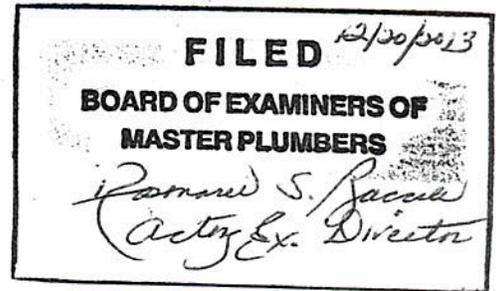


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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF EXAMINERS OF MASTER  
PLUMBERS

IN THE MATTER OF	:	
	:	Administrative Action
DAVID HART	:	
t/a CLEAR FLOW, LLC	:	FINAL ORDER
License # 36BI01123000	:	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 (“the Board”) upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made:

**FINDINGS OF FACT**

1. David Hart (“respondent”) is a licensed master plumber in the State of New Jersey and has been licensed at all times relevant hereto. Respondent has been issued license number 36BI01123000 and resides at, 626 East Main Street, grove City, PA, 16127.

2. Respondent is a 10% equity owner of Clear Flow, LLC and the bona fide representative of the company pursuant to N.J.S.A. 45:14C-2(d) and (h) and N.J.A.C. 13:32-1.3. The other 90% interest of Clear Flow, LLC is owned by Rolando Velazquez. The Board’s files

do not reflect the licensure of Rolando Velazquez to engage in the business of plumbing contracting in the State of New Jersey.

3. The Board received a complaint from consumer E.P. concerning plumbing work, performed at 48 Blum Street, Newark, New Jersey by Clear Flow, LLC. E.P. alleges that the work was not completed pursuant to contracts dated March 10, 2010 and June 10, 2012, that respondent did not adhere to a subsequent agreement, dated December 2012, to recommence work nor did respondent adhere to an agreement dated April 18, 2011 to refund money. #80512 (B)

4. In connection with the investigation of this complaint, respondent appeared before the Board, on September 27, 2012, for an investigative inquiry. During the inquiry, respondent gave sworn testimony under oath, whereby he acknowledged that Rolando Velazquez performs all of the plumbing work for Clear Flow, LLC., and that respondent's role is merely to supervise and inspect, which respondent accomplishes via a daily phone call and a visit to New Jersey a couple of times a month, when necessary. Respondent admitted during the inquiry that he was not privy to the negotiations between Mr. Velazquez and E.P. concerning additional work to be done and the agreement to recommence work that was not completed. Respondent did not learn about the agreement to continue the work and refund money until after the agreement was entered into by Mr. Velazquez and E.P..

5. According to respondent, the business office of Clear Flow, LLC, 15 Roberts Street, Warren, NJ is in fact Rolando Velazquez' home. Respondent stated under oath that files and records of Clear Flow, LLC are maintained at said address. Respondent further acknowledged that his access to the company's records are contingent on Mr. Velazquez' permission to enter his home.

#### **CONCLUSIONS OF LAW**

1. The above preliminary findings of fact establish a basis for disciplinary action

against respondent's license, pursuant to N.J.S.A. 45:1-21(h), in that respondent has failed to comply with the provisions of regulation, specifically N.J.A.C.13:32-3.3(a)(3), by failing to properly supervise Rolando Velazquez. Additionally, the aforementioned findings of fact establish a basis for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(h), in that respondent has failed to comply with the provisions of a regulation, specifically N.J.A.C. 13:32-3.3(d), by failing to have sufficient knowledge concerning the plumbing contractors records.

### **DISCUSSION**

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on February 28, 2013. A copy of the Order was forwarded to respondent's address of record. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following its entry unless respondent requested a modification or dismissal of the above 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 not be modified or dismissed, and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefore.

In response to the Provisional Order, respondent provided a letter to the Board dated April 16, 2013. In the letter, respondent contests the Board's provisional finding that he did not have sufficient knowledge concerning Clear Flow's records. Specifically, respondent cites to a portion of his testimony whereby he acknowledged that the address for Clear Flow was Mr. Velazquez's home and that all of the business records were maintained in the home. When asked if he had 24 hour a day, seven days a week access to the home, respondent replied "no".

Respondent now seeks to clarify that response and states that Mr. Velazquez “has a family living where our office is located”, but that respondent “always had full access” to the records.

Respondent also contests the Board’s finding that he failed to properly supervise Mr. Velazquez. According to respondent, he supervised Mr. Velazquez as a “qualified Journeyman Plumber, thinking we were adhering to all common practices.” In the future, respondent will only serve as a representative and salesman for Clear Flow.

The Board believes the provisional finding that respondent violated N.J.A.C. 13:32-3.3(a)(3) by failing to properly supervise Mr. Velazquez should be sustained. Respondent states in his response that he supervised Mr. Velazquez “as a qualified Journeyman Plumber”. However, the term “qualified Journeyman Plumber” does not exist in the Board’s statutes or regulations. If respondent meant “supervisory Journeyman”, there is no evidence that Mr. Velazquez completed an apprenticeship program and three additional years as a journeyman plumber.

If respondent intended to say he supervised Mr. Velazquez as a “journeyman plumber” then, pursuant to the requirements of N.J.A.C. 13:32-3.3(a)(3)iii, as the bona fide representative, respondent was required to maintain daily contact with Mr. Velazquez and inspect the work upon completion. However, when asked during the inquiry why there was a second contract signed by Mr. Velazquez and consumer E.P., regarding the gas work, even though the gas work was part of the first contract, respondent replied “I don’t know”. Respondent admitted he had no knowledge of a second contract and had no knowledge that Mr. Velazquez attempted to negotiate a settlement with consumer E.P. Respondent agreed during the inquiry, that as the bona fide representative, he should have been aware of the negotiations and settlement agreement between Clear Flow and E.P. Therefore, the Board finds that respondent violated N.J.A.C. 13:32-3.3(a)(3)iii, by failing to properly supervise Rolando Velazquez.

The Board believes respondent's response has merit concerning the provisional finding that he failed to have sufficient knowledge concerning the plumbing contractor's records. N.J.A.C. 13:32-3.3(d) requires the bona fide representative to have knowledge of the plumbing contractor's bookkeeping system and financial accounts to inform the Board, upon request by the Board, regarding the plumbing contractor's price-setting, billings, costs, subcontractors, overhead costs and profits.

It is clear from the facts and the testimony that Mr. Velazquez resided at the business address, and that respondent admitted he did not have "24 hour a day, seven days a week" access to the home. However, there is no evidence that respondent was unable to "inform the Board, upon request of the Board", regarding Clear Flow's price-setting, billings, costs, subcontractors, overhead costs and profits. Respondent clarified in his response that out of respect for Mr. Velazquez, he could not enter his home unannounced. However, he always had full access to the records. The Board believes the provisional finding, and associated \$5,000 civil penalty, concerning a violation of N.J.A.C. 13:32-3.3(d), should be dismissed.

ACCORDINGLY, IT IS, on this 20<sup>th</sup> day of December 2013,

ORDERED that:

1. Respondent is hereby reprimanded for violating N.J.A.C. 13:32-3.3(a)(3), by failing to properly supervise Rolando Velazquez.

2. Respondent is assessed a civil penalty, pursuant to N.J.S.A. 45:1-22, in the amount of \$5,000.00 for violating N.J.S.A. 45:1-21(h) by failing to properly supervise Rolando Velazquez in accordance with N.J.A.C. 13:32-3.3(a)(3). The civil penalty of \$5,000 shall be submitted by certified check or money order, made payable to the State of New Jersey, and shall be sent to Rosemarie Baccile, Acting Executive Director, New Jersey State Board of Examiners

of Master Plumbers, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101, no later than thirty days after entry of this Final Order of Discipline. In the event respondent fails to make a timely payment, a certificate of debt shall be filed.

3. Respondent's license to practice plumbing in the State of New Jersey is hereby suspended for one year. The one year suspension is to be entirely stayed and is to be served as a probationary period. The stayed suspension and probation period shall begin upon the entry date of this Final Order of Discipline. The stayed suspension shall be activated upon the Board's receipt of any information, which the Board in its sole discretion deems reliable, demonstrating that respondent has engaged in any violations of the Board's statutes or regulations during the probationary period; or for any violations of this order.

NEW JERSEY STATE BOARD OF  
EXAMINERS OF MASTER PLUMBERS

By: Peter I. Voros  
Peter I. Voros  
Board Chairman