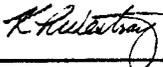




BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FILED
OSAH
FEB 19 2014

GEORGIA CONSTRUCTION :
INDUSTRY LICENSING BOARD, :
DIVISION OF ELECTRICAL :
CONTRACTORS, :
Petitioner, :
v. :
DAVID CLARK, :
Respondent. :


Kevin Westray, Legal Assistant

Docket No.:
OSAH-PLBD-ELEC-1422681-60-Howells

INITIAL DECISION

I. Summary of Proceedings

Petitioner, the Georgia Construction Industry Licensing Board, Division of Electrical Contractors, seeks a cease and desist order against Respondent David Clark to prevent him from performing electrical contracting work and from holding himself out as a licensed electrical contractor, unless and until he obtains a license. On December 14, 2013, notice of the proposed action, as well as the date and time of hearing was sent by certified mail to Respondent's home address.¹ Respondent, however, failed to appear for the hearing on January 28, 2014. The hearing proceeded in the absence of Respondent. Petitioner was represented by Wylencia Hood Monroe, Esq. Three witnesses testified on behalf of Petitioner: Darren Mickler, Executive Director for the State Construction Industry Licensing Board; Denise Williams, Senior Investigative Agent for the Office of the Secretary of State of the State of Georgia; and

¹ Ms. Williams, an investigator for the Secretary of State's Office, located Respondent's home address via the Georgia Crime Information Center ("GCIC") website and www.tlo.com, resources for law enforcement. While Ms. Williams is not aware of how the latter site collects its data, the GCIC site provided a picture of Respondent's driver's license that included his home address. The addresses on both sites matched. (Testimony of Denise Williams.) A printout from the United States Postal Service and a copy of the certified mail receipt indicate that the Notice of Hearing was sent to Respondent's home address.

Constance W. Sturgeon of Fertility Technology Resources, Inc. ("FTR").² For the reasons set forth below, Respondent is hereby **ORDERED** to **CEASE AND DESIST** from performing electrical contract work and from holding himself out as an electrical contractor, unless and until he obtains a license to do so.

II. Findings of Fact

1.

The Georgia Construction Industry Licensing Board has never issued Respondent an electrical contracting or a low-voltage electrical contracting license. (Testimony of Darren Mickler; Exhibit P-1.)

2.

On January 15, 2010, FTR hired Petitioner to perform electrical work at its new office, which was located next door to the office the company occupied at the time. Acting on behalf of the company, which she jointly owns with her husband, Mrs. Sturgeon located Respondent via his website, www.clarkelectric.com. The website states that the company, which Respondent presumably owns, is licensed and insured. Mrs. Sturgeon called the listed phone number and spoke to Respondent, who came out to the office to do the work. She showed him the new office space and explained what they wanted, specifically installation of a ceiling fan, a phone jack, and an outlet for a refrigerator. While instructing him on the work needed, she told him that she wanted the fan to operate independent of the lights, so that the lights and the fan could be turned on and off separately. She then went back to her office next door. Upon completing the work, Respondent presented Mrs. Sturgeon with an invoice for \$515.00 payable to Clark Electric Co.

² Prior to the start of the hearing, Petitioner amended the Matters Asserted by (1) eliminating paragraphs two and three, because it was unable to locate and subpoena witnesses to corroborate those allegations, and (2) altering a date in paragraph five to extend the timeframe from December 1, 2013, to January 4, 2014, during which time Respondent is alleged to have advertised through a website, www.clarkelectricco.com, that he was a licensed electrical contractor and owned and operated an electrical contracting business.

FTR paid the invoice for \$515.00 with check number 1629. (Testimony of Mrs. Sturgeon; Exhibit P-3, P-4.)

3.

Respondent's work for FTR was substandard at best. First, he unscrewed the light bulbs to make it appear as though the fan worked independently of the lights. Second, when installing the fan, he did not install an electrical box and left wires exposed in the ceiling. Finally, the phones did not function when plugged into the phone jacks. As a result of the shoddy work, FTR was forced to hire another electrician to redo the work. (Testimony of Mrs. Sturgeon.)

4.

On behalf of the Office of the Secretary of State, Ms. Williams investigated Respondent for the unauthorized practice of electrical contracting. In doing so, she reviewed the website of Clark Electric Co., "Atlanta's Master Electricians," which states that the company is licensed and insured. A screen shot of the website, printed on January 6, 2014, states that the company is "qualified, certified, [and] dependable." (Testimony of Ms. Williams; Exhibit P-2.)

III. Conclusions of Law

1.

Petitioner bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

Electrical contracting is considered a business or profession that affects the public interest. O.C.G.A. § 43-14-1. To protect the public against "faulty, inadequate, inefficient, or unsafe" electrical work, Georgia law prohibits persons from engaging in electrical contracting without a "valid license from the Division of Electrical Contractors." O.C.G.A. §§ 43-14-1.

“Electrical contracting” is defined as “installation, maintenance, alteration, or repair of any electrical equipment, apparatus, control system, or electrical wiring device which is attached to or incorporated into any building or structure in this state.” O.C.G.A. § 43-14-2(6). An “electrical contractor” is anyone who has an electrical contracting business or who “offers to perform, purports to have the capacity to perform, or does perform electrical contracting services under express or implied contract.” O.C.G.A. § 43-14-2(7). By contrast, low-voltage contracting, which is addressed separately under Georgia law, involves the “installation, alteration, service, or repair of a telecommunication system . . . or general system involving low-voltage wiring,” i.e., “wiring systems of 50 volts or less and [associated] control circuits.” O.C.G.A. §§ 43-14-2(10.1)-(10.3), 43-14-8.1(b).

3.

To protect the public from faulty, inadequate or unsafe work, the law regarding electrical contracting is to be “liberally construed” to safeguard the public’s interest in safe and professional work. O.C.G.A. § 43-14-1. As an enforcement mechanism, the Georgia Construction Industry Licensing Board may issue cease and desist orders, prohibiting persons from engaging in the unlicensed practice of electrical contracting. O.C.G.A. §§ 43-1-20.1(a), 43-14-2(1), 43-14-8(a). Thereafter, cease and desist orders may be enforced by “further proceedings before the board” and fines for each violation, not to exceed \$500.00. O.C.G.A. § 43-1-20.1(b).

4.

Here, Respondent engaged in electrical contracting without a Georgia license.³ Under the name Clark Electric Co., Respondent maintained a website, advertising his services as a licensed

³ There is also evidence that Respondent, by installing a phone jack, also performed low-voltage contracting. However, as the Division of Electrical Contractors may not seek a cease and desist order for low-voltage contracting, which is under the purview of the Division of Low-Voltage Contractors, only Respondent’s unauthorized electrical contracting is addressed here.

electrician. He performed work as an electrical contractor when he installed a ceiling fan and an electrical outlet for FTR. The workmanship was so poor that the company was forced to hire another electrical contractor to redo the work.

IV. Order

As Respondent is not licensed to perform electrical contracting work, this Court hereby **ORDERS** Respondent to **CEASE AND DESIST** from offering or performing electrical contracting unless and until he obtains a valid license from the Georgia Construction Industry Licensing Board, Division of Electrical Contractors. This Cease and Desist Order may be enforced by Petitioner through any and all means provided by law.

SO ORDERED, this 18th day of February, 2014.



STEPHANIE M. HOWELLS
Administrative Law Judge