

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

2 **IN THE MATTER OF:**

3
4 **PANCHOS HEATING & COOLING LLC,
5 A DOMESTIC LIMITED LIABILITY
6 COMPANY,**

7 **RESPONDENT.**

**NOTICE OF PROPOSED ASSESSMENT
OF CIVIL PENALTIES**

NOTICE OF FINAL ORDER ON DEFAULT

FINAL ORDER

As of: May 4, 2016

BCD CASE C2015-0213

8
9 **IF YOU DO NOT REQUEST A HEARING IN WRITING WITHIN 20 DAYS
10 OF THE POSTMARK DATE OF THIS NOTICE,
11 THIS NOTICE WILL BECOME A FINAL ORDER.**

More information about this Notice and how to request a hearing is included below.

12 Pursuant to Oregon Revised Statute (ORS) 455.895(1)(b) and Oregon Administrative Rule
13 (OAR) 918-001-0036, the Electrical and Elevator Board of the State of Oregon (Board) proposes to
14 assess civil penalties totaling \$6,000.00 against Panchos Heating & Cooling LLC (Respondent)
15 because Respondent violated Building Codes Division (Division) statutes and rules as identified
16 below.

17 **FINDINGS OF FACT**

- 18 1. On or around August 13, 2015, Respondent contracted to replace a Heating, Ventilation, and
19 Air Conditioning (HVAC) unit, including the extension of electrical service to the unit, at a
20 commercial property located at 2398 N. 1st Street, Hermiston, Oregon (1st Street property).
21 2. On or around October 2, 2015, Benjamin Estrella (Estrella), Respondent's employee,
22 installed new electrical wiring to an HVAC unit, thereby connecting the unit to an existing
23 electrical subpanel and extending electrical service, at the 1st Street property.
24 3. At no relevant time did Estrella hold an Oregon supervising or journeyman electrician
25

1 license.¹

2 4. At no relevant time did Respondent hold an electrical contractor license.

3 5. No electrical permit had been issued to Respondent at the time Respondent performed the
4 foregoing work at the 1st Street property.²

5 **APPLICABLE LAW**

6 1. The terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 455.010(1)-
7 (10), ORS 479.530(1)-(23), ORS 479.905(1)-(5), OAR 918-001-0005(1)-(4), OAR 918-030-
8 0010(1)-(11), and OAR 918-251-0090(1)-(43).

9 2. Under ORS 479.530(10), "Electrical installations" means the construction or installation of
10 electrical wiring and the permanent attachment or installation of electrical products in or on
11 any structure that is not itself an electrical product.

12 3. Under ORS 479.550(1), no person shall work on any new electrical installation for which a
13 permit has not been issued.

14 4. Under ORS 479.620(1), a person who does not hold an electrical contractor license may not
15 engage in the business of making electrical installations, advertise as or otherwise purport to
16 be licensed to make electrical installations or purport to be acting as a business that makes
17 electrical installations.

18 5. OAR 918-030-0010(8) states that for purposes of ORS 447.040, 479.620, 480.630, and any
19 other license regulated by ORS chapter 455, "engaging in the business" means to advertise
20 or solicit, contract or agree to perform, or to perform work for which a license or permit is
21 required under Oregon law, including but not limited to a single instance.

22 6. Under ORS 479.620(3), a person may not make any electrical installation without a
23 supervising or journeyman electrician's license.

24
25 ¹ See related Division case number C2015-0214.

² On September 29, 2015, Respondent was issued mechanical permit number 879-15-000556-MECH for "Commercial HVAC Replacement" at the 1st Street Property. On October 7, 2015, electrical permit number 879-15-000570-ELEC was issued to Wildcat Electric, LLC to "Reconnect Rooftop HVAC" at the 1st Street Property.

1 7. Under OAR 918-282-0120(1), no person or entity shall allow any individual to perform
2 electrical work for which the individual is not properly registered or licensed.

3 **CONCLUSIONS OF LAW**

4 1. Installing new electrical wiring, including connecting wiring to an electrical subpanel and
5 thereby extending electrical service to an HVAC unit, constitutes an electrical installation
6 under ORS 479.530(10).

7 2. By contracting to perform the foregoing electrical installation at the 1st Street property, and
8 by performing such installation, Respondent engaged in the business of making electrical
9 installations.

10 3. By engaging in the business of making electrical installation without an electrical
11 contractor's license, Respondent violated ORS 479.620(1).

12 4. By performing the foregoing electrical installation without having been issued an electrical
13 permit prior to performing the work, Respondent violated 479.550(1).

14 5. By allowing Estrella to perform the foregoing electrical installation without a supervising or
15 journeyman electrician's license, Respondent violated OAR 918-282-0120(1).

16 **ORDER**

17 Pursuant to ORS 455.895(1)(b) and OAR 918-001-0036, the Board assesses a total of
18 \$6,000.00 in civil penalties as follows:

- 19 1. \$3,000.00 for violating ORS 479.620(1);
20 2. \$2,000 for violating OAR 918-282-0120(1); and
21 3. \$1,000.00 for violating ORS 479.550(1).

22 **NOTICE OF RIGHT TO HEARING**

23 Respondent is entitled to a hearing as provided by the Administrative Procedures Act, ORS
24 chapter 183. If Respondent requests a hearing, the request must be in writing and postmarked no
25 later than 20 days from the date of service of this Notice. If the Notice was served on Respondent in

1 person, the date of service is the date Respondent received the Notice. If the Notice was served
2 through the mail, the date of service is the day the Notice was mailed, not the day it was received by
3 the Respondent. If a request for hearing is not received within the 20-day period, Respondent's right
4 to a hearing shall be considered waived. Mail hearing requests to Building Codes Division,
5 Enforcement Section, P.O. Box 14470, Salem, Oregon, 97309.

6 Respondent may be represented by legal counsel. Pursuant to ORS 183.457 and OAR 918-
7 001-0030, a corporate Respondent may be represented by an authorized representative at the
8 hearing. If Respondent requests a hearing, Respondent will be notified of the time and place of the
9 hearing. The Division will give Respondent information on the procedures, right of representation,
10 and other rights of parties relating to the conduct of the hearing before the commencement of the
11 hearing.

12 **NOTICE TO ACTIVE DUTY SERVICEMEMBERS**

13 Active duty servicemembers have a right to stay proceedings under the Federal
14 Servicemembers Civil Relief Act. Contact the Oregon State Bar at 800-452-8260 or the Oregon
15 Military Department at 800-452-7500 for more information. If Respondent needs help finding legal
16 assistance, visit the United States Armed Forces Legal Assistance Legal Services Locator website at
17 <http://legalassistance.law.af.mil/content/locator.php>.

18 **NOTICE OF FINAL ORDER**

19 This Notice will become a final order by default if Respondent does any of the following:
20 fails to request a hearing in writing within 20 days from the date of service of this Notice;
21 withdraws a hearing request; notifies the Building Codes Division or the administrative law judge
22 that Respondent will not appear at a scheduled hearing; or fails to appear at a scheduled hearing. If
23 this Notice becomes a final order by default, the Division's file on the matter, including all
24 materials submitted by Respondent, becomes the record for the purpose of establishing a prima
25 facie case.

1 **RIGHT TO JUDICIAL REVIEW**

2 Respondent is entitled to judicial review of a final order in this matter. Judicial review may
3 be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after a
4 final order is served upon Respondent. See ORS 183.482. If a final order is served on Respondent in
5 person, the date of service is the date Respondent receives the order. If a final order is served
6 through the mail, the date of service is the day the order is mailed, not the day it is received by the
7 Respondent. If Respondent does not file a petition for judicial review within the 60-day time
8 period, Respondent will lose the right to appeal. The phone number for the Oregon Court of
9 Appeals is 503-986-5555.

10 **FOR THE ELECTRICAL AND ELEVATOR BOARD OF THE STATE OF OREGON**

11 Andrea Simmons for
12 Chair
13 Electrical and Elevator Board
14 State of Oregon

Date: April 12, 2016