

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

BEFORE THE ELECTRICAL AND ELEVATOR BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

JOHNNY RODRIGUES, AN INDIVIDUAL,

RESPONDENT.

)
) **NOTICE OF PROPOSED ASSESSMENT**
) **OF CIVIL PENALTIES AND FINAL**
) **ORDER ON DEFAULT**
)
) **ORDER TO CEASE AND DESIST**
)
) **BCD CASE C2014-0276**
)

Under Oregon Revised Statutes (ORS) 455.895(1)(b), and Oregon Administrative Rules (OAR) 918-001-0036, the Oregon Electrical and Elevator Board (Board) propose assessing civil penalties against Respondent totaling \$6,000 because Respondent violated Building Codes Division statutes and rules as indicated in the Findings of Fact and Conclusions of Law that follow.

The Director of the Department of Consumer and Business Services (Director), acting pursuant to ORS 455.775(2), finds that there is reason to believe that Respondent has been engaged in, is engaging in, or is about to engage in violations of ORS chapters 455 and 479, and the rules adopted thereunder. Therefore, the Director issues the following Order to Respondent to immediately CEASE AND DESIST any and all violations of ORS chapters 455 and 479, and the rules adopted thereunder.

FINDINGS OF FACT

1. On or about November 5, 2014, at 1441 Main Street, Springfield, Oregon (the subject property), Respondent removed and reinstalled electrical wiring, metal conduit, and a light fixture on the exterior of the commercial building to troubleshoot and repair an exterior light, for the account of another.
2. All installations were for the account of Vita Brownlee, owner of the "What's In Store" business at the subject property.

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1 3. At no relevant time was Respondent licensed as an electrical contractor in the State of
2 Oregon.

3 4. At no relevant time did Respondent hold a supervising or journeyman electrician license in
4 the State of Oregon when he made the installations described in Findings of Fact paragraph
5 1 at the subject property.

6 5. Respondent did not obtain an electrical permit prior to making the installations described in
7 Findings of Fact paragraph 1 at the subject property.

8 **APPLICABLE LAW**

9 1. ORS 479.530(10) defines an electrical installation as the construction or installation of
10 electrical wiring and the permanent attachment or installation of electrical products.

11 2. ORS 479.620(1) requires a person to have an electrical contractor license to engage in the
12 business¹ of making electrical installations, including advertising or otherwise purporting to
13 be a business that makes electrical installations.

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

16 4. ORS 479.550(1) states no person shall work on any new electrical installation for which a
17 permit has not been issued.

18 5. Under ORS 455.775(2), if the Director has reason to believe that any person has been
19 engaged, or is engaging, or is about to engage in any violation of the state building code, or
20 ORS chapter 447, 455, 479, and 693 or any rule adopted under those statutes, the Director
21 may issue an order, subject to ORS 183.413 to 183.497, directed to the person to cease and
22 desist from the violation or threatened violation.

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25 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 **CONCLUSIONS OF LAW**

- 2 1. Removal and reinstallation of electrical wiring, metal conduit, and a light fixture are
3 electrical installations as defined in ORS 479.530(10).
- 4 2. Making the electrical installations described in Conclusions of Law paragraph 1 for the
5 account of another requires a valid supervising or journeyman electrician license under ORS
6 479.620(3).
- 7 3. By making the electrical installations described in Conclusions of Law paragraph 1 without
8 the proper licenses, Respondent violated ORS 479.620(3).
- 9 4. By engaging in the business of making electrical installations for the account of another
10 without Respondent having an Oregon electrical contractor license, Respondent violated
11 ORS 479.620(1).
- 12 5. By making electrical installations without first obtaining a valid electrical permit,
13 Respondent violated ORS 479.550(1).
- 14 6. From Findings of Fact paragraphs 1 through 5 and Conclusions of Law paragraphs 1
15 through 5, the Director has reason to believe that Respondent has and may continue to:
- 16 a. Perform electrical installations without first obtaining an electrical permit;
 - 17 b. Perform electrical installations without the appropriate electrical license;
 - 18 c. Engage in the business of electrical contracting without the appropriate electrical
19 contractor license; and

20 Respondent has been engaged in, is engaging in, or is about to engage in violations of ORS
21 chapters 455 and 479 and the rules adopted thereunder. Therefore, the Director may issue an
22 order against Respondent to cease and desist from the violations.

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1 **ORDER**

2 The Board hereby orders the follow penalties:

- 3 1. \$3,000 for violating ORS 479.620(1),
4 2. \$2,000 for violating ORS 479.620(3), and
5 3. \$1,000 for violating ORS 479.550(1).

6 Total civil penalties assessed: \$6,000.

7 Pursuant to ORS 455.775(2), the Director ORDERS, effective immediately, that Respondent
8 CEASE AND DESIST from engaging in the business of electrical contracting, making electrical
9 installations for the account of another without the appropriate electrical license, the making of an
10 electrical installation prior to obtaining an electrical permit, and CEASE AND DESIST any and all
11 violations of ORS chapters 455 and 479 and the rules adopted thereunder.

12 **NOTICE OF RIGHT TO HEARING**

13 Respondent is entitled to a hearing as provided by the Administrative Procedures Act,
14 Oregon Revised Statutes, chapter 183. If Respondent requests a hearing, the request must be in
15 writing and postmarked no later than 20 days from the date of service. If the Notice was served on
16 Respondent in person, the date of service is the date Respondent received the Notice. If the Notice
17 was served through the mail, the date of service is the day the Notice was mailed, not the day it was
18 received by the Respondent. If a request for hearing is not received within the 20-day period,
19 Respondent's right to a hearing shall be considered waived unless the failure to request a hearing
20 was beyond Respondent's reasonable control. Hearing requests shall be mailed to Building Codes
21 Division, Enforcement Section, P.O. Box 14470, Salem, Oregon, 97309.

22 Respondent has the right to be represented by legal counsel. ORS 183.457 provides that a
23 corporation may be represented by an authorized representative at the hearing. If Respondent
24 requests a hearing the Division will notify Respondent of the time and place of the hearing. The
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1 Division will give Respondent information on the procedures, right of representation and other
2 rights of parties relating to the conduct of the hearing before commencement of the hearing.

3 **NOTICE TO ACTIVE DUTY SERVICE MEMBERS**

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

9 **NOTICE OF FINAL ORDER**

10 If Respondent does not request a hearing within 20 days, this Notice will become a final
11 order, effective 21 days after it was served on Respondent. If Respondent does not request a
12 hearing or fails to appear at a scheduled hearing, the Division's file on the matter becomes record
13 for the purpose of establishing a prima facie case.

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

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10 **FOR THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

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12 Andrea Simmons for Date: February 27, 2015
13 Director,
14 Department of Consumer and Business Services
State of Oregon

15 **FOR THE ELECTRICAL AND ELEVATOR BOARD**

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17 Andrea Simmons for Date: February 27, 2015
18 Chair,
19 Electrical and Elevator Board
20 State of Oregon
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