

Findings of Fact

1.

Respondent currently holds a non-restricted license to engage in conditioned air contracting and has been licensed as such at all times relevant to the Matters Asserted. Respondent was initially license on July 13, 1983. (Ex. P-1.)

2.

On June 30, 2003, Respondent pleaded guilty to violation of the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act,² Theft by Receiving Stolen Property valued at more than \$500.00, one count of Theft by Taking property valued at more than \$500.00, and one count of Theft by Taking property valued at less than \$500.00 dollars. He was sentenced to a total of twenty years of imprisonment. However, after serving eight of the twenty, he would be allowed to serve the balance on probation. Additionally, Respondent was required to pay a fine in the amount of \$1,000.00 and other fees, and required to forfeit seized property. (Exs. P-3, P-4.)

3.

On November 19, 2007, January 11, 2010, July 26, 2011, and October 30, 2013, Respondent renewed his conditioned air contractor license on-line. On his 2007, 2010, and 2011 renewal applications, Respondent answered "No" to the following question: "Since the date of your last renewal or initial licensure, have you been arrested, convicted, or entered a plea of guilty, nolo contender, or been sentenced under the 'First Offender Act' for any felony, misdemeanor or any offense other than a minor traffic violation? DWI an[d] DUI are not minor traffic violations." Respondent answered "Yes" to that question on his 2013 renewal application. (Ex. P-2.)

² According to the Indictment, it was part of the scheme for Respondent "to observe targets of potential theft when performing electrical work at residential and business locations." (Ex. P-3.) During the times of the various offenses, Respondent held low-voltage and electrical contractor licenses. He surrendered the electrical contractor

Conclusions of Law

1.

Because the Board seeks to revoke Respondent's license, the Board 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.

Pursuant to Georgia Code section 43-1-19(a), the Board has the authority to sanction Respondent's license upon a finding that Respondent has:

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession . . . ; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; . . . ; and as used in this paragraph, the term 'conviction' shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought; [and]

* * *

(8) Violated a statute, law or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule;

O.C.G.A. § 43-1-19(a); *see also* O.C.G.A. § 43-14-6(a)(4)(A) (providing the Conditioned Air Division the authority to sanction a licensee for committing any false, fraudulent, or deceitful act or using any forged, false or fraudulent document in connection with the licensing requirements).

license on June 23, 2013 and the low-voltage contractor license on September 27, 2013. (Testimony of Deborah Beard.)

3.

Here, Respondent has been convicted of a violation of the Georgia RICO Act, which is a felony; Theft by Receiving Stolen Property valued at more than \$500.00, which is a felony; one count of Theft by Taking property valued at more than \$500.00, which is a felony; and one count of Theft by Taking property valued at less than \$500.00 dollars, which is a misdemeanor. O.C.G.A. § 16-14-4 (1999 - 2003); O.C.G.A. § 16-14-5(a) (1999 -2003); O.C.G.A. § 16-8-7(a) (1997 – 2002); O.C.G.A. § 16-8-2 (2002); O.C.G.A. § 16-8-12 (2002). Furthermore, theft is a crime of moral turpitude. *Sapp v. State*, 271 Ga. 446, 448 (1999); *In re Lenoir*, 265 Ga. 403 (1995). Thus, the Board has established a violation of Georgia Code section 43-1-19(a)(3).

4.

When Respondent renewed his license on-line in 2007, 2010, and 2011, he answered “No” to the question asking if he had prior convictions, when in fact he had pleaded guilty and was sentenced to significant imprisonment for multiple felonies and crimes of moral turpitude in 2003. Accordingly, Respondent engaged in fraud and deceit when renewing his license in violation of Georgia Code sections 43-1-19(a)(2) and 43-14-6(a)(4)(A).³

5.

The Board has established violations of professional licensing statutes which authorize and, in this case, warrant the imposition of a sanction on Respondent’s license. When the Board finds that a licensee should be disciplined pursuant to Code Section 43-1-19(a), the Board may take any one or more of several disciplinary actions, including license revocation or suspension.

³ In the Matters Asserted, the Board alleged that Respondent violated Georgia Code section 43-1-27 which requires licensees to report felony convictions to the Board within ten days. However, the Board presented no evidence or testimony to support this allegation. While one could presume that Respondent did not report his felony convictions within ten days based on his failure to report the convictions during the 2007, 2010 and 2011 renewals, the Board presented no evidence of what Respondent reported between 2003 and 2007. Specifically, the Board’s witness testified that renewals during that time were completed on paper and the Board no longer had possession of those

O.C.G.A. § 43-1-19(d); *see also* Ga. Comp. R. & Regs. 121-5-.01. Given the nature of Respondent's crimes, his deceit in renewing his license, and the absence of any mitigating evidence, the undersigned concludes that revocation is the appropriate sanction.

Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, Respondent's non-restricted conditioned air contractor license is hereby **REVOKED**.

SO ORDERED on this 4th day of September, 2014.


STEPHANIE M. HOWELLS
Administrative Law Judge

renewal applications. Further, the Board's witness provided no testimony regarding Respondent's failure to report his felony convictions within ten days. Accordingly, the Board failed to establish a violation of section 43-1-27.