

FINAL ORDER

As of: December 28, 2022

BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

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IN THE MATTER OF:

CHARLES CLAUSING
AN INDIVIDUAL,

RESPONDENT.

NOTICE OF PROPOSED ASSESSMENT
OF CIVIL PENALTIES

NOTICE OF FINAL ORDER ON DEFAULT

BCD CASE C2022-0128

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**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 \$6,000.00 against Charles Clausing¹ (Respondent) because Respondent violated Building Codes Division (Division) statutes and rules as identified below.

FINDINGS OF FACT

1. On or about February 22, 2011, Joshua and Leslie Piatt² dba Precise Property Inspection³ (Precise Property) registered with the Oregon Secretary of State (SOS) as an assumed business name.⁴
2. At all relevant times, Precise Property has held Construction Contractors Board (CCB) license number 204597.⁵

¹ See Division related case C2021-0109 against Respondent for violations of the electrical code.

² Leslie Piatt was the sole owner when Precise Property was first registered with SOS in 2011. Joshua Piatt was added as an owner of Precise Property Inspection in 2014.

³ See Division related cases C2020-0032 and C2022-0132 against Precise Property.

⁴ As of the date of this notice, Precise Property was listed on the SOS website as inactive.

⁵ At all relevant times, Leslie Piatt was registered with CCB as Precise Property's responsible managing individual, and the CCB number is registered in Leslie Piatt's name.

3. At all relevant times, Respondent worked for Precise Property as a subcontractor.⁶
 - a. At no relevant time did Respondent hold a valid Oregon plumbing contractor's license, Oregon journeyman plumber's license, or a water heater installer (WHI) license.
4. In or around February 2019, Precise Property was hired as part of a real estate transaction to conduct a home inspection of a residence located at 782 Laurel Ave, in Reedsport, Oregon (property).
 - a. Precise Property conducted the home inspection and provided a report to the homeowner of items that needed to be replaced or fixed, which included, but was not limited to replacing the hot water heater.
 - b. Subsequently, Precise Property submitted and won a bid to replace the hot water heater at the property.
5. From in around May 2019, through in or around January 2020, Respondent, on behalf of Precise Property, connected the water supply to a new hot water heater at the property.⁷
6. At no relevant time did Respondent obtain a plumbing permit prior to connecting the water supply to the new hot water heater at the property.

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.

⁶ Respondent contends he was a “1099” employee for Precise Property.

7 Respondent could have performed the installation of the electric hot water heater if he held a WHI license.

3. Under OAR 918-780-0065, no person, firm, or corporation shall do plumbing work in the State of Oregon without first obtaining a plumbing permit or minor label when required and paying the appropriate fees to the authorized permit issuing agency.
4. Under ORS 447.040(1), a person may not work as a plumbing contractor, or advertise or purport to be a plumbing contractor, without having obtained a plumbing contractor license.
5. OAR 918-030-0010(8) states that for purposes of ORS 447.040, 479.620, 480.630, and any other license regulated by ORS chapter 455, “engaging in the business” means to advertise or solicit, contract or agree to perform, or to perform work for which a license or permit is required under Oregon law, including but not limited to a single instance.
6. Under ORS 693.030(1), a person may not engage in the trade of journeyman plumber without a journeyman plumber license.
7. Under ORS 693.103(3)(a), the board shall establish a limited specialty plumber license for persons licensed under ORS 479.630 (Requirements for obtaining licenses) (12) to install and replace residential water heaters in existing plumbing designed for that purpose if the installation or replacement does not require an alteration of the existing plumbing.
8. Under OAR 918-695-0120(6)(a), as used in ORS 693.103 (Limited specialty plumbers) (2): “Installation and replacement of one-or two-family dwelling residential water heaters” includes open and (non-covered and not intended to be covered) plumbing work in a one-or two-family dwelling related to work listed in (A)-(C) below; that does not include any work that changes the location of the water heater.
9. Under OAR 918-695-0120(6)(b), “existing plumbing” means the exposed pre-installed approved cold water supply piping used or designed to connect to the water heater extending to the exposed cold water shut-off supply valve. If there is no cold water shut-off supply valve, “existing plumbing” extends to and includes the connected water heater and does not allow a replacement by a limited specialty plumbing license under these rules.

10. Under OAR 918-695-0120(6)(c), "alteration of existing plumbing" means any changes to existing plumbing and includes installation or replacement of a cold water shut-off supply valve regardless of whether one was initially installed. Alterations are not authorized under these rules and the limited specialty plumbing license.

CONCLUSIONS OF LAW

1. Connecting the water supply to a new hot water heater constitutes plumbing under ORS 447.010(6).
2. Respondent did not perform the installation under ORS 693.103(3)(a) because he did not hold a WHI license.
3. By agreeing to perform, and then by performing the foregoing plumbing work at the property, Respondent engaged in the business of a plumbing contractor under OAR 918-030-0010(8).
4. By engaging in the business of a plumbing contractor without holding a valid Oregon plumbing contractor license, Respondent violated ORS 447.040(1).
5. By performing the foregoing plumbing work at the property without holding a valid Oregon journeyman plumber's license, Respondent violated ORS 693.030(1).
6. By performing the foregoing plumbing work at the property without a plumbing permit, Respondent violated OAR 918-780-0065.

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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 upon default.

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 137-003-0569, 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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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.