



STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF EXAMINERS OF MASTER PLUMBERS

*4/1/3 ent'd csk
CH# 20566*

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

Administrative Action

August M. Dietrich, III
License No. BI 8794

FINAL ORDER
OF DISCIPLINE

TO PRACTICE PLUMBING :
IN THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Examiners of Master Plumbers (hereinafter "the Board") upon receipt of information that Respondent August M. Dietrich, III (hereinafter "Respondent") subcontracted with Gallo Construction Company to provide certain plumbing services to the complainants Donald and Dorothy Montauti (hereinafter the "homeowners") in Ewing, New Jersey and failed to provide those services in a good and workmanlike manner. In addition, the homeowners alleged that Respondent failed to obtain a plumbing permit and that the municipal plumbing inspector conducted a final inspection of the plumbing work performed and noted eight separate plumbing subcode violations. The homeowners' attorney has also advised the Board that a civil action was filed in Superior Court in Mercer County, New Jersey in or about September 16, 1997 by the complainants against Ronald Gallo, Ronald Gallo Construction Company and Respondent and that Respondent failed to file an answer to that judicial complaint. The Board also received a notice from the plumbing inspector of Ewing Township that Respondent had failed to address several violations involving the installation of the whirlpool at the complaining homeowners' residence.

On June 24, 1999, Respondent appeared at an investigative inquiry (the "inquiry") held by the Board into the matter. At that inquiry, Respondent admitted having received notice of the

judicial complaint filed against him by the homeowners. He was advised by the deputy attorney general advising the Board that a default could be entered against him and that he should take steps to address that judicial complaint.

FINDINGS OF FACT

1. Respondent admitted at the inquiry that he believed, prior to constructing the heating system on which Respondent was asked to work, that the system was not properly planned and would not work. (Transcript of appearance before the Board on June 24, 1999, pages 13 to 15.) He admitted that the efforts at make the system work were completely futile, but that he tried to make it work because the homeowners kept calling. (Transcript, page 41.)

2. Respondent admitted at the inquiry that he tried to install three-eighths rather than required three-quarter inch piping, and acknowledged that the homeowners had a legitimate complaint in this respect. (Transcript, pages 26 to 27.)

3. Respondent admitted at the inquiry that he did not apply for a change in the permit when the homeowners changed from a regular bathtub to a whirlpool; he stated he believed that was the responsibility of the general contractor. (Transcript, pages 18 and 19.)

4. Respondent admitted at the inquiry that he installed the plumbing in a Jacuzzi without a certain set screw and claimed that it was not his responsibility to obtain the proper equipment since the equipment was not ordered by him. (Transcript, page 48.)

5. A default judgment in the amount of twelve thousand one hundred forty six and 50/100 (\$12,146.50) dollars was entered against Respondent and in favor of the complainants in this matter. No part of the judgment due and owing from Respondent has been satisfied by Respondent. Attached is a copy of the judicial complaint and judgment.

CONCLUSIONS OF LAW

1. Respondent committed professional misconduct in violation of N.J.S.A. 45:1-21(e) in performing services that he admits he believed would not function properly or were incompletely performed. As a licensed master plumber, Respondent had a responsibility to refuse to do work which he did not believe would work as planned.
2. Respondent committed professional misconduct in violation of N.J.S.A. 45:1-21(e) in attempting to install improperly sized piping and installing plumbing in a jacuzzi without proper equipment.
3. Respondent committed professional misconduct in violation of N.J.S.A. 45:1-21(e) in that he failed to obtain a plumbing permit and he failed to correct eight subcode violations specified in the violation notice from the Ewing Township plumbing subcode official.

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on March 21, 2002, which reprimanded Respondent for professional misconduct, and ordered Respondent to pay restitution in favor of the homeowners and pay costs of the investigation to the State. The Provisional Order stated that if the Respondent failed to comply with the requirements of any final order entered pursuant to the Provisional Order within thirty days of the Final Order, Respondent's license would be suspended until such time as he demonstrated to the Board compliance with the requirements of the Final Order. A copy of the Provisional Order was forwarded to Respondent's last known address by means of both regular and certified mail. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following service unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified

or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor.

Although the record reflects that on March 28, 2002, the Provisional Order was served upon Respondent by means of regular mail to the address of record with the Board office, no response has been received to date. The Provisional Order was also served upon Respondent by means of certified mail return receipt requested on March 28, 2002. The certified mail was returned "unclaimed" and the Board received no proof of payment by Respondent to the homeowners. A licensee cannot evade process by failing to respond to the Provisional Order. Accordingly, the Board considered the matter, determined that further proceedings were not necessary and the Provisional Order should be made final.

ACCORDINGLY, IT IS on this 27th day of June, 2002,

ORDERED that:

1. Respondent is hereby reprimanded for professional misconduct.
2. Respondent shall pay restitution in favor of the homeowners Montauti in the amount of twelve thousand one hundred forty six and 50/100 (\$12,146.50) dollars as found to be the amount due in Docket No. MER-L-003576-97, Mercer County, which is based on the same facts as this matter, and shall, within thirty days of the final order entered in this matter, present proof acceptable to the Board that he has paid such restitution by certified check or money order presented to Dorothy Montauti or her attorney.
3. Respondent is hereby assessed the costs to the State of the investigation in this matter in the amount of four thousand forty five and 42/100 (\$4,045.42) dollars. (A certification of investigation costs and an invoice for certified shorthand reporter and transcript costs are attached.) Payment for the costs shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board no later than 30 days from the entry

of the final order. Payment shall be sent to Barbara Cook, Executive Director, Board of Examiners of Master Plumbers, 124 Halsey Street, Sixth Floor, P.O. Box 45008, Newark, New Jersey 07101.

4. In the event that Respondent does not comply with the requirements of this final order within thirty days of entry, Respondent's license to practice as a master plumber in New Jersey shall be suspended until such time as he demonstrates to the Board compliance with the requirements of this final order and until further order of the Board.

NEW JERSEY STATE BOARD OF
EXAMINERS OF MASTER PLUMBERS

By: _____



Ralph Wetzel
Chairman