

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS  
SERVICES  
BUILDING CODES DIVISION  
STATE OF OREGON**

IN THE MATTER OF: ) **FINAL ORDER**  
 )  
 **ON THE LEVEL INSPECTION** )  
 **CONCEPTS, INC.** ) OAH Case No.: 1403676  
 ) Agency Case No.: 2012-0233

**HISTORY OF THE CASE**

On March 14, 2014, the Director of the Department of Consumer and Business Services, Building Codes Division (Division) issued a Notice of Proposed Assessment of a Civil Penalty and Application Denial, Final Order on Default, and Order to Cease and Desist to On the Level Inspection Concepts, Inc. (Respondent). On March 19, 2014, Respondent requested a hearing.

On April 29, 2014, the Division referred the matter to the Office of Administrative Hearings (OAH).

The OAH assigned the matter to Administrative Law Judge Joe Allen and scheduled a telephone hearing for October 1, 2014. On July 31, 2014, the OAH assigned ALJ Samantha Fair to preside at hearing.

On August 11, 2014, ALJ Allen convened a prehearing conference. Respondent appeared, represented by attorney Ryan Hunt. The Division appeared, represented by Senior Assistant Attorney General Katharine Lozano. ALJ Allen consolidated this matter for purposes of hearing with two other matters involving the same parties, OAH Case Nos. 1403675 and 1403677. ALJ Allen scheduled an in-person hearing for September 29 through October 1, 2014, and set deadlines for the submission of witness lists and exhibits.

On September 10, 2014, the Division requested postponement of the hearing. On September 11, 2014, ALJ Fair granted the Division's request.

On September 29, 2014, ALJ Fair convened a prehearing conference. Respondent appeared, represented by Mr. Hunt. The Division appeared, represented by Assistant Attorney General Tyler Anderson. ALJ Fair scheduled an in-person hearing for February 3 through February 5, 2015, and set deadlines for submission of witness lists and exhibits.

On January 22, 2015, Mr. Hunt withdrew as Respondent's representative. Respondent advised the OAH that it was represented by its president Douglas Dick.

On February 2, 2015, the Division issued an Amended Notice of Proposed Assessment of a Civil Penalty and Application Denial, Final Order on Default, and Order to Cease and Desist

(Amended Notice) to Respondent.<sup>1</sup>

A hearing was held on February 3, 2015, in Tualatin, Oregon with ALJ Fair presiding. Respondent, represented by Mr. Dick, appeared and testified. The Division appeared and was represented by Ms. Lozano. Testifying on behalf of the Division were Andrea Simmons, the Division's enforcement and training manager; Roseanne Nelson, the Division's licensing manager; and Jerald Taylor, the city manager for the City of Manzanita. The record closed at the conclusion of the hearing. ALJ Fair issued a Proposed Order on February 23, 2015, recommending that the Division find Respondent committed violations of ORS 455.129(2)(d) and (c), OAR 918-090-0100, OAR 918-090-0110(2)(i), and OAR 918-090-0300(1), but find Respondent did not violate ORS 455.129(2)(i), and recommending that the Board deny Respondent's application for registration as a third party plan review and inspection business (SRB), assess a civil penalty against Respondent of \$3,000, and that the Division's Cease and Desist Order, issued with the Notice and Amended Notice should be maintained, with respect to violations of OAR 918-090-0100, OAR 918-090-0110, OAR 918-090-0300 and ORS 455.129.

On February 26, 2015, and March 13, 2015, Respondent filed exceptions to the ALJ's Proposed Order with the Division. The Division has considered Respondent's exceptions, to the extent that they did not attempt to introduce new evidence via assertion after the record had closed, or raise arguments or questions outside the scope of this contested case, but rejects them.

The Division issued an Amended Proposed Order on March 24, 2015 that was largely consistent with the ALJ's Proposed Order. The Amended Proposed Order did, however, include a finding that Respondent did violate ORS 455.129(2)(i), with accompanying analysis; this finding did not result in any additional discipline or penalties.

On April 8, 2015, the Respondent filed exceptions to the Amended Proposed Order with the Division, but they are substantially identical to prior arguments Respondent has raised, have already been addressed at length in the Proposed Order and Amended Proposed Order. The only new exception is that Respondent objects to the civil penalty proposed as unreasonable; however, this issue was also addressed in the Proposed and Amended Proposed Orders. The Division has considered Respondent's exceptions and rejects them.

The Division hereby issues the following Final Order.

### ISSUES

1. Whether Respondent engaged in the business of providing third party plan review and inspection services without being registered as such a business with the Division. ORS 455.129(2)(d) and OAR 918-090-0100.

2. Whether Respondent acted in a manner that created a serious danger to the public health or safety. ORS 455.129(2)(i).

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<sup>1</sup> The Amended Notice revised a citation to a statute that had been renumbered. Respondent received a copy of the Amended Notice prior to the hearing.

3. Whether Respondent met the requirements for a quality control manual required for a third party plan review and inspection business (SRB) application. OAR 918-090-0300(1) and OAR 918-090-0110(2)(i).

4. Whether Respondent submitted an application with the Division that contained an incorrect or misleading statement. ORS 455.129(2)(c).

5. Whether the Division may issue a cease and desist order to Respondent, prohibiting it from violating ORS chapter 455 and rules adopted thereunder. ORS 455.775(2).

6. Whether Respondent should pay a civil penalty in the amount of \$3,000. ORS 455.895(2).

7. Whether Respondent's application for SRB registration should be denied. ORS 455.125(2)(a) and ORS 455.129(2).

### EVIDENTIARY RULINGS

Exhibits A1 through A7, offered by the Division, were admitted into the record without objection. Exhibits R5, R8, R13, R16, R23, R26, R32, R35 and R36 were admitted into the record without objection. Exhibits R14 and R15 were excluded from the record because they were duplicates of Exhibits A1 at 2, A3 and A4. The Division's objections to Exhibits R1, R2, R4, R6, R7, R9, R10, R12, R17, R18, R21, R22, R24, R25, R27, R29 and R33 were overruled, and the exhibits were admitted into the record. The Division's objections to Exhibits R3, R11, R19, R20, R28, R30, R31 and R34 were sustained, and the exhibits were excluded from the record.

### FINDINGS OF FACT

1. Doug Dick registered On the Level Inspection Concepts (Concepts), his assumed business name, with the Oregon Corporation Division on February 21, 1997. (Ex. A7 at 1-2.) On December 8, 2005, the Division certified Concepts as an SRB.<sup>2</sup> The certification expired on March 1, 2012, without being renewed. (*Id.* at 3.)

2. Respondent, an Oregon corporation, has been registered with the Oregon Corporation Division since June 7, 2007. (Ex. A3 at 5-6.) Dick is Respondent's president, sole owner and only employee. (Exs. A3 at 1; A4 at 1.) Beginning in 2007, Respondent's communications with the Division noted the name of the business as On the Level Inspection Concepts, Inc. Respondent's checks for payments made to the Division noted the account name as being On the Level Inspection Concepts, Inc. Monthly reports filed by Respondent with the Division included the designation of On the Level Inspection Concepts, Inc. Respondent's letters to the Division were signed by Dick and noted his position as the president of On the Level Inspection Concepts, Inc. The Division's correspondence to Respondent included the name of the business as On the Level Inspection Concepts, Inc. (Exs. R1; R2; R4; R5; R6; R8.)

<sup>2</sup> Neither party provided evidence regarding the existence of certification prior to this date. Such evidence is not relevant for this order.

3. The Division has never issued SRB registration to Respondent. (Test. of Simmons.)

4. From March 2012 through February 2014, Respondent performed a total of 297 inspections and 102 plan reviews for the City of Manzanita. (Ex. A2 at 1-36.) No claims have ever been filed against the City of Manzanita based upon Respondent's performance of these inspections and plan reviews. (Test. of Taylor.) Dick had the necessary personal licenses to perform the inspections and plan reviews for the City of Manzanita. (Test. of Dick.)

5. In December 2013, the Division informed Dick that Respondent failed to have the registrations to perform its work. (Test. of Dick.) On January 14, 2014, Respondent submitted a Third Party Plan Review and Inspection Business Registration Application (SRB Application) to the Division. (Ex. A3 at 1.)

6. Respondent provided the Division its Quality Control Manual (Manual) with its SRB Application. (Test. of Simmons.) The Manual described its scope of work as "provides inspection and plan review services to governmental jurisdictions only." (Ex. A4 at 1.) The Manual further provided that Respondent "works for governmental jurisdictions or companies that work for governmental jurisdictions only." (*Id.* at 3.) The Manual listed business contacts as the State of Oregon, City of Manzanita, Modern Building Systems (MBS) and Blazer Industries, Inc. (*Id.* at 1-2.) It noted the final two business contacts as "Pre-Fab Manufacture." (*Id.* at 2.) The Manual included a section entitled "Documented Policies describing Business Operations or Application of State Codes." (*Id.*) That section provided:

All policies and procedures are based on ORS 455, Oregon BCD Application and Interpretation from the BCD web-page, and the other adopted State Specialty Codes.

(*Id.*) Respondent asserted that its Manual is the same as the manuals previously submitted to the Division by Dick, under his assumed business name with all of Dick's SRB applications and renewals. (Test. of Dick.)

7. In addition to performing services for the City of Manzanita, Respondent performed field inspection and plan review services for MBS. (Ex. A5 at 1-4.) MBS is an Oregon business corporation. (Ex. A6 at 1.) MBS does not perform any work as a governmental jurisdiction. (Test. of Dick.)

8. The Division requires SRBs to have errors and omissions coverage to provide greater coverage than provided by a general liability insurance policy. Errors and omissions liability coverage provides consumers with an additional insurance policy that could be pursued for damages resulting from inspection oversights. (Test. of Simmons.)

9. Respondent had errors and omissions insurance coverage from February 5, 2008 until February 5, 2009. (Ex. A1 at 1.) Respondent let the coverage lapse because Dick believed that the City of Manzanita's errors and omissions coverage would include Respondent's work. (Test.

of Dick.) Respondent re-acquired errors and omissions coverage for the period December 23, 2013 through December 23, 2014. (Ex. A3 at 3.)

10. The City of Manzanita has errors and omissions liability coverage for its employees. The coverage does not extend to non-employees, such as Respondent. Respondent performs its work for the City of Manzanita pursuant to a contract. (Test. of Taylor.)

11. A penalty matrix adopted by various Boards for the specialty building codes provides for penalties of \$3,000 per violation for businesses that perform unlicensed work as first-time violators. (Ex. R36 at 2.) No such matrix exists for penalties issued directly by the Division. (Test. of Simmons.)

12. Dick asserted he has experienced a loss of 55 percent of his income because of Respondent's inability to continue business operations. (Test. of Dick.)

### CONCLUSIONS OF LAW

1. Respondent engaged in the business of providing third party plan review and inspection services without being registered as such a business with the Division.

2. Respondent acted in a manner that created a serious danger to the public health or safety.

3. Respondent did not meet the requirements for a quality control manual required for an SRB application.

4. Respondent submitted an application with the Division that contained an incorrect or misleading statement.

5. The Division may issue a cease and desist order to Respondent.

6. Respondent should pay a civil penalty of \$3,000.

7. Respondent's SRB application should be denied.

### OPINION

The Division proposes to assess civil penalties against Respondent based upon an allegation that Respondent performed multiple plan reviews and inspections when it was not registered as an SRB. As the proponent of the allegation, the Division has the burden to establish, by a preponderance of the evidence, that the allegation is correct and that it may assess the civil penalties. 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). 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).

The Division also seeks to deny Respondent's application for registration as an SRB based on allegations that Respondent violated state laws and administrative rules. Because this is an application proceeding, Respondent has the burden to establish, by a preponderance of the evidence, its eligibility for registration. *Sobel v. Board of Pharmacy*, 130 Or App 374, 380 (1994) (applicants have the burden of establishing their eligibility).

*Engaging in the Business of Providing Third Party Plan Review and Inspection Services*

ORS 455.457 provides for the promulgation of administrative rules for the licensing of businesses that employ persons that perform inspections and plan reviews. OAR 918-090-0100 provides, in part:

A registration as a plan review and inspection business shall be held by any person who engages in \* \* \* the business or occupation of \* \* \* plan reviews or inspections other than as an exclusive employee of a municipality, the division or a registered plan review and inspection business[.]

OAR 918-090-0010(9) provides:

"Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other entity, public or private, however organized.

As a corporation exclusively owned by Dick, Respondent is a private corporation and, therefore, a person as defined by OAR 918-090-0010(9). Pursuant to OAR 918-090-0100, Respondent must be registered as an SRB to perform plan reviews or inspections. During the period March 2012 through February 2014 when Respondent was not registered as an SRB with the Division, it performed a total of 297 inspections and 102 plan reviews for the City of Manzanita.

Respondent asserted that the Division was aware of the change in entity from Dick, the sole proprietor, operating under the assumed business name of On the Level Inspection Concepts, to On the Level Inspection Concepts, Inc., the corporation. Respondent further argued that the Division was aware that Respondent did not have the required registration but failed to notify Respondent it was operating unlawfully until late 2013. The evidence did establish that, after the formation of Respondent, all communications made by Respondent with the Division included the "Inc." designation and named Dick as Respondent's president.

Intent to deceive on the part of Respondent is not alleged, nor is it an element of any of the violations alleged. Yet, while Respondent may not have willfully concealed its formation from the Division, but it did use a nearly identical name, with only three letters different from Dick's assumed business name, and did not even attempt to obtain proper registration as an SRB

until the Division notified Dick that it had become aware of Respondent's unregistered status. More importantly, however, the burden is on SRBs to ensure that they are properly registered with the Division prior to the performance of inspections and plan reviews.

Respondent further argued that the Division should not seek civil penalties and should not deny the SRB Application because the Division had knowledge of and allowed the ongoing violations. Essentially, Respondent is arguing for the application of equitable estoppel. However, its argument is unpersuasive. Equitable estoppel is rarely applicable against state agencies and should be applied cautiously. *Employment Div. v. Western Graphics Corp.*, 76 Or App 608, 612 (1985). Generally, equitable estoppel has been applied "only in cases where the individual asserting estoppel has been deprived of a benefit that would have been received but for the government's misleading conduct." *Id.* at 612-614. An individual is not entitled to "a windfall as a result of the government's mistake and erroneous advice." *Id.* Even assuming the Division was aware of the change in business entity as early as the first correspondence it received with the "Inc." designation, the Division did not engage in any misleading conduct. At most, the Division made a mistake by not thoroughly investigating the status of Respondent and potentially discovering its non-registered status earlier.

During the period of March 2012 through February 2014, Respondent performed 399 inspections and plan reviews when not registered to perform such work in violation of OAR 918-090-0100.

*Acting in a Manner that Creates a Serious Danger to the Public Health or Safety*

OAR 918-090-0110(2) lists the requirements for SRB registration. It provides, in part:

Application for plan review and inspection business registration shall include at least the following:

\* \* \* \* \*

(h) Proof of "errors and omissions" liability insurance or its equivalent, of at least \$500,000 per occurrence, with an aggregate limit of at least \$500,000 per policy year, including but not limited to, the name of the insurance company, the amount for which insured, the policy number and expiration, and the current business address and phone number of the insurance company's agent. In lieu of errors and omission insurance required by this rule, businesses contracting directly with a municipality to provide specialty code inspections and plan reviews, may be covered by the municipality's insurance. When this option is used, the business shall submit sufficient information for the division to determine the errors and omissions insurance is covered by all municipalities for which the person or business is working[.]

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ORS 455.129(2) provides, in part:

Subject to ORS chapter 183, a regulatory body listed in subsection (3) of this section may deny a license, certificate, registration or application or may suspend, revoke, condition or refuse to renew a license, certificate or registration if the regulatory body finds that the licensee, certificate holder, registrant or applicant:

\* \* \* \* \*

(i) Has acted in a manner creating a serious danger to the public health or safety[.]

OAR 918-090-0110(2)(h) requires SRBs to provide proof of errors and omissions liability coverage with specific minimum liability limits. Respondent's errors and omissions liability coverage lapsed in February 5, 2009 and was not re-acquired until December 23, 2013. Additionally, the City of Manzanita's insurance did not provide coverage for Respondent's work. Therefore, during the period March 2012 until December 23, 2013, Respondent engaged in the business of performing inspections and plan reviews without having the required errors and omissions liability coverage.

Errors and omissions liability coverage provides financial recourse for consumers who may have claims for damages from deficient plans or specialty code work that was missed during plan review and inspection. Failure to provide errors and omissions liability coverage creates a serious danger to the public health or safety because lack of coverage denies consumers that potential recourse. ORS 455.129(2)(i) prohibits Respondents from acting in a manner that creates danger to the public health or safety. Danger is defined as "the state of being exposed to harm; liability to injury, pain or loss; peril, risk." *Webster's Third New Int'l Dictionary 573* (unabridged ed 2002). The relevant definitions of safety are "\* \* \* exemption from hurt, injury or loss \* \* \* the quality or state of not presenting risks." *Id.* at 1998. The lack of error and omissions liability coverage creates the *peril or risk of loss* to the public, who would bear the risk, and any resultant loss, arising from a deficient plan review or inspection if the SRB that performed that review or inspection failed to carry errors and omissions liability coverage. Therefore, the evidence established that Respondent acted in a manner that created a serious danger to the public health or safety.

Requirements for a Quality Control Manual

OAR 918-090-0110(2) lists the requirements for SRB registration. It provides, in part:

Application for plan review and inspection business registration shall include at least the following:

\* \* \* \* \*

(i) Provide a quality control manual complying with OAR 918-090-0300 for division approval describing operating procedures and the process to ensure all applicable code provisions will be enforced as required by these rules.

OAR 918-090-0300(1) provides, in part:

(1) All registered businesses providing plan review and inspection services shall create, maintain and make available to customers and affected jurisdictions, a quality control manual for their business operations that is approved by the division and includes the following:

(a) The scope of work performed by the business;

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(f) Any documented policies and procedures describing business operations or application of the state building code and related regulations.

In its Manual, Respondent asserted that its scope of work was the performance of inspections and plan reviews for governmental jurisdictions. Respondent also performed such work for MBS, a private corporation that did not work for governmental jurisdictions. Therefore, Respondent's Manual failed to provide an accurate description of the scope of work it performed.

In its Manual, Respondent had a section for the documented policies of its business operations. However, the section simply stated that all policies and procedures are based upon ORS 455 and adopted state specialty codes and the Division's website. Such a generalized statement does not provide a description of business operations or how the state building code and related regulations apply to Respondent's business practices. Therefore, Respondent's Manual failed to provide adequate documentation of its business policies and procedures.

Respondent's Manual failed to comply with the requirements for a quality control manual as provided in OAR 918-090-0300(1).

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Respondent argued that the current Manual is the same as manuals Dick previously submitted to and were accepted by the Division in prior applications; therefore, Respondent argued, the manual it submitted in 2014 with its original application should also be acceptable to the Division. Although the Respondent provided no documentary evidence that its manual was the same as Dick's previous manuals, even if it had, this argument is the same equitable estoppel argument previously discussed, to wit: Respondent should receive a "windfall" of being allowed to submit a woefully deficient manual because the Division made a mistake by accepting another SRB applicant's non-compliant manual. As previously explained, equitable estoppel is not applicable in this matter.

Submission of an Application that Contained an Incorrect or Misleading Statement

ORS 455.129(2) provides, in part:

Subject to ORS chapter 183, a regulatory body listed in subsection (3) of this section may deny a license, certificate, registration or application or may suspend, revoke, condition or refuse to renew a license, certificate or registration if the regulatory body finds that the licensee, certificate holder, registrant or applicant:

\* \* \* \* \*

(c) Has filed an application for a license, certificate or registration that, as of the date the license, certificate or registration was issued or the date of an order denying the application, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was incorrect or misleading in any respect[.]

In its Manual submitted with its SRB application, Respondent asserted that it only performed inspection and plan review services for governmental jurisdictions. Contrary to this statement, Respondent also performed inspection and plan review services for MBS, a private corporation that did not perform any work for a governmental jurisdiction. Although there was no evidence of any fraudulent intent by Respondent to deceive the Division, the statement was incorrect. Therefore, Respondent submitted an application that contained an incorrect statement.

Issuance of a Cease and Desist Order

ORS 455.775(2) provides:

If the director has reason to believe that any person has been engaged, or is engaging, or is about to engage in any violation of the state building code, or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693 or any rule adopted under those statutes, the director may issue an order, subject to ORS 183.413 to 183.497, directed to the person to cease and desist from the violation or threatened violation<sup>4</sup>.

In its Amended Notice, the Division sought an order against Respondent to cease and desist from violating ORS chapter 455 and rules adopted thereunder. However, ORS 455.775(2) restricts the order to cease and desist "from the violation or threatened violation." Therefore, the order must be limited to those statutes or rules that a person has violated, is violating or is about to violate.

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<sup>4</sup> ORS 455.125(2) also provides the Division general authority to issue a Cease and Desist Order.

As previously discussed, the Division alleged and proved that Respondent engaged in the business of performing inspections and plan reviews without being registered as an SRB, failed to have errors and omissions liability coverage, created a serious danger to public health and safety, maintained a deficient quality control manual, and submitted an SRB application that contained an incorrect statement regarding the scope of Respondent's work, all in violation of OAR 918-090-0100, OAR 918-090-0110, OAR 918-090-0300 and ORS 455.129. The Division did not prove that Respondent violated any other provisions of the state building code or related statutes or rules. Therefore, the Division is entitled to issue an order to Respondent to cease and desist from further violations of OAR 918-090-0100, OAR 918-090-0110, OAR 918-090-0300 and ORS 455.129, the statute and administrative rules that Respondent violated.

Respondent must cease and desist from further violations of OAR 918-090-0100, OAR 918-090-0110, OAR 918-090-0300 and ORS 455.129.

Assessment of Civil Penalties

ORS 455.895 provides, in part:

(2) The Department of Consumer and Business Services, or an appropriate advisory board, if any, may at its discretion impose a civil penalty against any person who violates the state building code \* \* \*, or this chapter \* \* \*, or any rule adopted or order issued for the administration and enforcement of those statutes. Except as provided in subsections (3), (4) and (9) of this section or ORS 446.995, a civil penalty imposed under this section must be in an amount determined by the appropriate advisory board or the department of not more than \$5,000 for each offense \* \* \* [.]

\* \* \* \* \*

(6) Civil penalties under this section shall be imposed as provided in ORS 183.745[.]

From March 2012 through February 2014, Respondent performed inspections and plan reviews without being registered as an SRB in violation of OAR 918-090-0100. Because Respondent performed 399 inspections and plan review during this period, the Division is entitled to assess \$5,000 for each violation, or a total maximum civil penalty of \$1,995,000. A penalty matrix adopted by various specialty code boards, which the Division can reasonably elect to use a guideline for an individual case, would support limiting the civil penalty to \$3,000 per violation, or a total maximum civil penalty of \$1,197,000, as there is no evidence of prior violations by Respondent.

In its Amended Notice, the Division seeks to assess a *total* civil penalty of \$3,000 against Respondent for its violations of OAR 918-090-0100. The evidence supports such a limited civil penalty assessment as there was no evidence that Respondent's performance was deficient, no evidence of actual harm from its work, no evidence of a prior history of violations, and no

evidence of any intent to deceive the Division about Respondent's corporate status and its performance of the work. Because the amount of the proposed civil penalty is within the limits set by ORS 455.895 and there is no evidence that the Division has abused its discretion in assessing such reasonable amounts, Respondent must pay a civil penalty in the amount of \$3,000 for violations of OAR 918-090-0100. Pursuant to ORS 183.745(2), the civil penalty is due and payable 10 days after the final order imposing the civil penalty becomes final by operation of law or on appeal.

Denial of SRB Application

ORS 455.125(2)(a) provides the Division authority to deny a license if an applicant has failed to comply with a provision of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693, or with any rule adopted under those statutes or under ORS 455.117.

ORS 455.129(2) provides, in part:

Subject to ORS chapter 183, a regulatory body listed in subsection (3) of this section may deny a license, certificate, registration or application or may suspend, revoke, condition or refuse to renew a license, certificate or registration if the regulatory body finds that the licensee, certificate holder, registrant or applicant:

(a) Has failed to comply with the laws administered by the regulatory body or with the rules adopted by the regulatory body.

\* \* \* \* \*

(c) Has filed an application for a license, certificate or registration that, as of the date the license, certificate or registration was issued or the date of an order denying the application, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was incorrect or misleading in any respect.

(d) Has performed work without appropriate licensing, certification or registration or has employed individuals to perform work without appropriate licensing, certification or registration.

(i) Has acted in a manner creating a serious danger to the public health or safety[.]

Respondent argued that the Division should not deny its SRB license because Dick had lost significant personal income through Respondent's inability to continue its operations while this case has been pending. That an individual has lost income because a corporation that an agency has discovered has been operating unlawfully is unable to continue in that unlawful business while it is being investigated is not a reason to grant that that corporation a license to

operate -- particularly when that individual is the owner, president, and sole employee of the business that was operating unlawfully, and has been working in the field long enough to know better.

As previously discussed, the Division alleged and proved that Respondent performed inspections and plan reviews without being registered as an SRB, failed to have errors and omissions liability coverage, created a serious danger to public safety or health, maintained a deficient quality control manual, and submitted an SRB application that contained an incorrect statement in violation of OAR 918-090-0100, OAR 918-090-0110, OAR 918-090-0300 and ORS 455.129. Under ORS 455.125 and 455.129, the Division is entitled to deny licensure (registration) to an applicant for any one of these reasons. Inspection and plan review business are the on-the-ground gatekeepers of the state's building code; they are the only entities outside of governmental bodies that ensure contractors and specialty code tradesmen follow the building code. They set the example. Inspection and plan review businesses are entrusted with the responsibility of helping police the contractors and tradesmen in their work, and are thereby entrusted to help the government protect the public. When the keepers of the law show affirmative and utter disregard for it in their interactions with municipalities and consumers -- even if they are not acting with a specific intent to deceive -- the very foundation of the system of a statewide building code and its minimum legal requirements are compromised. Because Respondent violated Oregon statutes and administrative rules, submitted an application that contained an incorrect statement about its scope of work, performed work without the appropriate registration, and created a serious danger to public health and safety, the Division is acting within its discretion and appropriately to deny Respondent's application for certification as an SRB.

The Division's decision to deny the application is supported by the evidence of the number of violations, the period over which the violations occurred, and the varied nature of the violations. Respondent's application for certification as an SRB is denied.

In its exceptions, Respondent -- among its arguments -- again asserted that Dick has lost personal income during the pendency of this case; such assertion is immaterial, as it has no bearing on whether the violations alleged were committed, nor is it a basis on which to grant or deny a corporation licensure (registration). Respondent also argues that its SRB application should not be denied because its incomplete and incorrect quality control manual was drafted not only for its Oregon applications, but also for other states where it conducts its business, and not only for its on-site inspection and plan review work, but also for its manufactured structure in-factory inspection and plan review work. The Division rejects these arguments. What other states may or may not require in their manuals is irrelevant for purposes of an Oregon SRB application. That some of Respondent's unlawful business was done for site-built construction, but some for factory-built construction, is irrelevant; both involved inspections and plan review, and Respondent did not engage in the business of plan review and inspection only for governmental jurisdictions or entities working for such jurisdictions. Respondent argues the same estoppel arguments it presented at hearing; those have been addressed above. The Respondent suggests that it was the Division's responsibility to draft the Respondent's Quality Control Manual, and that

the Respondent should have simply been able to "sign off" on a Division-created manual. By law and rule, the duty to create a Quality Control Manual is the applicant's, not the Division's. It is, in part, through the Quality Control Manual that the Division is able to assess whether an applicant understands, and is able and prepared to carry out, its lawful licensure responsibilities; the woeful deficiencies in Respondent's Quality Control Manual were, in fact, an accurate reflection of its disregard for those very responsibilities – including the responsibility to obtain licensure itself. Respondent's arguments of its lack of intent to deceive and of the record not containing evidence of physical harm to a consumer have been addressed above. The reasonableness of the civil penalty assessed in this matter has been addressed above. Respondent's argument that a \$3,000 civil penalty is overly harsh, when – in fact – the Division had authority to assess a civil penalty of over \$1,000,000 against it for the violations committed, is not persuasive.

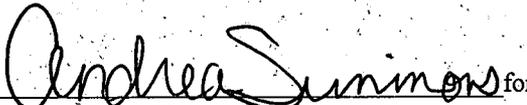
**ORDER**

It is **HEREBY ORDERED**:

On the Level Inspection Concepts, Inc. must pay the Department of Consumer and Business Services Building Codes Division a **CIVIL PENALTY** in the amount of \$3,000 for violations of OAR 918-090-0100. The civil penalties are due and payable 10 days after the final order imposing the civil penalty becomes final by operation of law or on appeal.

On the Level Inspection Concepts, Inc. must **CEASE AND DESIST** from further violations of OAR 918-090-0100, OAR 918-090-0110, OAR 918-090-0300 and ORS 455.129.

On the Level Inspection Concepts, Inc.'s application for registration as a third party plan review and inspection business is **DENIED**.

  
for  
**Director, DCBS – Building Codes Division**

Date: May 22, 2015

**APPEAL NOTICE**

You are entitled to judicial review of this order in accordance with ORS Chapter 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon within 60 days from the date of service of this order.

**Civil Penalty Notification**

Civil penalties, if unpaid, may be recorded and filed with the county clerks as liens against property 10 days after the expiration of the statutory appeals period (70 days after issuance of this order).