



STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY BOARD OF EXAMINERS
OF ELECTRICAL CONTRACTORS

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

JOSEPH C. CHICKACHOP :
License # 34EI00484700 :

TO PRACTICE ELECTRICAL :
CONTRACTING IN THE STATE :
OF NEW JERSEY :

Administrative Action
FINAL DECISION AND ORDER

THIS MATTER was returned to the New Jersey Board of Examiners of Electrical Contractors (“Board”) to consider a recommended Initial Decision (“Initial Decision”) by Administrative Law Judge Solomon A. Metzger (“ALJ”) entered on January 13, 2015. The Initial Decision was entered following the ALJ’s grant of the motion for summary decision filed by the Attorney General. For the reasons set forth hereafter, upon review and consideration of the Initial Decision, transcripts of the January 20, 2010 investigative inquiry, evidence, exceptions from the Attorney General and exceptions and mitigation submitted by Joseph C. Chickachop (“respondent”), oral argument on exceptions and testimony, the Board, at its meeting on May 14, 2015, adopted the findings of fact and conclusions of law set forth in the Initial Decision including the finding that granting summary decision in this matter is appropriate, with the modifications discussed below.

PROCEDURAL HISTORY

On February 3, 2011, the Attorney General filed a one count Administrative Complaint against respondent based on the receipt of fifteen (15) consumer complaints filed with the Board between May 3, 2008 and September 28, 2009 alleging multiple

incidents of unconscionable pricing, failure to obtain permits or inspections either timely or at all and improper use of respondent's pressure seal. These actions of respondent were alleged to constitute the use or employment of dishonesty, fraud, deception, misrepresentation or false pretense in violation of N.J.S.A. 45:1-21(b); repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d); professional misconduct in violation of N.J.S.A. 45:1-21(e); failure to comply with the provisions of any act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h); incapability of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare in violation of N.J.S.A. 45:1-21(i); and advertising fraudulently in any manner in violation of N.J.S.A. 45:1-21(o). Finally, the complaint alleged that in light of two previous findings that respondent's actions constituted violations of law, the actions of respondent constituted additional subsequent violations pursuant to N.J.S.A. 45:1-25. The matter was transferred to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 to -13.

On February 7, 2014, the Attorney General filed a motion for Summary Decision relying upon respondent's own statements made or adopted by him, under oath, when he appeared before the Board during the investigative inquiry held on January 20, 2010. No opposition papers were filed. The ALJ granted summary decision and a recommended Initial Decision was entered on January 13, 2015. The ALJ found that respondent admitted to twenty-one separate violations of the Board's regulations.

Citing to respondent's prior history with the Board "which exposed a long pattern of misconduct that was not reformed by intermediate discipline," the ALJ found that license

revocation was the appropriate remedy under N.J.S.A. 45:1-21 and provided restitution to six consumers, payment of \$42,000 in penalties and \$40,153.28 in costs.

Upon receiving the Initial Decision, Deputy Attorney General Susan Brown-Peitz ("DAG") immediately sent a letter to the ALJ inquiring why the restitution included only six consumers. The DAG pointed out that her letter brief dated April 24, 2014 requested restitution for nine named consumers, but that consumers Ruth Pinkerton, June Divine and Gilda Forgione were not provided restitution in the Initial Decision. The ALJ replied in a letter dated January 14, 2015 indicating he did not deny restitution to consumers Pinkerton, Divine and Forgione, rather the court "did not discern that you were seeking relief on their behalf."

Thereafter, the DAG filed exceptions on February 9, 2015 seeking to include restitution for consumers Pinkerton, Divine and Forgione. Respondent filed exceptions or mitigation in a letter to the Board dated May 5, 2015. Although the exceptions of the State and respondent were received subsequent to the 13 day deadline established by N.J.A.C. 1:1-18.4(a), they were nonetheless considered by the Board. On May 14, 2015, the DAG appeared before the Board to present oral argument urging the Board to accept the findings of fact and conclusions of law of the ALJ. Respondent chose to forego a personal appearance and instead relied upon his letter. After the Board found there was a basis for discipline, the DAG presented oral argument concerning the awarding of restitution for consumers Pinkerton, Divine and Forgione during a hearing regarding mitigating and aggravating circumstances for determination of penalty, restitution and costs. The Board also considered the exceptions or mitigation submitted by respondent.

FACTS IN THE RECORD

In its review of the record, the Board has determined to adopt the ALJ's grant of summary decision based upon the undisputed facts and conclusions of law. By his own admission, respondent committed 21 violations of the Board's regulations governing the practice of electrical contracting. These 21 violations involved 15 consumers. Specifically, the Board adopts the finding that respondent, by his own admission, overcharged consumers Ruth Pinkerton, Samuel Ellis, and Gilda Forgione, by a considerable margin. As a result, the Board adopts the ALJ's conclusion that the overcharges concerning these three consumers, violated N.J.A.C. 13:31-3.7(a) which makes it unlawful to charge "manifestly unconscionable" rates.

The Board also adopts the finding that respondent, again by his own admission, performed electrical work without first obtaining permits, relating to consumers David Lennon, Ruth Pinkerton, June Divine, Samuel Ellis, Joseph DiMeo, and Patricia Heward. As a result, the Board adopts the ALJ's conclusion that respondent violated N.J.A.C. 13:31-3.2 and N.J.A.C. 5:23-2.14 as it pertains to these six consumers.

The Board additionally adopts the finding that respondent failed to obtain timely inspections related to the electrical work performed for consumers David Lennon, Ruth Pinkerton and Samuel Ellis. The Board similarly adopts the finding that respondent failed to obtain final inspections as to consumers Walter Cox, Patricia Heward, June Divine and Joe DiMeo, as well as the conclusion that respondent's failure to obtain timely inspections regarding consumers Lennon, Pinkerton and Ellis, and his failure to obtain any inspections

regarding consumers Cox, Heward, Divine and DiMeo, constitute violations of N.J.A.C. 13:31-3.2(b) and N.J.A.C. 5:23-2.18(a)(1).

The Board also adopts the finding that during the period in question, May 3, 2008 to September 29, 2009, respondent admitted that his son, who was not licensed and worked in respondent's electrical business, signed and sealed permit applications for consumers David Lennon, June Divine, Samuel Ellis, Leonard Napoli and Walter Cox and that respondent continued to leave his pressure seal accessible to his son despite knowledge he was doing so. Finally, the Board adopts the ALJ's conclusion related to these five consumers, in that respondent violated N.J.A.C. 13:31-3.3, which prohibits the use of a contractor's pressure seal by anyone other than the licensee.

Therefore, based on all of the above, the Board determined that a grant of summary decision is warranted and voted to adopt the findings of fact and conclusions of law in the Initial Decision.

DISCUSSION ON PENALTY

Having found multiple bases for discipline, the Board then conducted a mitigation hearing to determine the appropriate sanction. The Board considered the Initial Decision and the entire record, including the letter submitted by respondent and the arguments of the Attorney General as it pertains to the penalty, restitution and costs to be imposed. Respondent, in his May 5, 2015 letter, cites to a serious heart attack which occurred in 2005 which purportedly left him with 30% heart function. As a result, respondent claims he had to rely upon his employees a lot more which was partly to blame for the complaints the Board received. Respondent also cites to fines and penalties previously imposed by the

Board, a bad economy and bad business decisions. While the Board is certainly sympathetic to respondent's health issues, respondent's disciplinary history dates back many years. The Board therefore agrees with and adopts the ALJ's finding that the overall record concerning respondent reflects a significant prior history of infractions which date back to 2001, and with the ALJ's observation that respondent's prior infractions are broadly of the same character as outlined in the current complaint.

With regard to the penalty, the Board agrees with the recommendation that respondent's electrical contractor's license be revoked. Respondent, by his own admission, committed twenty-one infractions, involving multiple consumers. The Board agrees with the ALJ that these twenty-one infractions, combined with the prior history of Board disciplinary action, demonstrate a long pattern of misconduct that was obviously not reformed despite repeated disciplinary actions by the Board. Indeed, the prior offenses were similar in nature. This long pattern of misconduct was primarily directed and focused toward senior citizens who we take notice comprised the complaints in nearly all of the matters. Therefore, the Board agrees with the ALJ and finds that license revocation is the appropriate sanction.

As to restitution, the ALJ recommended restitution to six consumers: \$1,600 to David Lennon, \$4,300 to Barbara Hyland, \$600 to Joseph DiMeo, \$600 to Leonard Napoli, \$600 to Patricia Heward and \$1,600 to Nancy and Edward Dutch. The Board agrees with the ALJ's reasoning and adopts his finding regarding the amounts of restitution to those six consumers. The DAG has filed exceptions to the restitution awarded, specifically seeking to include three additional consumers, Ruth Pinkerton, June Divine and Gilda Forgione.

The Board considered the exceptions and determined the awarding of restitution to Ms. Pinkerton, Ms. Divine and Ms. Forgione is appropriate. Concerning Ms. Pinkerton, the ALJ found, and the Board agrees, that respondent charged her “a manifestly unconscionable rate” for the installation of a 100 amp service in violation of N.J.A.C. 13:31-3.7(a). Additionally, the Board agrees with the ALJ, that respondent performed work without necessary permits for Ms. Pinkerton in violation of N.J.A.C. 13:31-3.2 and N.J.A.C. 5:23-2.14 and that inspections were not performed timely in violation of N.J.A.C. 13:31-3.2(b) and N.J.A.C. 5:23-2.18(a)(1). Therefore, restitution to Ms. Pinkerton is appropriate. For purposes of calculating the restitution in this matter, the Board accepts the ALJ’s finding that \$3,265.00 is a reasonable price to charge for the work. The amount paid by Ms. Pinkerton was \$7,265, more than twice the reasonable price of \$3,265, warranting the awarding of restitution to Ms. Pinkerton in the amount of the difference, or \$4,000. The Board’s order will therefore reflect restitution to Ms. Pinkerton in the amount of \$4,000.

With regard to Gilda Forgione, the ALJ found, and the Board agrees, that respondent charged her a “manifestly unconscionable rate” for the installation of a 100 amp service, in violation of N.J.A.C. 13:31-3.7. Ms. Forgione was charged \$8,365. Once again, for purposes of this matter, applying \$3,265 as the reasonable price to charge for the work performed, restitution of \$5,100 to Ms. Forgione is warranted. The Board’s order will therefore reflect restitution to Ms. Forgione in the amount of \$5,100.

With regard to June Divine, as found by the ALJ, and we agree, respondent failed to obtain permits in violation of N.J.A.C. 13:31-3.2 and N.J.A.C. 5:23-2.14; he failed to receive a final inspection for the work performed in violation of N.J.A.C. 13:31-3.2(b) and N.J.A.C. 5:23-2.18(a)(1), and respondent’s son signed the permit application in violation

of N.J.A.C. 13:31-3.3. Ms. Divine was charged \$4,865. Again, for purposes of this matter, applying \$3,265 as the reasonable price for the services performed, the Board finds that restitution of \$1,600 to Ms. Divine is appropriate.

Regarding the imposition of a monetary penalty, the Board agrees with, and adopts, the ALJ's assessment of a monetary penalty of \$42,000 against respondent. N.J.S.A. 45:1-25 authorizes penalties of up to \$20,000 per subsequent violation. Therefore, with 21 violations having been committed, the maximum penalties imposed could be as much as \$420,000. However, given the mitigating financial information submitted by respondent, the Board agrees with the ALJ that a \$2,000 penalty per violation is a more balanced approach. We also considered that respondent's license is being revoked, he will be responsible for restitution, attorneys' fees and costs. Finally, given respondent's reported financial difficulties, we have also determined to stay the payment of the \$42,000 civil penalty. However, in the event that respondent ever seeks reinstatement of his revoked license, the \$42,000 penalty will become immediately active and due as a condition precedent to any possible request for reinstatement.

The Initial Decision recommended imposition of costs and attorneys' fees totaling \$40,153.28. The Board has reviewed the submission of the Attorney General and finds that the fees and costs sought are reasonable. This case involved the investigation and prosecution of 15 consumer complaints submitted to the Board during the course of one year. The case also concerned serious and substantial violations of the Board's regulations involving primarily senior citizens. The costs are reasonable given the serious matters involved.

As to investigative costs, the State has submitted certifications from supervising investigator Richard L. Perry, which identifies the precise activity performed, the amount of time spent on the activity, and the hourly rate charged. The Activity Report and certifications document investigative costs totaling \$234.58.

The Board finds the portion of the application for the investigative costs supported by a signed and detailed time record kept in the ordinary course of business by the Enforcement Bureau. The Board also finds the standard rate charged (i.e. \$143.10 per hour), to be reasonable, and takes notice that investigative costs, approved many times in the past, are based on salaries, overhead and costs of State employees. Considering the important state interest to be vindicated, protection of the public, the investigative costs sought are reasonable.

Similarly, the Attorney General's certification in this matter extensively documented the attorney time in these proceedings, detailing all costs as of March 19, 2014, with attachments. The Attorney General, through the certification of Deputy Attorney General Susan Brown-Peitz, documented a total of \$6,912.00 in counsel fees by DAG William Lim and \$32,077.50 for DAG Brown-Peitz for a total of \$38,989.50. No charges were claimed for the time spent by the Attorney General after March 19, 2014 including the post hearing submissions and exceptions argument. The Attorney General's certification was supported by the time sheets of DAG Lim and DAG Brown-Peitz and included information derived from a memorandum by Nancy Kaplan, then Acting Director of the Division of Law, Department of Law and Public Safety, detailing the uniform rate of compensation for the purpose of recovery of attorney fees established in 1999 and amended in 2005, setting the hourly rate of a DAG with more than ten years of legal experience at \$175.00 per hour

(DAG Brown-Peitz) and for deputies with fewer than five years experience at \$135.00 per hour (DAG Lim). The Board is satisfied that the record adequately details the tasks performed and the amount of time spent on each by the Deputy Attorney General (including research, drafting, discovery, negotiations, motions, affidavits and briefs and post motion submissions). The Board is satisfied the tasks performed needed to be performed and that in each instance the time spent was reasonable. Similarly, the Board finds the rate charged by the Division of Law for its attorneys has been approved in prior litigated matters and appears to be well below the community standard. See, Poritz v. Stang, 288 N.J. Super. 217 (App. Div. 1996).

The Board also finds the expenses incurred as part of investigation of the 15 consumer complaints, namely the January 20, 2010 investigative inquiry transcription costs, to be reasonable. They are supported by the certification of an Administrative Assistant III for Board. The total transcription cost was \$929.20.

Finally, the Board has given consideration to the statement filed by respondent, concerning his financial situation, as it relates to mitigating payment of penalties and costs. As the Board is sympathetic to respondent's financial circumstances, it has adopted the ALJ's determination to impose monetary penalties of well below the maximum permitted. The Board has also determined to stay the penalties in their entirety as indicated below. However, the Board declines to reduce respondent's responsibility entirely and thus ordered payment of the costs. Respondent committed 21 violations of the Board's regulations related to 15 consumer complaints and has a long history of disciplinary action. Given these circumstances, the Board deems it unfair to require the licensed community

which pays for the costs of all Board functions through licensing fees, to incur the costs associated with this matter.

THEREFORE, IT IS ON THIS 27th DAY OF MAY, 2015

ORDERED THAT:

1. Respondent's license and business permit to practice as an electrical contractor in the State of New Jersey shall be, and hereby is revoked. Respondent shall immediately cease and desist from representing himself as a licensed electrical contractor and from engaging in the practice of electrical contracting in the State of New Jersey.

2. Respondent shall pay a total civil penalty in the amount of \$42,000, pursuant to N.J.S.A. 45:1-22, to be stayed in its entirety. Prior to the Board entertaining any petition by respondent for reinstatement of his license, respondent must demonstrate he has paid the \$42,000 civil penalty in its entirety. Additionally, upon receipt of reliable information that respondent has engaged in acts constituting the unlicensed practice of electrical contracting, then upon written notification to respondent and an opportunity to be heard by him, the civil penalty of \$42,000 shall become immediately due and payable. Failure to make the required payment shall result in the issuance of a Certificate of Debt and/or any other remedies as permitted by law.

3. Within six(6) months of the filing date of this Order, respondent shall pay attorney's fees and costs in the amount of \$40,153.28. Payment shall be made by certified check, bank cashier check or money order made payable to "State of New Jersey," or by wire transfer, direct deposit, or credit card payment delivered or mailed to Francine Widrich, Acting Executive Director, Board of Examiners of Electrical Contractors, P.O. Box 45006, 124 Halsey Street, Newark, NJ 07101. Any other form of payment will be rejected

and will be returned to the party making the payment. Failure to make the required payment shall result in the issuance of a Certificate of Debt and/or any other remedies as permitted by law.

4. Within (30) thirty days of the filing date of this Final Decision and Order, respondent shall pay restitution delivering it or mailing it to Francine Widrich, Acting Executive Director, Board of Examiners of Electrical Contractors, P.O. Box 45006, 124 Halsey Street, Newark, NJ 07101 as follows:

(a) Payment of \$1,600 shall be made by certified check, bank cashier check or money order payable to Dave Lennon.

(b) Payment of \$4,300 shall be made by certified check, bank cashier check or money order payable to Barbara A. Hyland.

(c) Payment of \$600 shall be made by certified check, bank cashier check or money order payable to Joseph DiMeo.

(d) Payment of \$600 shall be made by certified check, bank cashier check or money order payable to Leonard T. Napoli.

(e) Payment of \$600 shall be made by certified check, bank cashier check or money order payable to Patricia Heward.

(f) Payment of \$1,600 shall be made by certified check, bank cashier check or money orde payable to Nancy and Edward Dutch.

(g) Payment of \$4,000 shall be made by certified check, bank cashier check or money order payable to Ruth Pinkerton.

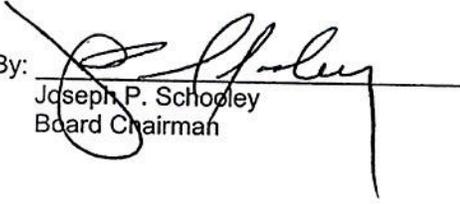
(h) Payment of \$5,100 shall be made by certified check, bank cashier check or money order payable to Gilda Forgione.

(i) Payment of \$1,600 shall be made by certified check, bank cashier check or money order payable to June Divine.

(j) Any other form of payment for restitution in paragraphs (a) through (i) above will be rejected and will be returned to the party making the payment. Failure to make any of the required restitution payments shall result in the issuance of a Certificate of Debt and/or other remedies as permitted by law.

NEW JERSEY BOARD OF EXAMINERS
OF ELECTRICAL CONTRACTORS

By: _____


Joseph P. Schooley
Board Chairman