

FINAL ORDER
As of: May 25, 2023

BEFORE THE ELECTRICAL AND ELEVATOR BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

**MARK STANKO
AN INDIVIDUAL,**

RESPONDENT.

**NOTICE OF PROPOSED ASSESSMENT
OF A CIVIL PENALTY**

**AND
NOTICE OF FINAL ORDER ON DEFAULT**

**AND
NOTICE OF RIGHT TO HEARING**

BCD CASE C2022-0108

**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 Statute (“ORS”) 455.895(1)(b) and Oregon Administrative Rule (“OAR”) 918-001-0036, the Electrical and Elevator Board of the State of Oregon (“Board”) proposes to assess a civil penalty totaling \$3,000.00 against Mark Stanko (“Respondent”) because Respondent violated Building Codes Division (“Division”) statutes and rules as identified below.

FINDINGS OF FACT

1. At all relevant times, Todd A. Eccles DBA Todd A Eccles Electric (“Eccles Electric”)¹ has held Oregon Construction Contractors Board (“CCB”) license number 148359.
 - a. At all relevant times, Respondent was registered with the CCB as the responsible managing individual and owner.
2. At all relevant times, Eccles Electric has held valid Oregon electrical contractor’s license number 3-523C.
3. At all relevant times, Respondent was registered with the Division as Eccles Electric’s registered general supervising electrician and Respondent held valid Oregon general

¹ See related Division case C2022-0091 regarding Eccles Electric.

1 supervising electrician license number 3155S.

2 4. At all relevant times, Malia Anderson (“Anderson”) was employed by Respondent as an
3 electrical apprentice.

4 a. At all relevant times, Anderson was registered with the Bureau of Labor and
5 Industries (“BOLI”) with apprentice ID number 1185829.

6 b. At all relevant times, Anderson was required to be directly supervised by a licensed
7 Oregon journeyman electrician while performing electrical installations.

8 c. At no relevant time has Anderson held a valid Oregon supervising electrician’s
9 license, journeyman electrician’s license, or limited residential electrician’s (“LRE”)
10 license.

11 5. On or about June 14, 2022, Anderson, on Eccles Electric’s behalf, performed the following
12 electrical work at 4770 N. Harvard Street in Portland, Oregon (“the property”) without the
13 supervision of an Oregon journeyman electrician:

14 a. Pulled wire into an electrical breaker box; and
15 b. Installed flexible wiring for a final hookup for a HVAC system.

16 **APPLICABLE LAW**

17 1. Definitions for terms used in this Notice may be found in ORS 183.310, ORS 455.010, ORS
18 479.530, ORS 479.905, OAR 918-001-0005, OAR 918-030-0010, and OAR 918-251-0090.

19 2. Under ORS 479.530(10), “electrical installations” means the construction or installation of
20 electrical wiring and the permanent attachment or installation of electrical products in or on
21 any structure that is not itself an electrical product. “Electrical installation” also means the
22 maintenance or repair of installed electrical wiring and permanently attached electrical
23 products.

3. Under ORS 479.530(11), “electrical product” means any electrical equipment, material, device or apparatus that, except as provided in ORS 479.540, requires a license or permit to install and either conveys or is operated by electrical current.
4. Under ORS 479.620(3), except as provided in ORS 479.620(5), a person may not make any electrical installation without a supervising or journeyman electrician’s license.
5. Under ORS 479.620(5), a person may not make any electrical installation on a single or multifamily dwelling unit not exceeding three floors above grade, as provided in ORS 479.630(14), without a limited residential electrician’s license.
6. Under ORS 660.010, as used in ORS 660.002 to 660.210, unless the context requires otherwise: (1) “Apprentice” means a worker who is at least 16 years of age, except when a higher minimum age is otherwise required by law and who is employed to learn an apprenticeable occupation under standards of apprenticeship approved by the State Apprenticeship and Training Council and under an apprenticeship agreement recognized by the council.
7. Under OAR 839-011-0143(6), in licensed trades, an apprentice must be supervised by a journey worker in the same or higher license classification than the apprentice, unless the local committee that the apprentice is registered to has approved supervision by a journey worker holding a license covering the specific work being performed by the apprentice on the job site.
8. Under OAR 918-282-0270(1)(c), an apprentice may assist an appropriately licensed electrician on the same job site and the same shift in performing electrical work authorized in the trade, or branch of the trade, in which the licensee is registered.
9. Under OAR 918-282-0140(2)(f), a general signing supervising electrician when working for or as an electrical contractor must: ensure electricians have proper licenses for the work

1 performed, and may not permit either by assent or failure to prevent, an individual to
2 perform work for which they are not properly licensed.

3 **CONCLUSIONS OF LAW**

4 1. The following constitutes electrical products under ORS 479.530(11):

- 5 a. Electrical wire;
- 6 b. Electrical breaker box;
- 7 c. Electrical flexible wiring; and
- 8 d. HVAC system.

9 2. The following constitutes electrical installations under ORS 479.530(10):

- 10 a. Pulling electrical wire into an electrical breaker box; and
- 11 b. Installing an electrical flexible wiring for the final hookup for a HVAC system.

12 3. Under OAR 839-011-0143(6), Anderson, as an apprentice, was not allowed to perform the
13 aforementioned electrical installations without the supervision of a journey level worker.

14 4. Under OAR 839-011-0143(6), Anderson, as an apprentice, required supervision under a
15 journey level worker holding a valid license.

16 5. By performing the aforementioned electrical installations at the property without the
17 supervision of a journey level worker, Anderson acted outside the scope of her electrical
18 apprentice license, under OAR 839-011-0143(5) and (6).

19 6. By performing the aforementioned electrical installations at the property outside the scope
20 of her apprentice license, and without a supervising electrician's license, journeyman
21 electrician's license, or LRE license, Anderson violated ORS 479.620(3) and (5).

22 7. By permitting, either by assent or by a failure to prevent, Anderson to perform the foregoing
23 electrical installations at the property for which she was not properly licensed, Respondent
24 violated OAR 918-282-0140(2)(f).

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DESIGNATION OF FILE

2 The Board designates the Division's file on this matter, including all materials submitted by
3 Respondent, as the record in this case. The record contains evidence sufficient to establish a prima
4 facie case in the event of default by Respondent.

ORDER

6 Pursuant to ORS 455.895(1)(b) and OAR 918-001-0036, the Board assesses a total of
7 \$3,000.00 in a civil penalty for violating OAR 918-282-0140(2)(f).

FOR THE ELECTRICAL AND ELEVATOR BOARD OF THE STATE OF OREGON

10  for Date: 4/20/23
Chair
11 Electrical and Elevator Board
State of Oregon

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NOTICE OF FINAL ORDER

This Notice will become a final order by default if Respondent does any of the following:

3 fails to request a hearing in writing within 20 days from the date of service of this Notice;
4 withdraws a hearing request; notifies the Division or the administrative law judge that Respondent
5 will not appear at a scheduled hearing; fails to appear at a scheduled hearing; or appearing late for a
6 scheduled hearing. If this Notice becomes a final order by default, the Division's file on the matter,
7 including all materials submitted by Respondent, is hereby designated the record for the purpose of
8 establishing a *prima facie* case upon default.

NOTICE OF RIGHT TO HEARING

10 Respondent is entitled to a hearing as provided by the Administrative Procedures Act
11 (“APA”), ORS Chapter 183. Hearings are held in accordance with the APA and the Attorney
12 General Model Rules (OAR, Chapter 137, Division 3). These statutes and rules can be found in the
13 “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

23 Hearings are held in front of an Administrative Law Judge (“ALJ”) with the Office of
24 Administrative Hearings and the ALJ is not an employee of the Division. A hearing is like an
25 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

NOTICE OF PROPOSED ASSESSMENT OF A CIVIL PENALTY, FINAL ORDER ON DEFAULT, AND RIGHT
TO HEARING

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 137-003-0569, 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 the
6 witness 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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1 If either party disagrees with the ALJ's Proposed Order, written exceptions may be
2 submitted. Submitting written exceptions is Respondent's opportunity to express legal or factual
3 disagreements Respondent has with the Proposed Order. Respondent will be notified when
4 exceptions to the Proposed Order must be filed. The Division and the licensing boards do not permit
5 oral argument when considering exceptions.

RECORD

7 A record will be made of the entire proceeding to preserve the testimony and other evidence
8 for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is
9 generally not transcribed, unless there is an appeal to the court of Appeals. However, Respondent
10 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.