

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the Board of Examiners of Master Plumbers

FILED
November 20, 2014
BOARD OF EXAMINERS OF
MASTER PLUMBERS
Roman S. Baccile
Acting Executive Director

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

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

JOHN D. ZEIGLER, LMP
License No.36BI01025100

TO PRACTICE PLUMBING
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER
OF DISCIPLINE

This matter was opened to the New Jersey State Board of Examiners of Master Plumbers ("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. John D. Zeigler ("respondent") is a licensed master plumber in the State of New Jersey having received his license on December 21, 1995. Respondent is registered with the Board to trade as "J. D. Zeigler Plumbing and Heating" and has been registered under that trade name at all times relevant hereto. Respondent failed to renew his license prior to its expiration on June 30, 2013. As a result, respondent's license was administratively suspended on July 31, 2013, pursuant to the provisions of N.J.S.A. 45:1-7.1(b), for failing to renew his license within 30 days of its expiration date. On September 9, 2013, respondent reinstated his plumbing license, in inactive status, pursuant to the provisions of N.J.S.A. 45:1-7.3 and N.J.A.C. 13:32-2.6(g). Respondent's license currently remains inactive.

2. This matter was opened to the Board upon receipt of complaints from the Salem/Cumberland Master Plumber's Association alleging that respondent had an affiliation and

103559 q

(Pg. 1-4)

involvement with an unlicensed plumbing company named "English Sewage Disposal" also doing business as "English Septic". A review of the Board's records indicates that neither "English Sewage Disposal", nor "English Septic", is licensed with the Board as a plumbing contractor in the State of New Jersey. The allegation is that "English Sewage Disposal" and "English Septic" are advertising and engaging in the practice of plumbing by utilizing respondent's licensed master plumber number (i.e. No.36BI01025100). Attached to the complaints were copies of billboard and phone book advertisements for "English Sewage Disposal" and "English Septic" utilizing respondent's license number..

3. In response to the complaints, respondent provided a letter dated February 24, 2013. Respondent stated he was offered employment as a "plumber" by "English Sewage Disposal". The owner of the company, Paul Behrens, later proposed using respondent's plumbing license for a temporary trial period. The Board's records indicate that Paul Behrens is not licensed as a master plumber in the State of New Jersey. Respondent later learned he was not being informed of decisions made concerning advertising. According to respondent, Mr. Behrens was to inform him of all plumbing jobs and respondent was to inspect all plumbing work performed.

4. Respondent was eventually "laid off" from "English Sewage Disposal". Respondent placed his license "on the shelf" and informed "English Sewage Disposal" they could no longer advertise with his license unless they came to an agreement. "English Sewage Disposal" later e-mailed respondent requesting to use his license again. Respondent laid out the terms of the use of his license. After some back and forth negotiations, "English Sewage Disposal" indicated that the use of respondent's license would be only for "marketing strategies". Respondent reinstated his license believing that "English Sewage Disposal" would no longer use his license. However, respondent later learned that "English Sewage Disposal" used respondent's license number in the Cape May County Yellow Page Book for 2012. When respondent learned this, he e-mailed Mr. Behrens. Mr. Behrens responded that there should not have been advertising in any book with respondent's license number.

5. On June 27, 2013, respondent appeared at an investigative inquiry before the Board. Respondent stated he was a W-2 employee for "English Sewage Disposal" in 2009. Respondent was first approached by an employee of "English Sewage Disposal" and asked to sign and seal a plumbing permit for the company. Respondent agreed. Respondent testified he signed and sealed this permit as a "subcontractor". However, "English Sewage Disposal" was actually

listed as the contractor on the permit application but the application was sealed by respondent. Respondent stated that a "English Sewage Disposal" employee actually performed the plumbing work. Respondent was subsequently hired by "English Sewage Disposal".

6. Respondent testified that during his employment with "English Sewage Disposal" there was never a licensed master plumber with a ten percent ownership interest in the company acting as the required bona fide representative. Although there was discussion about respondent becoming the bona fide representative for "English Sewage Disposal", it never actually happened. Respondent was employed as a W-2 employee with "English Sewage Disposal" for just under a year from roughly November 2008 to October 2009. During that time period respondent admitted he signed and sealed plumbing permits for "English Sewage Disposal" on about eight or nine occasions.

7. Respondent was asked if he was aware of the bona fide representative requirement to legally engage in plumbing contracting in New Jersey. Respondent stated he wasn't fully sure. Respondent misstated the licensed master plumber ownership percentage as requiring "20 percent" ownership. Respondent testified he never consented to the use of his licensed master plumber number being used in advertising for "English Sewage Disposal" and "English Septic". However, respondent acknowledged he became aware of the use of his licensed master plumber number in advertising for "English Sewage Disposal" and "English Septic" during the course of his employment in 2008 to 2009. When asked if he ever made an effort to notify the Board about the use of his licensed master plumber number respondent testified he did not. Respondent testified he did not understand his responsibilities or the impact of the use of his licensed master plumber number by "English Sewage Disposal" and "English Septic". Respondent "hoped it would all go away".

8 Respondent admitted he signed and sealed a permit for "English Sewage Disposal" on one occasion after he was fired as an employee of the company. Again, "English Sewage Disposal" was listed as the contractor on the plumbing permit application, but the application was sealed by respondent.

CONCLUSIONS OF LAW

1. The above preliminary findings of fact provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(b), in that respondent secured a plumbing

permit for an unlicensed person which is deemed to be the use or employment of dishonesty, fraud, deception, misrepresentation or false pretense in contravention of N.J.A.C. 13:32-4.1(c). Additionally, the above preliminary findings of fact provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(h), in that respondent has violated and failed to comply with the provisions of a Board regulation, specifically N.J.A.C. 13:32-4.1(b), by permitting his license and seal to be used by a person other than exclusively by the licensed master plumber in the conduct of his plumbing practice. Additionally, the above preliminary findings of fact provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(h), in that respondent has violated and failed to comply with the provisions of a Board regulation, specifically N.J.A.C. 13:32-4.1(d), in that respondent willfully and negligently allowed an unlicensed or unauthorized person to use his licensed master plumber number in multiple advertisements. N.J.A.C. 13:32-3.1(d) provides that every State-licensed master plumber whose name, New Jersey office address, place of practice or license number appears or is mentioned in any advertisement of any kind or character shall be presumed to have caused, permitted, or approved the advertising and shall be personally responsible for its content and character. Also, the above preliminary findings of fact provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(h), in that respondent has violated and failed to comply with the provisions of a Board regulation, specifically N.J.A.C. 13:32-3.4, in that any plumbing work that a licensed master plumber agrees to perform, that has not been subcontracted to another licensed master plumber, shall be performed only by the licensed master plumber or the employees of the licensed master plumber or the plumbing contractor. Finally, the above preliminary findings of fact provide grounds for disciplinary action, pursuant to N.J.S.A. 45:1-21(n), in that respondent permitted or aided and abetted an unlicensed person or entity to perform an act for which a license is required.

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on April 24, 2014. A copy of the Order was forwarded to respondent's last known address on file with the Board, via United States Parcel Service 2nd Day, on May 11, 2014. The Board obtained a copy of the United Parcel Service delivery sheet confirming delivery of the Provisional Order of Discipline to the respondent's last known address on file with the Board. The Provisional Order of Discipline was subject to finalization by the Board at 5:00 p.m. on the 30th 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 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.

Following the entry and service of the Provisional Order of Discipline, the Board received an email from Matthew J. Robinson, Esq., counsel for respondent, dated September 29, 2014. The email indicated that respondent would not contest the Provisional Order of Discipline and that respondent is working towards completing all aspects of the Order in the near future. Subsequent to receipt of the email from Mr. Robinson, respondent forwarded the civil penalty of two thousand five hundred dollars (\$2,500.00) to the Board. As a result, the Board's receipt of the email from Matthew J. Robinson, Esq., as well as respondent's payment of the aggregate civil penalty, indicates respondent is not contesting the Board's findings. The Board is hereby finalizing the Provisional Order of Discipline.

ACCORDINGLY, IT IS on this 26 day of NOVEMBER, 2014,

ORDERED that:

1. Respondent is hereby reprimanded for violating N.J.S.A. 45:1-21(b), N.J.S.A. 45:1-21(h) and N.J.S.A. 45:1-21(n) as outlined above.
2. Respondent's license to practice as a plumbing contractor in the State of New Jersey is hereby suspended until such time as he completes five (5) hours of remedial continuing education, pursuant to N.J.S.A. 45:1-22(g), pertaining to the bona fide representatives responsibilities and obligations in accordance with N.J.S.A. 45:14C-1 et seq. and N.J.A.C. 13:32-1.1 et seq. Respondent shall obtain the Board's approval of the course prior to the start of the remedial education work. Prior to reinstatement of his license, respondent shall submit a course completion certificate from the provider of the remedial continuing education, to the Board, demonstrating compliance. The five (5) hours of remedial continuing education shall not be used by respondent to satisfy the minimum biennial continuing education requirements of N.J.A.C. 13:32-6.1.
3. Respondent is hereby assessed a civil penalty in the aggregate amount of two thousand-five hundred dollars (\$2,500), consisting of a five hundred dollar (\$500) penalty for securing a plumbing permit for an unlicensed person in contravention of N.J.A.C. 13:32-4.1(c); a

five hundred dollar (\$500) penalty for permitting his license and seal to be used by another person in contravention of N.J.A.C. 13:32-4.1(b); a five hundred dollar (\$500) penalty for willfully and negligently allowing an unlicensed person to use respondent's licensed master plumbing number in multiple advertisements in contravention of N.J.A.C. 13:32-4.1(d); a five hundred dollar (\$500) penalty for allowing employees of an unlicensed entity to perform plumbing work under a permit sealed by respondent in contravention of N.J.A.C. 13:32-3.4 and finally, a five hundred dollar (\$500) penalty for aiding or abetting unlicensed practice in contravention of N.J.S.A. 45:1-21(n). The Board acknowledges that respondent has paid the entire civil penalty prior to the entry of this order.

4. Respondent shall cease and desist from the violations described herein. Subsequent violations will subject respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.

5. Failure to comply with any of the terms of a Final Order in this matter may constitute the basis for further disciplinary action by the Board, including but not limited to, suspension or revocation of respondent's master plumber's license and imposition of monetary penalties. Failure to remit any and all payment required by a Final Order in this matter will result in the filing of a certificate of debt and may result in subsequent disciplinary proceedings for failure to comply with an order of the Board.

NEW JERSEY STATE BOARD OF
EXAMINERS OF MASTER PLUMBERS

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