * * if the regulatory body finds that the licensee***[:]

(b) Has failed to comply with an order of the regulatory body or the Director of the Department of Consumer and Business Services, including but not limited to the failure to pay a civil penalty.

Respondent failed to comply with the Stipulated Order in case number 2013-0107. Thus, pursuant to ORS 455.129(2)(b) the Division may revoke his journeyman electrician's license.

ORDER

I propose that the Building Codes Division issue the following order:

Charles W. Degraffenreed is assessed a \$10,000 civil penalty for violating 479.620(3). His journeyman electrician's license is revoked for failing to comply with the Stipulated Order in case number 2013-0107.

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 November 7, 2014, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1403631.

By: First Class Mail

Charles Degraffenreed
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Sterling CO 80751

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