

515 C2015-0013

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

IN THE MATTER OF:

FRED S. ZHARKOFF, AN INDIVIDUAL,

RESPONDENT.

) NOTICE OF DENIAL OF APPLICATION
) FOR GENERAL SUPERVISING
) ELECTRICIAN LICENSE AND
) DISQUALIFICATION FROM RE-
) APPLICATION
) FINAL ORDER ON DEFAULT
) CASE NO. C2015-0013

FINAL ORDER
As of: April 20, 2015

Under Oregon Revised Statutes (ORS) 455.895(2) and Oregon Administrative Rules (OAR) 918-001-0036, the Director of the Department of Consumer and Business Services (Director) proposes denial of Respondent's application and disqualification from reapplication for violations of Building Codes Division statutes and rules as follows:

FINDINGS OF FACT

- 1. At all relevant times, Respondent possessed Oregon journeyman electrician license 19853J.
2. Respondent currently works for Creative Electric, LLC.
3. On January 21, 2015, Respondent submitted a general supervising electrician license application to the Oregon Department of Consumer and Business Services Building Codes Division (Division).
4. On January 26, 2015, Respondent submitted the two-page "Electrical Experience Verification" as part of his application for the general supervising electrician license. Respondent filled out the verification form and signed Daniel J. Malloy's name.
5. Daniel J. Malloy, who holds general supervising electrician license number 4890S, has worked for Creative Electric since September 27, 2013 as its signing supervisor electrician.
6. On February 20, 2015, Respondent admitted in an email to the Division's enforcement officer that he signed Daniel J. Malloy's name.

APPLICABLE LAW

- 1. Under ORS 479.630(2), the Department of Consumer and Business Services shall issue a general supervising electrician's license to a person who passes a written examination prepared by the Board and administered by the department; and submits proof

1 satisfactory to the Board that the person has had a least four years of experience as a
2 general journeyman electrician or its equivalent, as determined by the Board by rule, in
installing, maintaining and repairing electrical wires and equipment.

- 3 2. Under OAR 918-001-0040(2)(a), in addition to any passing grade requirement, a person
4 fails an examination provided, authorized or required by the division or one of its boards
5 if the person cheats in connection with an examination. A person "cheats in connection
6 with the examination" if the person applies for or takes an examination and directly or
7 indirectly provides untrue information regarding qualifications to take the examination.
8
9 3. Under ORS 455.129(2)(c), subject to ORS chapter 183, a regulatory body may deny a
10 license, certificate, registration or application or may suspend, revoke, condition or refuse
11 to renew a license, certificate or registration if the regulatory body finds that the licensee,
12 certificate holder, registrant or applicant has filed an application for a license, certificate
13 or registration that, as of the date the license, certification or registration was issued or
14 the date of an order denying the application, was incomplete in any material respect or
contained a statement that, in light of the circumstances under which it was made, was
incorrect or misleading in any respect.
- 15 4. Under ORS 455.127(2)(a), the Director may disqualify a person from obtaining or
16 renewing a license, registration, certificate or certification if the person is or has been
17 subject to civil penalties or other sanction by an advisory board.
- 18 5. Under ORS 455.127(3), a disqualification under subsection (2) of this section shall be for
19 a period determined by the Director, not to exceed five years.

20 CONCLUSIONS OF LAW

- 21 1. By falsely signing the signature of Daniel J. Malloy in the designated verifier section of
22 the electrical experience verification form on Respondent's application for the general
23 supervising electrician application, Respondent provided untrue information regarding
24 his qualifications to take the examination that constitutes cheating in connection with an
25 examination. Respondent is therefore considered to have failed the examination by
operation of OAR 918-001-0040(2)(a).
2. Filing a signing supervisor electrician license application with the Division that includes
a false signature for the designated verifier on the electrical experience verification form
is the act of misleading as provided in ORS 455.129(2)(c).
3. The Director may deny Respondent's application for a general supervising electrician's
license because Respondent's application contained a statement that was misleading,
submitting a false signature on the electrical experience verification form, as provided in
ORS 455.129(2)(c).
4. Because the Director is sanctioning Respondent by denying Respondent's application for
the general supervising electrician license, the Director may disqualify Respondent from
obtaining a license for up to five years, pursuant to ORS 455.127(2)(a) and (3).

ORDER

Pursuant to ORS 455.129(2)(c) and OAR 918-001-0040(2)(a), the Director denies Respondent’s application for a general supervising electrician license.

Pursuant to ORS 455.127(2)(a) and (3), the Director disqualifies Respondent from obtaining a new license from the Division or one of its boards for five (5) years.

NOTICE OF RIGHT TO HEARING

Respondent is entitled to a hearing as provided by the Administrative Procedures Act, Oregon Revised Statutes, chapter 183. If Respondent requests a hearing, the request must be in writing and filed with the Building Codes Division no later than 60 days from the service date. If this Notice was served to Respondent in person, the service date is the date Respondent received this Notice. If this Notice was served through the mail, the service date is the day the Notice was mailed, not the day Respondent received it.

If a request for hearing is not received within 60 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 assistance, visit the United States Armed Forces Legal Assistance Legal Services Locator website at <http://legalassistance.law.af.mil/content/locator.php>.

NOTICE OF FINAL ORDER

If Respondent does not request a hearing within 60 days, withdraws a hearing request, notifies the Division or the administrative law judge that they will not appear, or fails to appear at a scheduled hearing, the Division will issue a Final Order by Default. If the Division issues a Final Order by Default, it designates the file, including any materials submitted by Respondent that relate to this matter, as the record for purpose of proving a prima facie case.

Respondent is entitled to judicial review of any final order issued in the matter of this Notice of Denial of Application for General Supervising Electrician License and Disqualification from Re-Application. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after the Final Order is served. See ORS 183.482. If the Order was served in person, the service date is the date Respondent received the Order. If the

1 Order was served through the mail, the service date is the day the Order was mailed, not the day
2 it was received by Respondent. If Respondent does not file a petition for judicial review within
3 60 days, Respondent will lose the right to appeal. The phone number for the Oregon Court of
4 Appeals is 503-986-5555.

5 Dated this 26th day of March, 2015

6 Roseanne Nelson for
7 Director,
8 Department of Consumer and Business Services
9 State of Oregon
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25