

BEFORE THE ELECTRICAL AND ELEVATOR BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

CONSENT ORDER

**JOSEPH F. CAIN,
DBA PROMPT ELECTRIC,
AN INDIVIDUAL,**

RESPONDENT.

BCD CASE C2015-0134

INTRODUCTION

The Building Codes Division (Division) conducted an investigation on behalf of the Electrical and Elevator Board of the State of Oregon (Board) and determined that Joseph F. Cain, dba Prompt Electric (Respondent) violated certain provisions of the Division's statutes and administrative rules as identified below.

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

FINDINGS OF FACT

1. At all relevant times, Respondent (Joseph F. Cain, dba Prompt Electric) has held electrical contractor license 30-90C.
2. At all relevant times, Respondent (Joe F. Cain) has held journeyman electrician license number 17942J.
3. Respondent is both the electrical contractor and the journeyman electrician: Joseph F. Cain is the owner of the business that holds the electrical contractor license of Joseph F. Cain, dba Prompt Electric; Mr. Cain also works as a journeyman electrician for that contractor.
4. Respondent employed Jack Rasmussen as a signing supervisor.

1 5. On June 22, 1978, Rasmussen obtained general supervising electrician license number
2 2352S.

3 6. On or about March 3, 2015, Respondent employed Nathaneal M. Icenogle to perform rough-
4 in electrical work, including stripping non-metallic cable sheathing within a wall-mounted
5 receptacle for a light box switch, as part of a new residential construction project at 919 SW
6 14th Place in Hermiston, Oregon.¹

7 7. At no relevant time did Icenogle possess a supervising or journeyman electrician license.

8 8. Respondent's general supervising electrician, Rasmussen, died on March 16, 2015.

9 9. Following Rasmussen's death, Respondent applied for and obtained the following electrical
10 permits using Rasmussen's supervising electrician license number and/or signature:

11 a. From the City of Hermiston:

12 i. Permit number HE-2941-15 for one residential service or feeder and one
13 branch circuit, applied for on March 24, 2015 by signing Rasmussen's name
14 in ink and using Rasmussen's license number;

15 ii. Permit number HE-2942-15 for one residential service or feeder and one
16 branch circuit, applied for on March 25, 2015 by signing Rasmussen's name
17 in ink and using Rasmussen's license number;

18 iii. Permit number HE-2959-15 for one residential service or feeder and one
19 branch circuit, applied for on April 16, 2015 by signing Rasmussen's name in
20 ink and using Rasmussen's license number;

21 iv. Permit number HE-2975-15 for one temporary service or feeder of 200 amps
22 or less, applied for on May 4, 2015 by signing Rasmussen's name in ink and
23 using Rasmussen's license number;

24 v. Permit number HE-2984-15 for one residential 1,000 square foot service,
25

¹ See related BCD case C2015-0135.

1 three additional 500 square foot services, and one limited energy service,
2 obtained on May 19, 2015 using Rasmussen's license number;

3 vi. Permit number HE-3020-15 for one residential service or feeder and one
4 branch circuit, applied for on June 10, 2015 by signing Rasmussen's name in
5 ink and using Rasmussen's license number; and

6 vii. Permit number HE-3021-15 for one residential service or feeder, applied for
7 on June 10, 2015 by signing Rasmussen's name in ink and using
8 Rasmussen's license number.

9 b. From the City of Pendleton:

10 i. Permit number PEL-15-63 for one residential service or feeder, issued on
11 April 13, 2015 by signing Rasmussen's name in ink and using Rasmussen's
12 license number; and

13 ii. Permit number PEL-15-92 for one residential service or feeder, issued on
14 May 14, 2015 by signing Rasmussen's name in ink and using Rasmussen's
15 license number.

16 c. From the Division's Umatilla County office:

17 i. Permit number EL15PE0154 for one 200 amp service or feeder and one 201-
18 400 amp service or feeder, applied for on March 9, 2015 by signing
19 Rasmussen's name in ink and using Rasmussen's license number;

20 ii. Permit number EL15PE0173 for one pump or irrigation circle, applied for on
21 March 13, 2015 by signing Rasmussen's name in ink and using Rasmussen's
22 license number;

23 iii. Permit number EL15PE0176 for one residential service or feeder, applied for
24 on March 13, 2015 by signing Rasmussen's name in ink and using
25 Rasmussen's license number;

- 1 iv. Permit number EL15PE0250 for one 200 amp service or feeder, applied for
2 on April 15, 2015 by signing Rasmussen's name in ink and using
3 Rasmussen's license number;
- 4 v. Permit number EL15PE0259 for one 200 amp service or feeder and two
5 branch circuits, applied for on April 15, 2015 by signing Rasmussen's name
6 in ink and using Rasmussen's license number;
- 7 vi. Permit number EL15PE0260 for one 200 amp service or feeder and two
8 branch circuits, applied for on April 15, 2015 by signing Rasmussen's name
9 in ink and using Rasmussen's license number;
- 10 vii. Permit number EL15PE0261 for one 200 amp service or feeder and two
11 branch circuits, applied for on April 16, 2015 by signing Rasmussen's name
12 in ink and using Rasmussen's license number;
- 13 viii. Permit number EL15PE0280 for one 200 amp service or feeder and two
14 branch circuits, applied for on April 23, 2015 by signing Rasmussen's name
15 in ink and using Rasmussen's license number;
- 16 ix. Permit number EL15PE0281 for one 200 amp service or feeder and two
17 branch circuits, applied for on April 23, 2015 by signing Rasmussen's name
18 in ink and using Rasmussen's license number; and
- 19 x. Permit number EL15PE0317 for one pump or irrigation circle, applied for on
20 May 11, 2015 by signing Rasmussen's name in ink and using Rasmussen's
21 license number.

22 10. Respondent completed and submitted the foregoing permit application forms, including
23 Rasmussen's ink signatures and license numbers.

24 11. Respondent performed the electrical work pursuant to the foregoing permits.

25 12. Respondent did not employ a supervising electrician following Rasmussen's death.

APPLICABLE LAW

1. The terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 455.010(1)-(10), ORS 479.530(1)-(23), ORS 479.905(1)-(5), OAR 918-001-0005(1)-(4), OAR 918-030-0010(1)-(11), and OAR 918-251-0090(1)-(43).
2. Under ORS 479.530(10), "Electrical installations" means the construction or installation of electrical wiring and the permanent attachment or installation of electrical products in or on any structure that is not itself an electrical product.
3. Under ORS 479.620(3), a person may not make any electrical installation without a supervising or journeyman electrician's license.
4. Under OAR 918-282-0120(1), no person or entity shall allow any individual to perform electrical work for which the individual is not properly registered or licensed.
5. Under OAR 918-282-0010(1), an electrical contractor is required to continuously employ at least one full-time general supervising electrician.
6. Under OAR 918-282-0170(1)(b), a general journeyman electrician shall work under the supervision, direction, and control of a general supervising electrician unless doing the type of work that may be supervised, directed, or controlled by a person holding a specific limited supervising electrician license, or the type of work requiring no supervision.
7. Under OAR 918-309-0000(1), any person providing false or incorrect information or false or an incorrect signature to obtain a permit may be subject to compliance action by the board.
8. Under ORS 479.560(2), a permit issued to an electrical contractor upon the request of the contractor's supervising electrician is void upon the end of the employment of such supervising electrician before completion of the electrical installation.
9. Under ORS 479.550(1), except as provided in ORS 479.540, no person shall work on any new electrical installation for which a permit has not been issued.

1 10. Under ORS 455.450(3), a person may not violate, or procure or assist in the violation of, any
2 standard, specification, requirement, prohibition or other technical provision set forth in the
3 state building code or an applicable local building code or in any rule or order of the
4 Department of Consumer and Business Services, an advisory board, a local governing body
5 or local building official.

6 11. Under ORS 455.129(2), the Board, acting pursuant to 455.129(3)(b), may revoke a license if
7 the licensee:

8 (a) has failed to comply with the laws administered by the regulatory body or with the
9 rules adopted by the regulatory body;

10 ***

11 (d) has performed work without appropriate licensing, certification or registration or has
12 employed individuals to perform work without appropriate licensing, certification or
13 registration; [or]

14 ***

15 (m) has, while performing work that requires or that is related to work that requires a
16 valid license or certificate under ORS 479.510 to 479.945, violated any statute or rule
17 related to the state building code.

18 12. Under ORS 455.127(2)(a), the Board may disqualify a person from obtaining or renewing a
19 license if the person is or has been subject to civil penalties, revocation, cancellation or
20 suspension of a license, registration, certificate or certification or other sanction by the
21 director, department or an advisory board.

22 13. Under ORS 455.127(3), a disqualification under subsection (2) of this section shall be for a
23 period determined by the director, department or appropriate advisory board by rule, not to
24 exceed five years.

25 ///

1 14. Under OAR 918-001-0034(1), disqualification under ORS 455.127(2) shall be for a period
2 of five years except as provided in subsection (2) of this rule.

3 15. Under OAR 918-001-0034(2), the board may, in its discretion, order a disqualification fewer
4 than five years. In doing so the board may, but is not required to, consider any mitigating
5 factors.

6 CONCLUSIONS OF LAW

7 1. Performing rough-in electrical work, including stripping non-metallic cable sheathing within
8 a wall-mounted receptacle for a light box switch, installing services or feeders, and installing
9 pump or irrigation circles constitute electrical installations under ORS 479.530(10).

10 2. A supervising or journeyman electrician license is required to perform rough-in electrical
11 work, including stripping non-metallic cable sheathing within a wall-mounted receptacle for
12 a light box switch, under ORS 479.620(3).

13 3. By making the foregoing electrical installation without holding a supervising or journeyman
14 electrician license, Icenogle violated ORS 479.620(3).

15 4. By allowing Icenogle to perform the foregoing electrical work without holding a supervising
16 or journeyman electrician license, Respondent violated OAR 918-282-0120(1).

17 5. By failing to continuously employ at least one full-time general supervising electrician
18 following Rasmussen's death, including for the foregoing work performed under the permits
19 obtained from the City of Hermiston, City of Pendleton, and Umatilla County, Respondent
20 violated OAR 918-282-0010(1).

21 6. By failing to work under the supervision, direction, and control of a general supervising
22 electrician while working as a journeyman electrician, Respondent violated OAR 918-282-
23 0170(1)(b).

24 7. By using Rasmussen's supervising electrician license number and by signing Rasmussen's
25 signature on permit applications in three jurisdictions in order to obtain permits, Respondent

1 provided false or incorrect information or false or incorrect signatures to obtain permits in
2 violation of OAR 918-309-0000(1).

- 3 8. Any permit issued to Respondent using Rasmussen's signature and license number
4 following Rasmussen's death was void because Rasmussen was no longer employed by
5 Respondent, as provided under ORS 479.560(2).
- 6 9. Because the foregoing permits were void under ORS 479.560(2), Respondent did not hold a
7 valid permit prior to performing the foregoing electrical work, in violation of ORS
8 479.550(1).
- 9 10. By procuring or assisting the electrical contractor (Joseph F. Cain, dba Prompt Electric) in
10 the violation of a standard, specification, requirement, prohibition, or other technical
11 provision set forth in the state building code – namely, by procuring or assisting the
12 electrical contractor in using Rasmussen's supervising electrician license number and by
13 forging Rasmussen's signature on permit applications in three jurisdictions in violation of
14 OAR 918-309-0000(1) – Joe F. Cain (the individual journeyman) violated ORS 455.450(3).
- 15 11. The Board, acting under ORS 455.129(2)(a), (2)(d), (2)(m), and (3)(b), may revoke
16 Respondent's electrical contractor license number 30-90C because Respondent: failed to
17 comply with laws administered by the Board and rules adopted by the Board, including
18 OAR 918-282-0120(1), OAR 918-282-0010(1), OAR 918-309-0000(1), and ORS
19 479.550(1); employed an individual, Icenogle, to perform electrical work without holding
20 the appropriate license; and has, while performing electrical work that requires a valid
21 license pursuant to ORS 479.510-479.945, violated statutes or rules related to the state
22 building code, including OAR 918-282-0120(1), OAR 918-282-0010(1), OAR 918-309-
23 0000(1), and ORS 479.550(1).
- 24 12. The Board, acting under ORS 455.129(2)(m) and (3)(b), may revoke Respondent's
25 journeyman electrician license number 17942J because Respondent has, while performing

1 electrical work that requires a valid license pursuant to ORS 479.510-479.945, violated
2 statutes or rules related to the state building code, including ORS 455.450(3).

3 13. Because Respondent is subject to civil penalties, revocation, or suspension of a license or
4 other sanction by the Board, the Board may disqualify Respondent from obtaining a
5 journeyman electrician license under ORS 455.127(2)(a).

6 14. The Board may disqualify Respondent from obtaining a journeyman electrician license for
7 up to five years under ORS 455.127(3) and OAR 918-001-0034.

8 **ORDER**

9 1. The Board hereby assesses a total civil penalty of \$20,000 against Respondent for violating
10 OAR 918-282-0120(1), OAR 918-282-0010(1), OAR 918-282-0170(1)(b), ORS 479.550(1),
11 ORS 455.450(3), and OAR 918-309-0000(1) as follows:

12 a. \$10,000 of the total civil penalty will be suspended for a period of five years if there
13 is compliance with all other terms of this Consent Order.

14 b. Respondent agrees to pay the remaining \$10,000 of the civil penalty. Respondent's
15 payment shall be postmarked no later than the 25th day of the month following the
16 month in which this Consent Order becomes a final order. *(An invoice will be*
17 *included with Respondent's copy of the final order after the Director signs it.*

18 *Respondent understands timely payment must be made even if no invoice is ever*

19 *received.)* Payment shall be mailed to Department of Consumer and Business
20 Services, Fiscal Services Section, P.O. Box 14610, Salem, OR 97309-0445.

21 c. Respondent understands the suspended civil penalty (\$10,000) will be considered
22 satisfied five years after this Consent Order becomes a final order, provided
23 Respondent complies with its terms and has not committed any further violations of
24 the Division's statutes and rules within that five-year period. Respondent
25 understands and agrees that if Respondent does not comply with the terms of this

1 Consent Order or if Respondent commits any further violations of the Division's
2 statutes or rules within the five-year period, then the entire civil penalty, including
3 any suspended amount, will become immediately due and payable. Failure to comply
4 with this Consent Order includes, but is not limited to, failure to pay the civil penalty
5 amount due by the due date.

6 2. Respondent's electrical contractor license number 30-90C is hereby revoked.

7 3. Respondent is disqualified from obtaining an electrical contractor license for one (1) year.
8 This one-year period shall commence on the date that this Consent Order becomes a final
9 order.

10 4. Respondent's journeyman electrician license number 17942J shall be suspended for a period
11 of thirty (30) days, commencing on April ~~18~~²², 2016. *dc*

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

15 6. Respondent understands that further enforcement action may be taken for any violation of
16 the Division's statutes or rules not alleged in this Consent Order, whether committed before
17 or after the execution of this Consent Order, and/or for any violation of the terms of this
18 Consent Order.

19 7. Respondent understands that failure to comply with this Consent Order may be used as a
20 basis for the denial of future license, certificate, registration, or other applications, or for the
21 refusal to renew the same; for the suspension, revocation, or conditioning of a license,
22 certificate, or registration issued by the Division or other state agencies; and/or for any other
23 reason provided for in law.

24 8. Respondent understands that this Consent Order is a public record.

25 9. Respondent has read and fully understands the terms of this Consent Order, freely and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

voluntarily consents to the entry of this Consent Order without any force or duress, and expressly waives all rights to hearing or judicial review in this matter.

10. Respondent understands that, upon signature of all parties, this Consent Order will be a Final Order.

Joseph F. Cain It is so agreed this 4 day of APRIL, 2016.
Joseph F. Cain, doing business as Prompt Electric

Andrea Simmons for It is so agreed this 11 day of April, 2016.
Chair
Electrical and Elevator Board
State of Oregon