

BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

A-1 AMERICAN CONTRACTORS INC.,
A DISSOLVED DOMESTIC BUSINESS
CORPORATION,

RESPONDENT.

AMENDED NOTICE OF PROPOSED
ASSESSMENT OF CIVIL PENALTIES

NOTICE OF FINAL ORDER ON DEFAULT

FINAL ORDER

BCD CASE C2015-0024

As of: February 3, 2016

**IF YOU DO NOT REQUEST A HEARING IN WRITING WITHIN 20 DAYS
OF THE POSTMARK DATE OF THIS NOTICE,
THIS NOTICE WILL BECOME A FINAL ORDER.**

More information about this Notice and how to request a hearing is included below.

Pursuant to Oregon Revised Statutes (ORS) 455.895(1)(a) and Oregon Administrative Rules (OAR) 918-001-0036, the State Plumbing Board of the State of Oregon (Board) proposes to assess civil penalties totaling \$11,950 against A-1 American Contractors Inc. (Respondent) because Respondent violated Building Codes Division (Division) statutes and rules as identified below.

FINDINGS OF FACT

1. During all relevant times, Respondent held plumbing contractor license number PB944.¹
2. On or about February 2, 2015, Respondent hired John Glassman as an employee.
3. During or about the period of February 10, 2015 through February 12, 2015, Mr. Glassman, in the course of his employment with Respondent, installed plumbing piping for a kitchen sink and garbage disposal at 5407 SE Boise Street, Portland, Oregon (Boise property).
4. During or about the period of February 10, 2015 through February 12, 2015, Mr. Glassman, in the course of his employment with Respondent, installed finish plumbing at 1924 Lexington Street, Portland, Oregon (Lexington Property).
5. At no relevant time did Mr. Glassman hold a valid journeyman plumber license in Oregon.

¹ This license was revoked effective December 22, 2015 in Division case number C2015-0215.

- 1 6. On December 1, 2012, in BCD case number 2010-0267, a consent order was executed
2 between Respondent and the Board in which the Board assessed a \$3,000 civil penalty for a
3 violation of ORS 447.040(1) (advertising and agreeing to perform a plumbing installation
4 without a plumbing contractor license).
- 5 7. The consent order in BCD case number 2010-0267 provided, in part, that \$2,750 of the
6 \$3,000 civil penalty would be suspended for a period of five years from the execution of the
7 order provided Respondent complied with the order and did not commit further violations of
8 BCD's statutes or rules.
- 9 8. On August 21, 2014, in BCD case number C2013-0252, a second consent order was
10 executed between Respondent and the Board in which Respondent was assessed a \$2,500
11 civil penalty for violations of OAR 918-780-0065 (making a plumbing installation prior to
12 obtaining a plumbing permit), ORS 693.030(2)(a) (permitting or suffering employee to
13 install water piping without having an Oregon journeyman plumber's license), and ORS
14 455-129(2)(b) (failing to comply with an order of the Board).
- 15 9. The consent order in BCD case number C2013-0252 provided, in part, that Respondent
16 would pay \$2,500 in new civil penalties and that the previously-suspended \$2,750 penalty
17 had become due and payable, for a total of \$5,250 in civil penalties.
- 18 10. As of the date of this notice, Respondent has an outstanding remaining balance of \$1,950 in
19 civil penalties pursuant to case number C2013-0252.
- 20 11. The consent order in BCD case number C2013-0252 further required Respondent to provide
21 monthly reporting to the Division for 12 months.²
- 22 12. The consent order in BCD case number C2013-0252 also provided that a single failure to
23 comply with any of its terms would result in the entire civil penalty becoming immediately
24

25 ² The monthly reporting required Respondent to provide the Division with a list of all jobs worked, invoices for the jobs, names and license numbers of each employee or subcontractor who worked on the job, and a copy of each permit received for each job.

1 due and payable. Another term of the consent order prohibited Respondent from
2 committing further violations of BCD's statutes and rules.

3 13. Respondent failed to report the work performed at the Boise property to the Division.

4 **APPLICABLE LAW**

- 5 1. The terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 447.010(1)-(6),
6 ORS 455.010(1)-(10), ORS 693.010(1)-(5), OAR 918-001-0005(1)-(4), OAR 918-030-
7 0010(1)-(11), and OAR 918-690-0420(1)-(14).
- 8 2. Under ORS 447.010(6), plumbing is defined as the art of installing, altering, or repairing
9 pipes, fixtures, and other apparatus for bringing in the water supply and removing liquid and
10 water-carried waste.
- 11 3. Under ORS 693.030(1), a person may not engage in the trade of journeyman plumber
12 without a journeyman plumber license.
- 13 4. Under ORS 693.030(2)(a), a licensed plumbing contractor may not permit or suffer any
14 person to work as a journeyman plumber who does not hold a valid journeyman plumber
15 license.
- 16 5. Under ORS 455.895(5), the maximum penalty established by ORS 455.895 for a violation
17 may be imposed only upon a finding that the person has engaged in a pattern of violations.
- 18 6. Under OAR 918-001-0036(2)(c), "pattern of violation" means two or more prior violations
19 during a five-year period of any provision of ORS chapters 446, 447, 455, 460, 479, 480, or
20 693, or the state building code as defined in ORS 455.010, whether or not a penalty was
21 assessed. A pattern of violation is calculated within a five-year period from the date of the
22 latest violation.
- 23 7. Under OAR 918-001-0036(4), civil penalties may be assessed by a board, the Director, or a
24 board's designee acting as agent for a board. A board or the Director may take into account
25 any appropriate factors, including previous directives, in determining the penalty amount or

1 conditions within an order. The statutorily defined maximum penalty may only be assessed
2 upon a finding of a pattern of violation.

- 3 8. Under OAR 918-001-0036(6), the Director may, subject to approval of a board, develop a
4 penalty matrix for the board's use to promote equality and uniformity in proposing the
5 amount and terms of civil penalties and conditions under which the penalties may be
6 modified based on the circumstances in individual cases.

7 CONCLUSIONS OF LAW

- 8 1. The following constitute plumbing under ORS 447.010(6):
9 a. Installation of piping; and
10 b. Installation of finish plumbing.
- 11 2. By performing the foregoing plumbing work at the Boise and Lexington properties, Mr.
12 Glassman engaged in the trade of journeyman plumber in two instances.
- 13 3. By permitting or suffering Mr. Glassman to perform the foregoing plumbing without
14 holding a journeyman plumber's license, Respondent violated ORS 693.020(2)(a) in two
15 instances.
- 16 4. By failing to report the plumbing work performed at the Boise property to the Division,
17 Respondent failed to comply with a term of the consent order in BCD case number C2013-
18 0252.
- 19 5. By failing to comply with all terms of the consent order in BCD case number C2013-0252,
20 including failing to report the plumbing work at the Boise property and committing further
21 violations of BCD's statutes and rules after executing the consent order, the unpaid balance
22 of Respondent's previous civil penalties, \$1,950, is immediately due and payable
- 23 6. By violating ORS 447.040(1) within the last five years in BCD case number 2010-0267,
24 violating OAR 918-780-0065, ORS 693.020(2)(a), and 455.129(2)(b) within the last five
25 years in BCD case C2013-0252, and by violating ORS 693.020(2)(a) in this matter,

1 Respondent has engaged in a pattern of violation under OAR 918-001-0036(2)(c).
2 Therefore, Respondent is subject to increased civil penalties in accordance with the
3 Advisory Board Penalty Matrix.

4 **ORDER**

- 5 1. Pursuant to ORS 455.895(1)(a) and OAR 918-001-0036, the Board assesses \$10,000 in civil
6 penalties for violating ORS 693.020(1)(a) in two instances (\$5,000 per violation); and
7 2. Pursuant to the terms of the consent order in BCD case number C2013-0252, the unpaid
8 balance of Respondent's previous civil penalties, \$1,950, is immediately due and payable.
9 The total civil penalty due is \$11,950.

10 **NOTICE OF RIGHT TO HEARING**

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

19 Respondent may be represented by legal counsel. Pursuant to ORS 183.457 and OAR 918-
20 001-0030, a corporate Respondent may be represented by an authorized representative at the
21 hearing. If Respondent requests a hearing, Respondent will be notified of the time and place of the
22 hearing. The Division will give Respondent information on the procedures, right of representation,
23 and other rights of parties relating to the conduct of the hearing before the commencement of the
24 hearing.

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1 **RIGHT TO JUDICIAL REVIEW**

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

10 **FOR THE STATE PLUMBING BOARD OF THE STATE OF OREGON**

11 Andrea Simmons for Date: 1/20/16
12 Chair
13 State of Oregon