

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

2  
3 **IN THE MATTER OF:**

**CONSENT ORDER**

4 **ER ELECTRIC, INC.,**  
5 **A DOMESTIC BUSINESS**  
6 **CORPORATION,**

**BCD CASE C2015-0015**

7 **RESPONDENT.**

8  
9 The Building Codes Division (Division) conducted an investigation on behalf of the  
10 Electrical and Elevator Board of the State of Oregon (Board) and determined that ER Electric, Inc.  
11 (Respondent) violated certain provisions of the Division's statutes and administrative rules as  
12 identified below.

13 The parties agree to settle this matter without a hearing. Respondent understands that  
14 Respondent has the right to a contested case hearing under the Administrative Procedures Act,  
15 Oregon Revised Statutes (ORS), chapter 183, and Respondent fully and finally waives the right to a  
16 hearing and any appeal therefrom by the signing of this Consent Order.

17 **FINDINGS OF FACT**

- 18 1. Respondent has held electrical contractor license number 3-591C since April 19, 2004.  
19 2. On or about January 11, 2013, Aaron Zachary (Zachary) registered as Respondent's general  
20 signing supervising electrician.<sup>1</sup>  
21 3. At no relevant time did Zachary perform any work for Respondent. Zachary did not devote  
22 any time to supervising, designing, laying out, planning, controlling, or making electrical  
23 installations for Respondent. Zachary was never on Respondent's payroll as the signing  
24 supervisor, nor did he provide any services or receive any remuneration from Respondent.  
25 4. In or about April 2014, Zachary informed Respondent that he no longer would be

<sup>1</sup> See related BCD case number C2014-0289.

1 Respondent's general signing supervising electrician.

- 2 5. After Zachary terminated his relationship with Respondent, Respondent continued to use  
3 Zachary's general supervising electrician license number to obtain the following permits:
- 4 a. Permit number 2014-142354-000-00-ET from the City of Portland on April 16,  
5 2014;
  - 6 b. Permit number 2014-150700-000-00-ET from the City of Portland on April 30,  
7 2014;
  - 8 c. Permit number 2014-158288-000-00-ET from the City of Portland on May 19, 2014;
  - 9 d. Permit number 2014-220571-000-00-ET from the City of Portland on October 2,  
10 2014;
  - 11 e. Permit number 2014-234441-000-00-ET from the City of Portland on November 5,  
12 2014;
  - 13 f. Permit number 2014-222815-000-00-ET from the City of Portland on October 8,  
14 2014; and
  - 15 g. Permit number E0674014 from Clackamas County on December 23, 2014.
- 16 6. Respondent's representative signed for Zachary or allowed Zachary's name to be used on  
17 the permits in order to obtain each permit enumerated above.
- 18 7. At all relevant times, Respondent has had no registered general supervising electrician other  
19 than Zachary.

20 **APPLICABLE LAW**

- 21 1. Under OAR 918-282-0010(1), an electrical contractor is required to continuously employ at  
22 least one full-time general supervising electrician.
- 23 2. Under OAR 918-251-0090(8), "continuously employ" means a person who devotes his  
24 entire time of employment to tasks of supervising, designing, laying out, planning,  
25

1 controlling, and making electrical installations for the electrical contractor for which the  
2 supervisor is registered as signing supervisor.

- 3 3. Under OAR 918-309-0000(1), the signature of a signing supervising electrician is required  
4 on each permit, and any person providing false or incorrect information or false or an  
5 incorrect signature to obtain a permit may be subject to compliance action by the Board.  
6 4. Under ORS 455.129(2)(a) and (3)(b), the Board may suspend and/or condition a license if  
7 the license holder fails to comply with the provisions of ORS 479.510 - 479.945, ORS  
8 chapter 455, or any rule adopted under those statutes.

9 **CONCLUSIONS OF LAW**

- 10 1. Because Zachary did not devote any of his time to supervising, designing, laying out,  
11 planning, controlling, or making electrical installations for Respondent, Respondent did not  
12 continuously employ Zachary as a general supervising electrician as defined under OAR  
13 918-251-0090(8).  
14 2. By failing to continuously employ at least one full-time general supervising electrician,  
15 Respondent violated OAR 918-282-0010(1).  
16 3. By using Zachary's name, license number, and signature to obtain seven permits,  
17 Respondent violated OAR 918-309-0000(1) seven times.  
18 4. Under ORS 455.129(2)(a) and (3)(b), Respondent is subject to suspension and/or  
19 conditioning of its license for failing to comply with provisions of ORS 479.510 - 479.945,  
20 ORS chapter 455, and the rules adopted thereunder.

21 **ORDER**

- 22 1. The Board orders an assessment of a total of \$10,000 in civil penalties – \$7,000 for violating  
23 OAR 918-309-0000(1) on seven (7) occasions and \$3,000 for violating OAR 918-282-  
24 0010(1) – as follows:  
25 a. \$7,500 of the total civil penalty will be suspended for a period of five (5) years if

1           there is compliance with all other terms of this Consent Order;

- 2           b. Respondent agrees to pay the remaining \$2,500 of the civil penalty. Respondent's  
3           payment shall be postmarked no later than July 25, 2015. (*An invoice will be*  
4           *included with Respondent's copy of the final order after the Director signs it.*)

5           Payment shall be mailed to Department of Consumer and Business Services,  
6           Revenue Services Section, P.O. Box 14610, Salem, OR 97309-0445.

- 7           c. The suspended civil penalty (\$7,500) will be considered satisfied five (5) years after  
8           this Consent Order becomes a final order, provided Respondent complies with its  
9           terms and has not committed any further violations of the Division's statutes and  
10          rules within that five-year period. Respondent understands and agrees that if  
11          Respondent does not comply with the terms of this Consent Order or if Respondent  
12          commits any further violations of the Division's statutes or rules within the five-year  
13          period, then the entire civil penalty, including any suspended amount, will become  
14          immediately due and payable. Failure to comply with this Consent Order includes,  
15          but is not limited to, failure to pay the civil penalty amount due by the due date.

- 16          2. Respondent's electrical contractor license number 3-591C shall be suspended for a period of  
17          six (6) months, commencing on the date that this Consent Order is executed by all parties.

- 18          3. Respondent's electrical contractor license number 3-591C shall be conditioned as follows  
19          after the suspension:

- 20                  a. Respondent's electrical contractor license number 3-591C shall remain suspended,  
21                  including beyond the six-month suspension identified in the preceding paragraph,  
22                  unless and until Respondent becomes compliant with OAR 918-282-0010(1) by  
23                  hiring and registering with the Division a general supervising electrician. In addition,  
24                  Respondent shall comply with all other statutes and regulations of the Division and  
25

1 the Construction Contractors Board. This includes, but is not limited to, Respondent  
2 continuing to renew his license through the Division and paying all applicable fees.

3 b. Respondent shall provide the Division with monthly reports for six (6) months,  
4 commencing at the time that Respondent's electrical contractor license number is  
5 active and no longer suspended.

6 c. The monthly reports shall include: a list of all jobs worked on during the month  
7 (including jobs reported in a previous month's report if the job runs longer than one  
8 calendar month); copies of all invoices from each job; copies of Respondent's  
9 payroll records for each month, including the timesheets for its designated signing  
10 supervisor(s); and copies of all permits received for each job.

11 d. The first monthly report shall be due to the Division on the tenth day of the month  
12 after which Respondent's license is no longer suspended. (As an example, if  
13 Respondent's license is active and no longer suspended as of December 8, 2015,  
14 Respondent's first monthly report shall be due by January 10, 2016 to report all work  
15 done in December 2015.) Subsequent reports shall be due on the tenth day of each  
16 month to report all work done in the preceding month.

17 e. The monthly reports shall be mailed to Building Codes Division, Enforcement  
18 Section, P.O. Box 14470, Salem, Oregon, 97309.

19 4. Respondent agrees to fully cooperate with the Division's enforcement efforts in other cases  
20 that rely on the facts underlying this case. Cooperation may include, but not be limited to,  
21 making sworn statements or testifying in administrative hearings.

22 5. Respondent understands and agrees that further enforcement action may be taken for any  
23 violation of the Division's statutes or rules not identified in this Consent Order, whether  
24 committed before or after the execution of this Consent Order, and/or for any violation of  
25 the terms of this Consent Order.

- 1 6. Respondent understands that failure to comply with this Consent Order may be used as a  
2 basis for the denial of a future license, certificate, registration, or other application, or for the  
3 refusal to renew the same; for the suspension, revocation, or conditioning of a license,  
4 certificate, or registration issued by the Division or other state agencies; and/or for any other  
5 reason provided for in law.
- 6 7. Respondent understands that this Consent Order is a public record.
- 7 8. Respondent has read and fully understands the terms of this Consent Order, freely and  
8 voluntarily consents to the entry of this Consent Order without any force or duress, and  
9 expressly waives all rights to hearing or appeal in this matter.
- 10 9. Respondent understands that, upon signature of all parties, this Consent Order will be a final  
11 order.

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14 \_\_\_\_\_  
15 Eric Reich  
16 Authorized Representative  
17 ER Electric, Inc.

It is so agreed this 1 day of July, 2015.

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19 \_\_\_\_\_  
20 Chair,  
21 Electrical and Elevator Board  
22 State of Oregon

It is so agreed this 8 day of July, 2015.