

BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

NOTICE OF PROPOSED ASSESSMENT
OF A CIVIL PENALTY

BERENGER'S CONSTRUCTION LLC,
A DISSOLVED DOMESTIC LIMITED
LIABILITY COMPANY,

NOTICE OF FINAL ORDER ON DEFAULT

FINAL ORDER

As of: March 1, 2016

RESPONDENT.

BCD CASE C2016-0016

**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 \$4,000.00 against Berenger's Construction LLC (Respondent) because Respondent violated Building Codes Division (Division) statutes and rules as identified below.

FINDINGS OF FACT

1. Berenger R. Constantino is Respondent's owner and sole member.
2. In or around March, 2015, Mr. Constantino, acting as Respondent, performed the following work at a residence located at 756 Santa Anita Court, Eugene, Oregon (Santa Anita property):
 - a. Installation of water and drain pipes beneath the flooring of the home; and
 - b. Installation of PEX tubing within the home, through which Respondent connected the water and drain pipes to a sink and shower basin in the master bathroom suite.¹
3. Respondent did not obtain a plumbing permit prior to performing the foregoing work at the

¹ See related Division case number C2015-0158.

1 Santa Anita property.

2 4. At no relevant time did Respondent hold a plumbing contractor license.

3 **APPLICABLE LAW**

4 1. The terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 447.010(1)-(6),
5 ORS 455.010(1)-(10), ORS 693.010(1)-(5), OAR 918-001-0005(1)-(4), OAR 918-030-
6 0010(1)-(11), and OAR 918-690-0420(1)-(14).

7 2. Under ORS 447.010(6), plumbing is defined as the art of installing, altering, or repairing
8 pipes, fixtures, and other apparatus for bringing in the water supply and removing liquid and
9 water-carried waste.

10 3. Under OAR 918-780-0065, no person, firm, or corporation shall do plumbing work in the
11 State of Oregon without first obtaining a plumbing permit or minor label when required and
12 paying the appropriate fees to the authorized permit issuing agency.

13 4. Under ORS 447.040(1), a person may not work as a plumbing contractor, or advertise or
14 purport to be a plumbing contractor, without having obtained a plumbing contractor license.

15 5. OAR 918-030-0010(8) states that for purposes of ORS 447.040, 479.620, 480.630, and any
16 other license regulated by ORS chapter 455, "engaging in the business" means to advertise
17 or solicit, contract or agree to perform, or to perform work for which a license or permit is
18 required under Oregon law, including but not limited to a single instance.

19 **CONCLUSIONS OF LAW**

20 1. The following constitute plumbing under ORS 447.010(6):

21 a. Installation of water and drain pipes; and

22 b. Installation of PEX tubing connecting water and drain pipes to fixtures.

23 2. By performing the foregoing plumbing work at the Santa Anita property without having first
24 obtained a plumbing permit, Respondent violated OAR 918-780-0065.

25 3. By performing the foregoing plumbing work at the Santa Anita property, Respondent

1 engaged in the business of plumbing contractor.

- 2 4. By engaging in the business of plumbing contractor without a plumbing contractor license,
3 Respondent violated ORS 447.040 (1).

4 **ORDER**

5 Pursuant to ORS 455.895(1)(a) and OAR 918-001-0036, the Board assesses a total of
6 \$4,000.00 in civil penalties as follows:

- 7 1. \$1,000.00 for violating OAR 918-780-0065; and
8 2. \$3,000.00 for violating ORS 447.040(1).

9 **NOTICE OF RIGHT TO HEARING**

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

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

24 **NOTICE TO ACTIVE DUTY SERVICEMEMBERS**

25 Active duty servicemembers have a right to stay proceedings under the Federal

1 Servicemembers Civil Relief Act. Contact the Oregon State Bar at 800-452-8260 or the Oregon
2 Military Department at 800-452-7500 for more information. If Respondent needs help finding legal
3 assistance, visit the United States Armed Forces Legal Assistance Legal Services Locator website at
4 <http://legalassistance.law.af.mil/content/locator.php>.

5 **NOTICE OF FINAL ORDER**

6 This Notice will become a final order by default if Respondent does any of the following:
7 fails to request a hearing in writing within 20 days from the date of service of this Notice;
8 withdraws a hearing request; notifies the Building Codes Division or the administrative law judge
9 that Respondent will not appear at a scheduled hearing; or fails to appear at a scheduled hearing. If
10 this Notice becomes a final order by default, the Division's file on the matter, including all
11 materials submitted by Respondent, becomes the record for the purpose of establishing a prima
12 facie case.

13 **RIGHT TO JUDICIAL REVIEW**

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

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

23 Andrea Summers for Date: 2/9/16
24 Chair
25 State Plumbing Board
State of Oregon