

BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

BEFORE THE DIRECTOR OF THE OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

FINAL ORDER
As of: May 12, 2015

IN THE MATTER OF:

BRYAN A. NELSON, AN INDIVIDUAL
ABN NELSON PLUMBING,

RESPONDENT.

)
) NOTICE OF PROPOSED ASSESSMENT
) OF A CIVIL PENALTY AND FINAL
) ORDER ON DEFAULT
)
) ORDER TO CEASE AND DESIST
)
) CASE NO. C2014-0262
)

Under Oregon Revised Statutes (ORS) 455.895(1)(a) and Oregon Administrative Rules (OAR) 918-001-0036, the State Plumbing Board (Board) proposes disciplinary action against Respondent in the form of civil penalties totaling \$12,000 for violations of Building Codes Division (Division) statutes or rules as follows.

Acting pursuant to ORS 455.775(2), the Director of the Oregon Department of Consumer and Business Services (Director) hereby finds there is reason to believe that Respondent has been engaged in, is engaging in, or is about to engage in violations of ORS chapters 447, 455, and 693, and the rules adopted thereunder. Therefore, the Director issues the following order for Respondent to immediately CEASE AND DESIST any and all violations of ORS chapter 447, 455 and 693, and the laws and rules adopted thereunder.

FINDINGS OF FACT

1. Respondent was first issued journeyman plumber license 7296JP on July 9, 2002. On April 1, 2014, journeyman plumber license 7296JP expired and was not renewed.
2. Respondent was first issued plumbing business license PB775 on November 13, 2009. On July 1, 2014, plumbing business license PB775 expired and was not renewed.
3. On or about October 17 and 27, 2014, and February 4, 2015, on the craigslist classified advertisements website, Nelson Plumbing, an assumed business name for Bryan Albert Nelson, advertised to make plumbing installations without a plumbing contractor license.
4. On December 10, 2014, in BCD case number C2014-0223, the Division issued a Notice of Proposed Assessment of a Civil Penalty and Final Order on Default (Notice) on behalf of the Board against Respondent that assessed a \$6,000 civil penalty for violations of ORS 447.040(1) (engaging in the business of plumbing contracting without having an active plumbing contractor license), ORS 693.030(1) (engaging in the trade of journeyman plumber without having an active journeyman plumber license), and OAR 918-785-0200 (performing plumbing without first obtaining a plumbing permit).

1 5. BCD case number C2014-0223 became, a Final Order on Default on December 31, 2014,
2 when Respondent failed to respond to the Notice. The civil penalty became due and
3 payable following the execution of the Final Order.

4 APPLICABLE LAW

- 5 1. ORS 447.010(6) defines plumbing to include the art of installing, altering or repairing in
6 or adjacent to or serving buildings pipes, fixtures and other apparatus for bringing in the
7 water supply and removing liquid and water-carried waste, including the water supply
8 distributing pipes.
- 9 2. Under ORS 447.040(1), a person may not work as a plumbing contractor, or advertise or
10 purport to be a plumbing contractor, and a member or employee of a firm, partnership or
11 corporation may not engage¹ in the layout or superintending of plumbing installations,
12 without having obtained the plumbing contractor license.
- 13 3. Under OAR 918-001-0036(2)(c), "pattern of violation" means two or more prior
14 violations during a five-year period of any provision of ORS chapters 446, 447, 455, 460,
15 479, 480, or 693, or the state building code as defined in ORS 455.010, whether or not a
16 penalty was assessed. A pattern of violation is calculated within a five-year period from
17 the date of the latest violation.
- 18 4. Under OAR 918-001-0036(6), the Director may, subject to approval of a board, develop a
19 penalty matrix for the board's use to promote equality and uniformity in proposing the
20 amount and terms of civil penalties and conditions under which the penalties may be
21 modified based on the circumstances in individual cases.
- 22 5. Under ORS 455.775(2), if the Director has reason to believe that any person has been
23 engaged, or is engaging or is about to engage in any violation of the state building code,
24 or this chapter or ORS chapter 447, 693 or any rule adopted under those statutes, the
25 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.

CONCLUSIONS OF LAW

- 19 1. By advertising to make plumbing installations without having an active plumbing
20 contractor license, Respondent violated ORS 447.040(1) on three occasions.
- 21 2. By violating ORS chapter 447, 693 and OAR 918-785-0200(2)(a) within the last five
22 years in BCD case C2014-0223 and violating ORS chapter 447 in this matter,
23 Respondent has engaged in a pattern of violation according to OAR 918-001-0036(2)(c)
24 and is therefore subject to increased civil penalties according to the Advisory Board
25 Penalty Matrix.

¹ OAR 918-030-0010(8) states that 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.

1 3. Findings of Fact paragraphs 1 through 5 give the Director reason to believe that
2 Respondent has engaged, is engaging in or is about to engage in violations of the state
3 building code, including ORS chapter 447 and 693, and the rules adopted thereunder, and
4 therefore the Director may issue an order directing Respondent to cease and desist from
5 the violation.

6 **ORDER**

7 Under ORS 455.895(1)(a) and OAR 918-001-0036, the State Plumbing Board assesses a
8 \$12,000 civil penalty against Respondent for violating ORS 447.040(1) on three occasions and
9 within five years from the violations Respondent was found to have committed in BCD case
10 C2014-0223.

11 **ORDER TO CEASE AND DESIST**

12 Pursuant to ORS 455.775(2), the Director orders Respondent to immediately CEASE
13 AND DESIST from further violating the Electrical Safety Law and rules adopted thereunder.
14 Respondent must immediately cease engaging in violations of ORS chapter 479, and related
15 rules thereunder, and all other portions of the Electrical Safety Law. In addition, the Director
16 orders Respondent to immediately CEASE AND DESIST engaging in violations of ORS chapter
17 455 and the rules adopted thereunder.

18 **NOTICE OF RIGHT TO HEARING**

19 Respondent is entitled to a hearing as provided by the Administrative Procedures Act,
20 Oregon Revised Statutes, chapter 183. If Respondent requests a hearing, the request must be in
21 writing and postmarked no later than 20 days from the service date. If this notice was served to
22 Respondent in person, the service date is the date Respondent received this notice. If this notice
23 was served through the mail, the service date is the day the notice was mailed, not the day
24 Respondent received it.

25 If a request for hearing is not received within 20 days, Respondent's right to a hearing is
considered waived. Mail hearing requests to Building Codes Division, Enforcement Section,
P.O. Box 14470, Salem, Oregon, 97309.

Respondent has the right to be represented by legal counsel. ORS 183.457 provides that a
corporation may be represented by an authorized representative at the hearing. If Respondent
requests a hearing, Respondent will be notified of the time and place of the hearing and be given
information on procedures, right of representation and other rights of parties relating to the
hearing before it begins.

NOTICE TO ACTIVE DUTY SERVICE MEMBERS

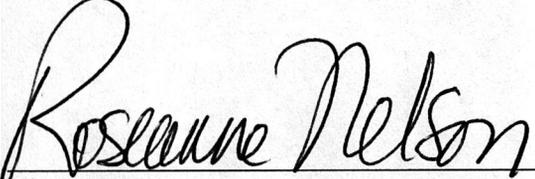
Active duty service members have a right to stay proceedings under the federal
Servicemembers Civil Relief Act. Contact the Oregon State Bar at 800-452-8260 or the Oregon
Military Department at 800-452-7500 for more information. If you need help finding legal

1 assistance, visit the United States Armed Forces Legal Assistance Legal Services Locator
2 website at <http://legalassistance.law.af.mil/content/locator.php>.

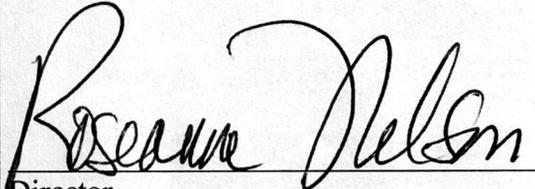
3 **NOTICE OF FINAL ORDER**

4 If Respondent does not request a hearing within 20 days, withdraws a hearing request,
5 notifies the Director of the Department of Consumer and Business Services (Director) or the
6 administrative law judge that they will not appear, or fails to appear at a scheduled hearing, the
7 Director will issue a Final Order by Default. If the Director issues a Final Order by Default, it
8 designates the file, including any materials submitted by Respondent that relate to this matter, as
9 the record for purpose of proving a prima facie case.

10 Respondent is entitled to judicial review of any final order issued in the matter of this
11 Notice of a Proposed Assessment of a Civil Penalty and Order to Cease and Desist. Judicial
12 review may be obtained by filing a petition for review with the Oregon Court of Appeals within
13 60 days after the Final Order is served. See ORS 183.482. If the order was served in person, the
14 service date is the date Respondent received the order. If the order was served through the mail,
15 the service date is the day the order was mailed, not the day it was received by Respondent. If
16 Respondent does not file a petition for judicial review within 60 days, Respondent will lose the
17 right to appeal. The phone number for the Oregon Court of Appeals is 503-986-5555.

18  for
19 Chair
20 State Plumbing Board
21 State of Oregon

Dated this 8th day of April, 2015

22  for
23 Director
24 Department of Consumer and Business Services
25 State of Oregon

Dated this 8th day of April, 2015