

FINAL ORDER

As of: April 22, 2022

BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

EDWIN OST
AN INDIVIDUAL,

RESPONDENT.

NOTICE OF PROPOSED ASSESSMENT OF A CIVIL PENALTY

NOTICE OF FINAL ORDER ON DEFAULT

BCD CASE C2021-0112

**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 \$2,000.00 against Edwin Ost (Respondent) because Respondent violated Building Codes Division (Division) statutes and rules as identified below.

FINDINGS OF FACT

1. On or about May 12, 2004, Tip -Top Plumbing Inc. (Tip Top)¹ registered with the Oregon Secretary of State as a domestic business corporation.
2. At all relevant times Tip Top held Construction Contractors Board license number 160062.
3. At all relevant times Tip Top held Oregon plumbing contractor license number 24-417PB.
4. On or about July 20, 2021, Division Investigator, Russ Darling (Darling), observed Respondent applying glue to the ends of white plastic drain piping and installing a drain trap during a routine license check at a residential property located at 2876 Mayfly Avenue NW, in Salem, Oregon (property).
 - a. At no relevant time did Respondent hold an Oregon journeyman plumber license.²

¹ See Division related case C2021-0111 against Tip Top.

² Respondent told Darling that he was a licensed journeyman plumber, but he could not remember his license number.

APPLICABLE LAW

1. Definitions for terms used in this Notice may be found in ORS 183.310, ORS 447.010, ORS 455.010, ORS 693.010, OAR 918-001-0005, OAR 918-030-0010, and OAR 918-690-0420.
2. Under ORS 447.010(6), plumbing is defined as the art of installing, altering, or repairing pipes, fixtures, and other apparatus for bringing in the water supply and removing liquid and water-carried waste.
3. Under ORS 693.030(1), a person may not engage in the trade of journeyman plumber without a journeyman plumber license.

CONCLUSIONS OF LAW

1. Applying glue to the ends of white plastic drain piping and installing a drain trap constitutes plumbing under ORS 447.010(6).
2. Under ORS 693.030(1), Respondent may not engage in the trade of journeyman plumber, such as applying glue to the ends of white plastic drain piping and installing a drain trap, at the property without a journeyman plumber's license.
3. By engaging in the art of plumbing at the property, without a valid Oregon journeyman plumber's license, Respondent violated ORS 693.030(1).

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NOTICE OF FINAL ORDER

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

NOTICE OF RIGHT TO HEARING

Respondent is entitled to a hearing as provided by the Administrative Procedures Act (APA), ORS Chapter 183. Hearings are held in accordance with the APA and the Attorney General Model Rules (OAR, Chapter 137, Division 3). These statutes and rules can be found in the "Legal Resources" section of the Department of Justice Web site.

If Respondent requests a hearing, the request must be in writing and postmarked no later than 20 days from the date of service of this Notice. If the Notice was served on Respondent in person, the date of service is the date Respondent received the Notice. If the Notice was served through the mail, the date of service is the day the Notice was mailed, not the day it was received by the Respondent. If a request for hearing is not received within the 20-day period, Respondent's right to a hearing shall be considered waived. Mail hearing requests to Building Codes Division, Enforcement Section, P.O. Box 14470, Salem, Oregon, 97309. If Respondent requests a hearing, Respondent will be notified of the time and place of the hearing.

OFFICE OF ADMINISTRATIVE HEARINGS

Hearings are held in front of an Administrative Law Judge (ALJ) with the Office of Administrative Hearings and the ALJ is not an employee of the Division. A hearing is like an informal trial. At hearing, the Respondent may present evidence, witnesses, and the Respondent's

1 side of all the issues before the ALJ. The hearing is recorded to preserve testimony and to allow
2 appeal of the decision. Witnesses are placed under oath, and the Respondent or the Respondent's
3 attorney may question all witnesses.

4 **LEGAL REPRESENTATION AT HEARING**

5 Respondent may be represented by legal counsel. Division staff or an Assistant Attorney
6 General will represent the Division. If the Division will be represented by an Assistant Attorney
7 General, Respondent will be notified by letter. Respondent may self-represent or may choose to be
8 represented by an attorney.

9 If Respondent is a partnership, corporation, association or organized group, or a
10 governmental authority other than a state agency, Respondent must be represented by an attorney or
11 an authorized representative. An authorized representative is: a member of a participating
12 partnership; an authorized officer or regular employee of a participating corporation, association or
13 organized group; or an authorized officer or employee of a participating governmental authority
14 other than a state agency. *See* ORS 183.457 and OAR 918-001-0030.

15 If Respondent cannot afford an attorney, a legal aid organization may be able to provide
16 assistance. Respondent may contact the Oregon State Bar at 800-452-8260 to find the legal aid
17 office in Respondent's area.

18 If Respondent is represented by counsel, Respondent's attorney shall provide the ALJ and
19 the Division with a "letter of representation" as soon as possible. Hearings are not automatically
20 postponed by the late hiring of an attorney. If Respondent is not represented and decides during the
21 hearing that Respondent needs an attorney, Respondent may ask for a break to request an attorney.

22 **NOTICE TO ACTIVE DUTY SERVICEMEMBERS**

23 Active duty Servicemembers have a right to stay these proceedings under the federal
24 Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-
25 8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces

1 Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department
2 does not have a toll free telephone number.

3 **DISCOVERY**

4 Discovery may be permitted as provided in OAR 137-003-0566 through 137-003-0570, 137-
5 003-0572 and 137-003-0573. Respondent must first ask the agency to provide copies of documents
6 or other information relevant to this proceeding. If Respondent is not satisfied with the response of
7 the agency, Respondent may ask the ALJ or Chief ALJ to order production of the information
8 Respondent seeks in accordance with applicable rules.

9 Additionally, prior to the hearing, the Division will provide Respondent with a copy of
10 exhibits and a list of witnesses it intends to present during the hearing. The Division will also ask
11 that Respondent provide copies of Respondent's exhibits and names of witnesses Respondent will
12 present during the hearing. This exchange should occur no later than two weeks prior to the hearing.

13 If Respondent discovers during or at the end of the hearing that there is evidence which was
14 not available to Respondent prior to hearing, Respondent may ask for a postponement. After the
15 hearing if Respondent discovers there is evidence that was not available at the time of the hearing,
16 Respondent may ask to reopen the hearing. In either case, the ALJ has discretion in deciding
17 whether to grant Respondent's request. If Respondent knew about the additional evidence *before*
18 the hearing, and had adequate time to obtain it, Respondent's request may be denied.

19 **PRESENTING EVIDENCE**

20 The Division presents its evidence first. Respondent then presents evidence to prove that the
21 Division's facts are incorrect, or to present other factual or legal defense. A general feeling that the
22 Division is being unfair is not a legal defense; Respondent needs to point to the fact Respondent
23 thinks is missing or incorrect, or law that Respondent thinks is being incorrectly interpreted or
24 applied. Respondent and the Division's representative will be allowed to present evidence in
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1 response to the other party's evidence. The burden of proof is a "preponderance" of the evidence,
2 which means the evidence must show that a fact is more likely true than not.

3 Evidence is generally admissible unless it is irrelevant, immaterial, unduly repetitious or
4 privileged. Either party may object to evidence if it does not meet this standard, or for any other
5 legal reason. "Hearsay evidence" (evidence that a witness did not directly see or hear, but which he
6 or she heard about from someone else) may be admissible.

7 WITNESSES

8 Respondent should decide immediately what witnesses will testify on Respondent's behalf.
9 With prior approval from the ALJ, witnesses may testify by telephone. Respondent shall let the
10 Division know if a witness will appear by telephone. Witnesses testifying by telephone must receive
11 copies of all "exhibits" (evidence submitted into the hearing record) that will be discussed at the
12 hearing. Respondent shall ensure that Respondent has correct telephone numbers and that
13 Respondent's witnesses will be available to testify during the scheduled hearing time.

14 Subpoenas are only issued when a witness will not appear voluntarily and when the witness'
15 testimony has a direct bearing on the issues being decided in the hearing. At Respondent's request,
16 the Division may issue a subpoena to compel Respondent's witnesses to appear at hearing. To
17 request a subpoena, Respondent shall notify the Division in writing, along with a statement
18 describing the relevance of the witness' testimony.

19 PROPOSED ORDERS AND FINAL ORDERS

20 At the conclusion of the hearing the record is closed (no more evidence can be introduced);
21 the ALJ will review the record and issue a "Proposed Order." Proposed Orders are normally issued
22 within 45 days; the Proposed Order contains "findings of fact," "conclusions of law," and a
23 recommendation. The order is a "Proposed Order" because the Director of the Department of
24 Consumer and Business Services or a licensing board may change or reject a Proposed Order.
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If either party disagrees with the ALJ's Proposed Order, written exceptions may be submitted. Submitting written exceptions is Respondent's opportunity to express legal or factual disagreements Respondent has with the Proposed Order. Respondent will be notified when exceptions to the Proposed Order must be filed. The Division and the licensing boards do not permit oral argument when considering exceptions.

RECORD

A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the court of Appeals. However, Respondent may obtain a copy of the recording upon payment of the costs of making that copy.

RIGHT TO JUDICIAL REVIEW

If this Notice becomes a Final Order, Respondent is entitled to judicial review of a final order in this matter. The recording of the hearing, together with evidence admitted at hearing, the Proposed Order, Written Exceptions, and the Final Order constitute the hearing record for appeal purposes. The record is available to Respondent and Respondent's attorney.

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