

1 **BEFORE THE ELECTRICAL AND ELEVATOR BOARD OF THE STATE OF OREGON**
2 **BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON**

3)
4 **IN THE MATTER OF:**) **FINAL ORDER**
5)
6 **GARY L. FRIX, JR.,**) **OAH CASE NO. 1403546**
7 **DBA GARY FRIX HANDYMAN SERVICES**) **BCD CASE NO. 2013-0031**
8)
9 **RESPONDENT**)

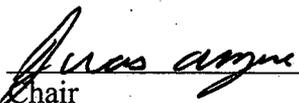
10 The State Plumbing Board and the Electrical and Elevator Board of the State of Oregon adopt
11 and incorporate by reference the attached proposed order, dated May 5, 2014, for violations of Oregon
12 Revised Statutes 447.040(1), 693.030(1), 479.620(1), 479.550(1), 479.620(3), 479.710(1), and Oregon
13 Administrative Rule 918-785-0200(1)(a).
14

15 Dated this 24 day of July, 2014

16 

17 Chair
18 Electrical and Elevator Board
19 State of Oregon

20 Dated this 19th day of June, 2014

21  6-19-14

22 Chair
23 State Plumbing Board
24 State of Oregon

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

Applicant 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 Applicant.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
Oregon Plumbing Board of the State of Oregon
Before the Electrical and Elevator Board of the State of Oregon
BUILDING CODES DIVISION**

IN THE MATTER OF:) PROPOSED ORDER
)
GARY L. FRIX, JR., DBA GARY FRIX HANDYMAN SERVICES) OAH Case No.: 1403546) Agency Case No.: 2013-0031

HISTORY OF THE CASE

On November 22, 2013, the Plumbing Board and the Electrical and Elevator Board of the Building Codes Division (Division) issued a Notice of Proposed Assessment of Civil Penalty and Final Order on Default to Gary L. Frix, Jr., DBA Gary Frix Handyman Services (Respondent). On December 13, 2013, Respondent requested a hearing.

On January 23, 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 March 25, 2014. Respondent appeared and testified on his behalf. John Adams represented the Division. The following witnesses testified on behalf of the Division: Rick Newman, Robert Whelan, Homer Humelbaugh, Aeron Teverbaugh, and Marion "Skip" Smith. The record closed at the conclusion of the hearing.

ISSUES

1. Whether Respondent advertised or purported to be a plumbing contractor, without a plumbing contractor's license, in violation of ORS 447.040(1).
2. Whether Respondent did plumbing work in Oregon without first obtaining a plumbing permit, in violation of OAR 918-785-0200(1)(a).
3. Whether Respondent engaged in the trade of a journeyman plumber without a journeyman plumber's license, in violation of ORS 693.030(1).
4. Whether Respondent engaged in the business of an electrical contractor without an electrical contractor's license, in violation of ORS 479.620(1).

5. Whether Respondent worked on any new electrical installation for which a permit has not been issued, in violation of ORS 479.550(1).

6. Whether Respondent made any electrical installation without a supervising or journeyman electrician's license, in violation of ORS 479.620(3).

7. Whether Respondent made an electrical installation that does not meet minimum safety standards, in violation of ORS 479.710(1).

8. Whether the Division may impose civil penalties totaling \$15,000 against Respondent.

EVIDENTIARY RULING

Exhibits A1 through A12, offered by the Division, were admitted into the record.

FINDINGS OF FACT

1. Gary L. Frix, Jr. is the owner of Gary Frix Handyman Services (Respondent). Respondent does not have an Oregon electrical contractor's license, an Oregon plumber contractor's license, a journeyman plumber's license or a journeyman electrician's license. (Ex. A1; test. of Frix, Jr., Smith.)

2. On approximately May 2012, Frances Davis, the owner of the property located at 2895 5th Street, Baker City, Oregon, hired Respondent to convert her garage into a bedroom and bathroom. (Ex. A4; test. of Frix, Jr.)

3. Between approximately May 2012 and November 2012, Respondent performed plumbing and electrical work on Ms. Davis' property. Respondent installed electrical wiring, switches, outlet receptacles and electrical fixtures. In the bathroom, Respondent installed a four foot surface mounted fluorescent fixture that extended a short distance into the shower. (Exs. A6, A7; test. of Frix, Jr., Whelan.)

4. Respondent installed hot and cold water plumbing piping to the bathroom shower and tub enclosure and to the toilet and sink. Respondent did not obtain any permits to perform any installations in the residence. (Ex. A6; test. of Frix, Jr., Whelan)

5. Respondent did not obtain an electrical or plumbing permit to perform any work. Respondent oversaw and/or performed all of the work to convert the garage into a bedroom and bathroom. (Ex. A4; test. of Frix, Jr., Whelan.)

6. In approximately November 2012, the Baker County Electrical Inspector, Rick Newman, inspected Ms. Davis' residence and discovered electrical violations including, but not limited to, the following: short lengths of electrical wire assembled to reach long distances that were poorly spliced together in the attic with no junction boxes or securing methods; all splicing, including recessed fixtures with junction boxes, were performed in free air outside boxes with no method of securing jacked cable throughout the length or at the point of termination; methods of

splicing were consistently performed without workmanship; and devices in the wall boxes were installed without workmanship and concern for loose connection hazards. The inspector concluded that the numerous loose connections presented potential failures, due to mechanically unsecured splicing, and that the failures posed serious present and future hazards to persons and property. (Exs. A5, A6; test. of Newman.)

7. Ms. Davis paid Respondent an hourly wage for all the work he performed at her residence. (Exs. A4, A10, A11; test. of Frix Jr.)

8. Installing electrical wiring, outlet receptacles and electrical fixtures are electrical installations pursuant to ORS 479.530(10). (Ex. A6).

9. Installing hot and cold water plumbing piping to the bathroom shower and tub enclosure and to the toilet and sink are plumbing installations pursuant to ORS 477.010(6). (Ex. A6; test. of Humelbaugh.)

CONCLUSIONS OF LAW

1. Respondent advertised or purported to be a plumbing contractor, without a plumbing contractor's license, in violation of ORS 447.040(1).

2. Respondent performed plumbing work in Oregon without first obtaining a plumbing permit, in violation of OAR 918-785-0200(1)(a).

3. Respondent engaged in the trade of a journeyman plumber without a journeyman plumber's license, in violation of ORS 693.030(1).

4. Respondent engaged in the business of an electrical contractor without an electrical contractor's license, in violation of ORS 479.620(1).

5. Respondent worked on a new electrical installation for which a permit has not been issued, in violation of ORS 479.550(1).

6. Respondent made any electrical installation without a supervising or journeyman electrician's license, in violation of ORS 479.620(3).

7. Respondent made an electrical installation that does not meet minimum safety standards, in violation of ORS 479.710(1).

8. The Division may impose civil penalties totaling \$15,000 against Respondent.

OPINION

The Division contends that Respondent advertised or purported to be a plumbing contractor, without a plumbing contractor's license, that he performed plumbing work in Oregon without first obtaining a plumbing permit, that he engaged in the trade of a journeyman plumber without a journeyman plumber's license, that he engaged in the business of an electrical

contractor without an electrical contractor's license, that he worked on a new electrical installation without a permit, that he made an electrical installation without a supervising or journeyman electrician's license and that he made an electrical installation that does not meet minimum safety standards. The Division also contends that Respondent should be assessed a civil penalty in the amount of \$15,000 for the alleged violations. The Division has the burden to show, by a preponderance of the evidence, that Respondent committed the alleged violations, and that the proposed penalties are 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 or Purporting to be a Plumbing Contractor, without a 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 as provided by State Plumbing Board rules adopted under ORS 455.117.

ORS 693.010(4) provides:

"Licensed plumbing contractor" means a person licensed as required under ORS 447.010 to 447.156 to engage in the business of furnishing labor and material, or labor only, to install, alter and repair plumbing.

ORS 447.010(6) provides:

"Plumbing" is the art of installing, altering or repairing in or adjacent to or serving buildings:

- (a) Pipes, fixtures and other apparatus for bringing in the water supply and removing liquid and water-carried waste, including the water supply distributing pipes.
- (b) Fixtures and fixture traps.
- (c) Soil, waste and vent pipes.
- (d) House drain and house sewer to the sewer service lateral at the curb, or in the streets, or alley or other disposal terminal holding human or domestic sewage.
- (e) Storm water drainage, with their devices, appurtenances and connections.
- (f) Pipes, fixtures and other apparatus for medical gas, anesthetic waste gas and vacuum systems.
- (g) Solar heating and cooling systems.

At hearing, Respondent confirmed that he helped Ms. Davis plan the design of the bedroom and bathroom, and that he installed hot and cold water plumbing piping to the bathroom shower and bathtub enclosure and to the toilet and sink. In so doing, Respondent performed work as a plumbing contractor. See ORS 693.010(4). It is undisputed that Respondent does not have a plumbing contractor's license. Although Respondent testified at hearing that he did not believe he needed a plumbing contractor's license to perform a plumbing installation, his mistaken belief as to the licensing requirement does not change the fact that he violated ORS 447.040(1).

Performing Plumbing Work in Oregon without First Obtaining a Plumbing Permit

OAR 918-785-0200(1) provides, in part:

Permits required:

- (a) No person, firm or corporation shall do plumbing * * * work in the State of Oregon without first obtaining a plumbing permit or minor label when required and paying the appropriate fees to the authorized permit issuing agency[.]
* * * *

Respondent confirmed that he performed plumbing work and did not obtain a plumbing permit. He testified at hearing that he asked Ms. Davis to inquire about obtaining permits and that she informed him that he did not need one. Regardless of Ms. Davis' incorrect information regarding the permit, Respondent nonetheless performed plumbing work without obtaining a plumbing permit. This violates OAR 918-785-0200(1).

Engaging in the Trade of a Journeyman Plumber without a Journeyman Plumber's License

ORS 693.030(1) provides:

A person may not engage in the trade of a journeyman plumber without a journeyman plumber license issued under this chapter.

Respondent confirmed that he performed plumbing work without a journeyman plumber's license. While he testified at hearing that he was not aware that he needed to obtain such a license, his conduct nonetheless violates ORS 693.030(1).

Engaging in the Business of an Electrical Contractor without an Electrical Contractor's License

ORS 479.620(1) provides: A person may not:

- (1) 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 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.

Respondent confirmed that he made electrical installations to convert Ms. Davis' garage into a bedroom and a bathroom. However, he also testified at hearing that the work was not complete when the Baker County Electrical Inspector visited the residence and that Respondent informed Ms. Davis that he did not have an electrical contractor's license. While Respondent's testimony may be accurate, he agreed to perform work for which a license or permit is required. Because he agreed to perform this work, the preponderance of the evidence indicates that he purported to be acting as a business that makes electrical installations. Thus, Respondent engaged in the business of making electrical installations without an electrical contractor's license, in violation of ORS 479.620(1).

Making an Electrical Installation Without Obtaining a Valid Permit

ORS 479.550(1) provides: No person shall work on any new electrical installation for which a permit has not been issued.

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 structure that is not itself an electrical product.

Respondent confirmed that he made electrical installations on Ms. Davis' property. The preponderance of the evidence establishes that Respondent made electrical installations without obtaining a valid permit. As such, Respondent violated ORS 479.550(1).

Making an Electrical Installation without a Supervising or Journeyman's Electrician's License

ORS 479.620(3) provides: A person may not:

Except as provided in ORS 479.630(10)(c) and (11)(f), direct, supervise or control the making of an electrical installation without a supervising electrician's license.

Respondent confirmed that he made electrical installations on Ms. Davis' property and that he has no supervising or journeyman's electrician's license. The preponderance of the evidence establishes that Respondent made electrical installations without a supervising or journeyman's electrician's license. He therefore, violated ORS 479.620(3).

Making an Electrical Installation that does not meet Minimum Safety Standards

ORS 479.710(1) provides:

Except as provided in ORS 479.540, no person shall make, supervise or direct the making of an electrical installation which does not meet minimum safety standards.

The Baker County Electrical Inspector, Rick Newman, inspected Ms. Davis' property and discovered electrical violations throughout the remodeled portion of Ms. Davis' residence. These violations did not meet minimum safety standards and Mr. Newman testified at hearing that these violations posed a hazardous threat to both person and property. The evidence persuasively establishes that Respondent made these electrical installations and/or supervised these electrical installations and that they did not meet minimum safety standards, in violation of ORS 479.710(1).

Appropriate Penalties

The Electrical and Elevator Board and the Plumbing Board have adopted administrative rules to administer and enforce ORS chapter 693. OAR 918-001-0036 provides that the Boards may develop a penalty matrix to use as a guideline for assessing civil penalties.

The Plumbing Board's penalty matrix provides for a civil penalty of \$3,000 for violating ORS 447.040(1), a civil penalty of \$1,000 for violating OAR 918-785-0200(1)(a) and a civil penalty of \$2,000 for violating ORS 693.030(1).

The Electrical and Elevator Board's penalty matrix provides for a civil penalty of \$3,000 for violating ORS 479.620(1), a civil penalty of \$1,000 for violating ORS 479.550(1), a civil penalty of \$2,000 for violating ORS 479.620(3) and a civil penalty of \$3,000 for violating ORS 479.710(1).

Therefore, the \$15,000 civil penalty proposed by the Division is appropriate.

ORDER

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

The Notice of Proposed Assessment of a Civil Penalty and Final Order on Default is **AFFIRMED**.

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 May 5, 2014, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1403546.

By: First Class Mail

Gary Frix, Jr.
3320 H Street
Baker City OR 97814

Aeron Teverbaugh
Building Codes Division (DCBS)
PO Box 14470
Salem OR 97309-0404

Carol Buntjer
Administrative Specialist
Hearing Coordinator