

1 **BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS**
2 **SERVICES OF THE STATE OF OREGON**

3 **IN THE MATTER OF:**)
4 **SCOTT MCNAMARA, AN INDIVIDUAL,**) **CONSENT ORDER**
5)
6 **RESPONDENT.**) **BCD CASE C2014-0230**
7)

8 The Director of the Department of Consumer and Business Services (Director) of the State
9 of Oregon conducted an investigation and determined that Respondent violated certain provisions of
10 the Oregon Building Codes Division's statutes, administrative rules, and specialty codes.

11 The parties wish to settle this matter informally. Respondent understands that Respondent
12 has the right to a hearing under the Administrative Procedures Act (chapter 183), Oregon Revised
13 Statutes (ORS), and fully and finally waives the right to a contested case hearing and any appeal
14 therefrom by the signing and entry of this Order in the Director's records. Respondent agrees to
15 conduct all future business in compliance with the applicable statutes, Oregon Administrative Rules
16 (OAR), and specialty codes. Respondent understands that this order is a public record.

16 **FINDINGS OF FACT**

- 17 1. On April 24, 2009, the Building Codes Division (the division or BCD) issued a Notice of
18 Proposed Assessment of a Civil Penalty and Notice of Intent to Suspend Respondent's
19 limited residential electrician license in BCD case 2008-0271.¹ Respondent requested a
20 hearing but failed to appear for the hearing convened by the Office of Administrative
21 Hearings (OAH).

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24 ¹ BCD case 2008-0271 involved Respondent committing the following violations: performing electrical installations for
25 the account of another without an electrical contractor license; making unpermitted electrical installations; making
electrical installations while not under the supervision, direction or control of a general supervising electrician; applying
for an electrical permit using false information; and making electrical installations that do not meet minimum safety
standards.

1 2. On September 15, 2009, the division issued a Final Order upon Default in BCD case 2008-
2 0271, which ordered Respondent to pay civil penalties totaling \$22,500 and suspended
3 Respondent's limited residential electrician license 706LR, for four years.

4 3. On September 22, 2009, the Marion County Circuit Court entered a Default General
5 Judgment against Respondent in favor of the division that included a money award of \$262
6 and the following injunctive relief:

7 "[Respondent] shall not perform electrical installation work unless and until
8 he obtains the license and permits required by ORS 479.510 through
9 479.945."

10 4. On October 1, 2009, Respondent's limited residential electrician license, 706LR, expired
11 when Respondent failed to pay the renewal fee.

12 5. On or about June 25, 2012, the Bureau of Labor and Industries, Apprenticeship and Training
13 Division (BOLI), acting on behalf of BCD, issued Respondent electrical apprentice license
14 917788 as a participant in the Joint Apprentice Training Council Area II's inside electrician
15 program.

16 6. On March 28, 2013, Respondent submitted an application to the division seeking a limited
17 residential electrician license with a letter requesting that he be allowed to sit for the
18 residential journeyman electrician test prior to the end of the suspension of his limited
19 residential electrician license.

20 7. On April 8, 2013, the division served Respondent with a Notice of Application Denial and
21 Notice of Proposed License Suspension and Final Order on Default. Respondent requested
22 hearings on both matters, which became cases 2013-0065 and 2013-0085.

23 8. On December 23, 2013, after considering the arguments from the division and Respondent,
24 an administrative law judge issued a proposed order affirming the Notice of Application
25 Denial and Notice of Proposed License Suspension.

- 1 9. On January 22, 2014, the application denial and suspension of respondent's limited
2 residential electrician license 706LR became final when the Director of the Department of
3 Consumer and Business Services, on behalf of the division, signed the Final Order adopting
4 the administrative law judge's proposed order in cases 2013-0065 and 2013-0085.
- 5 10. On or about August 2014 through September 2014, while working as a second period
6 apprentice for Young Electric LLC, at a home located at 4174 NW 176th Avenue, Portland,
7 Oregon, Respondent spent at least three days installing electrical conduit and wiring for the
8 account of another without supervision and without holding a supervising or journeyman
9 electrician license.
- 10 11. Through November 20, 2014, Respondent made no voluntary payments toward his
11 outstanding civil penalties that totaled \$32,075.41. The only funds applied to that balance of
12 civil penalties were recovered through the following garnishments of Respondent's wages:
13 \$29.69 on August 28, 2014, and \$19.69 on September 19, 2014.

14 **APPLICABLE LAW**

- 15 1. Under ORS 479.530(10), electrical installations include the construction or installation of
16 electrical wiring and the permanent attachment or installation of electrical products in or on
17 any structure that is not itself an electrical product.
- 18 2. Under ORS 479.620(3), a person may not make any electrical installation without a
19 supervising or journeyman electrician's license.
- 20 3. Under ORS 479.630(7), if a person pays the applicable application fee required under ORS
21 479.840 and complies with ORS 479.510 to 479.945 and the rules adopted under ORS
22 455.117 and 479.510 to 479.945, the Department of Consumer and Business Services shall
23 issue an electrical apprentice's license to a person who has complied with ORS 660.002 to
24 660.210 as an electrical apprentice.

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1 4. Under ORS 455.129(2)(b) and (4), the Director or other regulatory body may deny or revoke
2 a license if the Director finds that the licensee has failed to comply with an order of the
3 Director of the Department of Consumer and Business Services, including but not limited to
4 the failure to pay a civil penalty.

5 **CONCLUSIONS OF LAW**

- 6 1. Installing electrical conduit and wiring is an electrical installation as defined by ORS
7 479.530(10).
- 8 2. By making an electrical installation without a valid supervising or journeyman electrician
9 license, Respondent violated ORS 479.620(3).
- 10 3. By violating Building Codes Division statutes and administrative rules in BCD case 2008-
11 0271, which resulted in the finding of a violation within the last five years, and then
12 violating ORS 479.620(3) in August and September 2014 in the present case, Respondent is
13 subject to civil penalties as a second-time offender under the Advisory Board Penalty
14 Matrix, adopted pursuant to OAR 918-001-0036.
- 15 4. When Respondent did not pay the civil penalties due following the final order in BCD case
16 2008-0271, Respondent failed to comply with an order of the Director of the Department of
17 Consumer and Business Services.
- 18 5. By failing to comply with an order of the Director of the Department of Consumer and
19 Business Services requiring Respondent to pay civil penalties in BCD case 2008-0271, the
20 Director may revoke Respondent's electrical apprentice license 917788.

21 **ORDER**

22 The Respondent and the Director agree to resolve this matter without a hearing according to
23 the following terms:

- 24 1. The Director hereby assesses a \$2,500 total civil penalty for violating ORS 479.620(3), of
25 which \$1,000 will be suspended for a period of five years under the following terms:

1 1.1. Respondent agrees to pay the remaining \$1500 of the civil penalty. (*An invoice will*
2 *be included with Respondent's copy of the Final Order after the Director signs it.*)

3 1.2. Respondent agrees to make payments of \$125 per month for 12 months, beginning
4 with the first payment due on May 25, 2015, and all payments due (postmarked) by
5 the 25th day of each month thereafter. As long as the payments remain timely, there
6 shall be no interest added to Respondent's balance. There are no early payoff
7 penalties.

8 1.3. Respondent agrees to voluntarily surrender his Oregon Apprentice Electrician
9 license, agreement number 917788, along with all copies of his Oregon Apprentice
10 Electrician card. The cards will be submitted to the Building Codes Division (BCD)
11 office (1535 Edgewater St NW, Salem, Oregon 97304) or via mail to: BCD, Attn:
12 John Adams, Enforcement Section, P.O. Box 14470 Salem, Oregon 97309-0404. All
13 copies of Respondent's Oregon Apprentice Electrician card must be received within
14 14 days of this Consent Order becoming a Final Order. The license revocation will
15 be effective as of the date this agreement becomes a Final Order, which will occur
16 upon signature of both parties.

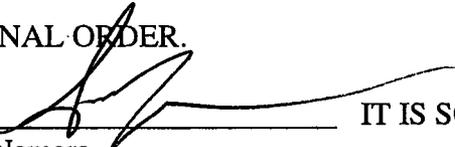
17 2. Respondent understands that a single failure to comply with any of the terms of this Consent
18 Order could result in the entire civil penalty, including the suspended amount, becoming
19 immediately due and payable. Failure to comply includes, but is not limited to, failure to pay
20 the civil penalty amount on the Final Demand Notice by the due date.

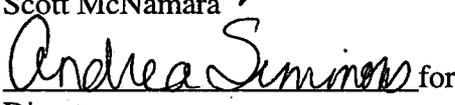
21 3. Respondent agrees to fully cooperate with the Building Codes Division's enforcement
22 efforts in cases against other entities or individuals that rely on the underlying facts in this
23 case. Cooperation may include, but not be limited to, making sworn statements or testifying
24 in administrative hearings.

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- 1 4. Respondent agrees not to commit violations of the Building Codes Division's statutes and
2 rules, including but not limited to, performing electrical installations that require an
3 electrical license in the state of Oregon unless and until Respondent lawfully holds the
4 proper electrical license(s).
- 5 5. Respondent understands and agrees that any violation of the terms of this Consent Order
6 will result in further enforcement action.
- 7 6. Respondent understands and agrees that any violation of the Building Codes Division's
8 statutes or rules not alleged in this order, whether committed before or after the execution of
9 this Consent Order, may be the basis for further enforcement action.
- 10 7. Respondent understands that failure to comply with this Consent Order may be used, in
11 addition to any other reason provided for in law, as a basis for the denial of future licensing
12 applications and/or suspension of licensing or certification issued by the Division and/or
13 other state agencies.
- 14 8. Respondent understands the suspended civil penalty will be waived five years after the
15 execution of this Consent Order, provided Respondent complies with its terms and has not
16 committed any further violations of Building Codes Division's statutes and rules.
- 17 9. Respondent has read and fully understands the terms of this Consent Order, freely and
18 voluntarily consents to the entry of this order without further hearing, without any force or
19 duress, and expressly waives all rights to hearing or appeal in this matter.
- 20 10. Respondent understands that, upon signature of all parties, this Consent Order will be a

21 FINAL ORDER.

22  IT IS SO AGREED THIS 13 DAY OF April, 2015.
23 Scott McNamara

24  for IT IS SO AGREED THIS 13 DAY OF April, 2015.
25 Director,
Department of Consumer and Business Services
State of Oregon