

**BEFORE THE
DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
AND
ELECTRICAL AND ELEVATOR BOARD
AND
STATE PLUMBING BOARD
State of Oregon**

IN THE MATTER OF:

RANDY A. LAPHAM

) **FINAL ORDER**

)

) OAH Case No.: 1403951

) Agency Case No.: C2014-0119

HISTORY OF THE CASE

On August 26, 2014, the **Director of the Department of Consumer and Business Services (Director)** and Electrical and Elevator Board and the Plumbing Board (Boards), of the Building Codes Division (collectively, Division) issued a Notice of Proposed Assessment of Civil Penalty, **Order to Cease and Desist**, and Final Order on Default to Randy A. Lapham (Respondent). On September 12, 2014, Respondent requested a hearing.

On November 10, 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. On January 2, 2015, the **Boards Division** issued an Amended Notice of Proposed Assessment of a Civil Penalty, **Order to Cease and Desist**, and Final Order on Default ~~and an Order to Cease and Desist~~.

ALJ Davis held a contested case telephone hearing on January 21, 2015. Respondent appeared and testified on his own behalf. John Adams represented the Division. Richard Hug, Mike Weaver, Shawn Haggin, Andrew Skinner and Andrea Simmons testified on behalf of the Division. The record closed at the conclusion of the hearing.

On March 6, 2015, ALJ Davis issued a Proposed Order affirming the Division's Notice of Proposed Assessment of Civil Penalties and Order to Cease and Desist. The Director of the Department of Consumer and Business Services, the Electrical and Elevator Board, and the State Plumbing Board now adopt the Proposed Order with minor corrections of grammatical, punctuation, citation correction, or other scrivener's errors¹. No substantial changes have been made to the Proposed Order.

ISSUES

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

¹ Additions are made in bold typeface; deletions are stricken-through

2. Whether Respondent made electrical installations without first obtaining a valid electrical permit, in violation of ORS 479.550(1).

3. Whether Respondent engaged in the business of making electrical installations, including advertising or otherwise purporting to be a business that makes electrical installations, without an electrical contractor's license, in violation of ORS 479.620(1).

4. Whether Respondent engaged in the trade of making plumbing installations without a valid journeyman plumber license, in violation of ORS 693.030(1).

5. Whether Respondent made a plumbing installation without first obtaining a valid plumbing permit, in violation of OAR 918-780-0065.

6. Whether Respondent engaged in the business of working as a plumbing contractor or advertising or purporting to be a plumbing contractor without a plumbing contractor license, in violation of ORS 447.040(1).

7. Whether the Division may impose a civil penalty of \$12,000 against Respondent. ORS 455.895(1) and OAR 918-001-0036.

8. Whether the Division may order Respondent to cease and desist from engaging in any violation of the state building code. ORS 455.775(2).

EVIDENTIARY RULING

Exhibits A1 through A21, offered by the Division, were admitted into the record without objection.

FINDINGS OF FACT

1. Randy A. Lapham (Respondent) is not a licensed journeyman electrician, licensed electrical contractor, licensed journeyman plumber or licensed plumbing contractor. (Ex. A10; test. of Simmons and Respondent.)

2. Beginning in approximately October 2013, Respondent performed work at a residence located at 739 Park Street, in Ashland, Oregon (the residence). He removed a hot water heater and installed a hot water Eco-Smart green energy system, a new 220 plug for the clothes dryer, a Gree ductless heater on the living room wall, approximately ten grounded plugs inside the residence and one GFI plug outside on the deck. No permits were issued for these installations. (Ex. A1; test. of Respondent, Weaver.) Respondent also installed 14 solar panels on the roof of the residence. (Ex. A1; test. of Hug, Weaver.)

3. The owner of the residence was Genevieve Hug. In late October 2013, she was hospitalized. At that time, her father, Richard Hug, began helping her with her finances and home repairs. Ms. Hug passed away on April 17, 2014. (Test. of Hug.)

4. On December 17, 2013, Mr. Hug paid Respondent \$1,750 for work he performed at Ms. Hug's residence. The payment was made to Respondent's girlfriend's bank account. (Ex. A20; test. of Hug.)

5. On February 9, 2014, Respondent sent Mr. Hug an email attaching pictures of the installed solar panels at Ms. Hug's residence. He also informed Mr. Hug that the remaining balance on the "solar panels project" was \$2,300. (Ex. A17.)

6. On February 10, 2014, Mr. Hug paid Respondent \$1,300. This payment was also made to Respondent's girlfriend's bank account. (Ex. A17.)

7. On May 26, 2014, Mike Weaver, a Division enforcement officer, received a report that Respondent had installed a solar electrical system at the residence. Ms. Hug's mother, Nancy Lauka, reported to Mr. Weaver that Respondent had installed a Gree Inverter, a Gree Ductless heat and disconnect, a Kaco Blueplanet Panel, and an electrical power supply line coming out of the main panel. Ms. Lauka also reported that Respondent had mounted 14 solar panels to the roof and he installed a disconnect on the roof and a hot water Eco-Smart green energy water heater. (Ex. A1; test. of Weaver.)

8. On May 28, 2014, Mr. Weaver contacted Respondent. Respondent informed Mr. Weaver that his last name was spelled "Latham." Respondent confirmed that he helped install a Gree Invertor, a Gree ductless heater on the living room wall, a hot-water Eco-Smart green energy system, a new 220 plug for the clothes dryer, ten grounded plugs inside the house and one GFI plug outside on the deck at the residence. He also confirmed that he had relocated the 220 range plug and wire in the kitchen. (Ex. A1; test. of Weaver.) Mr. Weaver wrote a statement regarding the installations Respondent performed and the conversation that day. Respondent reviewed the statement, confirmed that the statement was accurate, but refused to sign it. (Ex. A3; test. of Weaver.)

9. After speaking with Respondent, Mr. Weaver contacted Matt Rodrigues, a Division investigator, to update him on his conversation with Respondent. Mr. Rodrigues questioned the spelling of Respondent's last name. Mr. Weaver contacted Respondent to question him further about his last name. Initially, Respondent confirmed that his last name was spelled "Latham." However, after Mr. Weaver explained that he had checked on the spelling, Respondent confirmed that his last name was spelled "Lapham." (Ex. A1; test. of Weaver.)

10. On June 5, 2014, Division enforcement officer Tom Nicolai mailed a letter to Respondent and requested further information about the installations performed at the residence. (Ex. A5.)

11. On September 12, 2014, Respondent mailed a statement to the Division wherein he denied performing any work at the residence and stated that he was only at the residence to "make sure deliveries made it on time, without damages, & were not stolen." (Ex. A13.)

~~12. Installing a Gree inverter, a Gree ductless heater, a 220-volt electrical clothes dryer receptacle, ten~~

12. Installing a Gree inverter, a ductless heater, a 220-volt electrical clothes dryer receptacle, ten new grounded electrical receptacles and a GFI electrical receptacle, and relocating a 220-volt electrical receptacle and wire are actions that constitute "making electrical an electrical installation" as defined in ORS 479.530(10). Electrical permits are required prior to making such electrical installations. (Test. of Haggin.)

13. Installing a hot water Eco-Smart green energy system is a plumbing installation, as defined in ORS 447.010(6). A plumbing permit is required prior to making this plumbing installation. (Test. of Skinner).

14. The Board based the proposed penalties in this case on the factors set forth in the Division's penalty matrix. (Ex. A21; test. of Simmons.)

CONCLUSIONS OF LAW

1. Respondent made electrical installations without a supervising or journeyman electrician's license, in violation of ORS 479.620(3).
2. Respondent made electrical installations without first obtaining a valid electrical permit, in violation of ORS 479.550(1).
3. Respondent engaged in the business of making electrical installations, including advertising or otherwise purporting to be a business that makes electrical installations, without an electrical contractor's license, in violation of ORS 479.620(1).
4. Respondent engaged in the trade of making plumbing installations without a valid journeyman plumber license, in violation of ORS 693.030(1).
5. Respondent made a plumbing installation without first obtaining a valid plumbing permit, in violation of OAR 918-780-0065.
6. Respondent engaged in the business of working as a plumbing contractor or advertising or purporting to be a plumbing contractor without a plumbing contractor license, in violation of ORS 447.040(1).
7. The Division may impose a civil penalty of \$12,000 against Respondent.
8. The Division may order Respondent to cease and desist from engaging in any violation of the state building code.

OPINION

The Division contends that Respondent made electrical installations without a supervising or journeyman electrician's license, that he made electrical installations without first obtaining a valid electrical permit, that he engaged in the business of making electrical installations without an electrical contractor's license, that he engaged in the trade of making plumbing installations without a valid journeyman plumber license, that he made a plumbing installation without first obtaining a valid plumbing permit and that he engaged in the business of making plumbing installations without a plumbing contractor's license. The Division also contends that Respondent should be assessed a \$12,000 civil penalty for the violations and that he should be ordered to cease and desist from engaging in any further violation of the state building code. The Division has the burden to show, by a preponderance of the evidence, that Respondent committed the alleged violations and that the proposed civil penalty and the order to cease and desist 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.

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

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. “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.

ORS 479.620(3) provides:

Subject to ORS ~~679.540~~ 479.540, 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 admitted at hearing that he performed electrical work at the residence and that he is not a licensed journeyman electrician. While Respondent denied at hearing installing the solar panels, he admitted that he installed a hot water Eco-Smart green energy system, a new 220 plug for the clothes dryer, a Gree ductless heater on the living room wall, approximately ten grounded plugs inside the residence and one GFI plug outside on the deck. These installations are electrical installations as defined in ORS 479.530(10) and they are not exempt from the licensing requirements of 479.620(3). Respondent made electrical installations without the required license, in violation of ORS ~~476.620(3)~~ 479.620(3).

Making an Electrical Installation without Obtaining an Electrical Permit

ORS 479.550(1) provides:

Except as provided in ORS 479.540, no person shall work on any new electrical installation for which a permit has not been issued.

Respondent did not obtain any permits for the electrical installations he made at the residence, in violation of ORS 479.550(1). The electrical installations performed by Respondent are not exempt from the electrical permit requirements as set forth in ORS 479.550(1).

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

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.

Respondent admitted at hearing that he made electrical installations and that he does not have an electrical contractor's license. The evidence is persuasive that Mr. Hug paid Respondent for those electrical installations. Because Respondent agreed to perform this work and received payment for the work, the preponderance of the evidence indicates that he purported to be acting as a business that makes electrical installations and his conduct does not fall within the exemptions as set forth in ORS 479.540. Thus, Respondent engaged in the business of making electrical installations without an electrical contractor's license, in violation of ORS 479.620(1).

Engaging in the Trade of Making Plumbing Installations without a Valid Journeyman Plumber License

ORS 447.010(6) provides:

"Plumbing" is the art of installing, altering or repairing in or adjacent to 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 street, 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.

ORS 693.030(1) provides:

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

Respondent has conceded that he installed a hot water Eco-Smart green energy system at the residence and that he does not have a journeyman plumber license. This installation is a

plumbing installation as defined in ORS 447.010(6). By installing the hot water Eco-Smart green energy system, Respondent engaged in the trade of a journeyman plumber without the requisite license, and therefore violated of ORS 693.030(1).

Making a Plumbing Installation without Obtaining a Plumbing Permit

OAR 918-780-0065 provides:

No person, firm, or corporation shall do plumbing or medical gas systems 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 did not obtain a permit for the plumbing work he performed when installing the hot water Eco-Smart green energy system at the residence. Because the installation constitutes "plumbing work," Respondent violated OAR 918-780-0065.

Engaging in the Business of Working as a Plumbing Contractor or Advertising or Purporting to be a Plumbing Contractor without a Plumbing Contractor 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 plumber contractor license under ORS 447.010 to 447.156 as provided by State Plumbing Board rules adopted under ORS 455.117.

Respondent has admitted that he made a plumbing installation and that he does not have a plumbing contractor license. The evidence is persuasive that Respondent received payment for making the plumbing installation. Because he agreed to perform this work and received payment for the work, the preponderance of the evidence indicates that he purported to be acting as a plumbing contractor. Thus, he engaged in the business of working as a plumbing contractor without a plumbing contractor license, in violation of ORS 447.040(1).

Civil Penalties

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), \$3,000 for violating ORS 447.040(1), \$2,000 for violating ORS 479.620(3), \$2,000 for violating ORS 693.030(1), \$1,000 for violating ORS 479.550(1) and \$1,000 for violating OAR 918-780-0065. Therefore, the \$12,000 civil penalty proposed by the Division is appropriate.

Order to Cease and Desist:

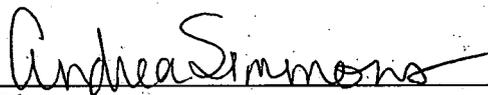
ORS 455.755(2) 455.775(2) provides:

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, * * *, 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.

The Division contends that Respondent has been or is violating state building code law. Such belief is reasonable, based on Respondent's numerous violations in 2013-2014 and his inability to provide consistent and accurate information to the Division during the investigation process. The Division has established grounds to issue an Order to Cease and Desist.

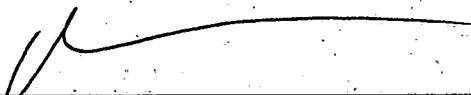
ORDER

Randy A. Lapham shall pay a \$12,000 civil penalty and shall cease and desist from violations of ORS chapters 447, 479, 693 and 455 and the rules adopted thereunder.



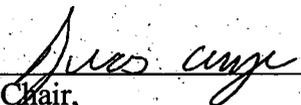
Director,
Department of Consumer and Business
State of Oregon

Dated this 28 day of May, 2015.



Chair,
Electrical and Elevator Board
State of Oregon

Dated this 28 day of May, 2015.



Chair,
State Plumbing Board
State of Oregon

Dated this 16 day of April, 2015.

**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.