

BEFORE THE ELECTRICAL AND ELEVATOR BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

FINAL ORDER

**JED JAVNER,
AN INDIVIDUAL,**

OAH CASE NUMBER 1504422

RESPONDENT.

BCD CASE C2015-0202

On 3/29/2016, Administrative Law Judge Marni J. Davis issued the attached Proposed Order affirming the Notice of Proposed Assessment of a Civil Penalty.

ORDER

The Electrical and Elevator Board of the State of Oregon hereby adopts and incorporates by reference the attached Proposed Order and assesses a \$3,000 civil penalty against Respondent.

Dated this 26 day of May, 2016



Chair
Electrical and Elevator Board
State of Oregon

NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW (COURT OF APPEALS)

Respondent is entitled to judicial review of this Final Order pursuant to Oregon Revised Statutes (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.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
ELECTRICAL AND ELEVATOR BOARD**

IN THE MATTER OF:

JED JAVNER

) **PROPOSED ORDER**

)

) OAH Case No.: 1504422

) Agency Case No.: C2015-0202

HISTORY OF THE CASE

On October 2, 2015, the Electrical and Elevator Board of the Building Codes Division (Division) issued a Notice of Proposed Assessment of a Civil Penalty and Final Order on Default to Jed Javner (Respondent). On October 9, 2015, Respondent requested a hearing.

On December 21, 2015, 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 February 25, 2016. Respondent appeared and testified on his own behalf. Adam Blechman represented the Division. Andrea Simmons testified on behalf of the Division. The record closed at the conclusion of the hearing.

ISSUES

1. Whether Respondent advertised to perform electrical work without an Oregon electrical contractor's license, in violation of ORS 479.620(1).
2. Whether the Division may impose a civil penalty of \$3,000 against Respondent.

EVIDENTIARY RULING

Exhibits A1 and A2 were admitted into the record without objection.

FINDINGS OF FACT

1. Jed Javner (Respondent) is not a licensed journeyman electrician or licensed electrical contractor. (Ex. A2; test. of Respondent.)
2. On approximately September 29, 2015, Respondent posted the following listing on craigslist.com:

"I have over 12 yrs [sic] doing various electrical work from wiring in hot tubs, power outlets, sub panels, video surveillance systems, telecom systems also car alarms/remote start."

"call [sic] or text with any questions jed * * * please leave a message of the work you would like done and a phone number * * * [.]"

(Ex. A2; test of Respondent.)

3. Wiring hot tubs and performing electrical work on power outlets, sub panels and video surveillance are considered electrical installations under ORS 479.530(10).

(Test. of Simmons.)

CONCLUSIONS OF LAW

1. Respondent advertised to perform electrical work without an Oregon electrical 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 electrical work without an electrical 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 civil 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).

Advertising to Perform Electrical Work

ORS 479.620(1) provides:

Subject to ORS 479.540, a person may not:

Without an electrical contractor's license, engage in the business of making electrical installations, advertise as or otherwise purport to be licensed to make electrical installations or purport to be acting as a business that makes electrical installations.

OAR 918-030-0010(8) provides:

For the purposes of * * * 479.620 * * * "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.

ORS 479.530(10) provides:

“Electrical installations” means the construction or installation of electrical wiring and the permanent attachment or installation of electrical products in or on any new 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. “Electrical installation” does not include an oil module.

Respondent is not a licensed electrical contractor. At hearing, he contended that he ~~advertised in a section of craigslist.com that is for people without electrical licenses and that he~~ was only advertising to install car alarms. He asserted that he included “wiring in hot tubs, power outlets, sub panels, video surveillance systems, telecom systems” as keywords in his advertisement so potential customers would be directed to him when they performed searches, but that he did not intend to actually perform that type of work. While Respondent may not have intended to perform all the work he advertised, he placed an advertisement to perform work that requires an electrical contractor’s license. Because he lacks such license, the Division has established that he violated ORS 479.620(1).

Civil Penalty

The Division has adopted administrative rules to administer and enforce ORS chapter 693. OAR 918-001-0036(6) provides that the Director may, subject to approval of the Boards, develop a penalty matrix to use as a guideline for assessing civil penalties.

The Division’s penalty matrix provides for a civil penalty of \$3,000 for violating ORS 479.620(1). Therefore, the \$3,000 civil penalty proposed by the Division is appropriate.

ORDER

I propose the Building Codes Division, Electrical and Elevator Board, issue the following order:

Jed Javner shall pay a \$3,000 civil penalty for violating ORS 479.620(1).

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 March 29, 2016, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 1504422.

By: First Class Mail

Jed Javner
PO Box 15046
Salem OR 97309

Adam Blechman
Building Codes Division
PO Box 14470
Salem OR 97309-0404

Ryan Clark
Administrative Specialist
Hearing Coordinator