

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

MARCUS KINDALL,
Petitioner,

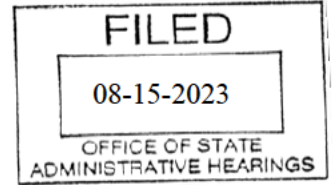
v.

**STATE LICENSING BOARD FOR
RESIDENTIAL AND GENERAL
CONTRACTORS,**
Respondent.

**Docket No.: 2324762
2324762-OSAH-PLBD-RES_GEN-33-
Barnes**

Agency Reference No.: 2324762

INITIAL DECISION



Petitioner Marcus Kindall appealed the decision of the State Licensing Board of Residential and General Contractors (“the Board”) to deny his application seeking licensure as a Residential Light Commercial Qualifying Agent. The hearing in this matter was held on July 14, 2023, at the Office of State Administrative Hearings in Atlanta, Georgia. The Board was represented by Assistant Attorney General Thomas McNulty. Petitioner represented himself. After careful consideration of the evidence and arguments of the parties, and for the reasons stated below, the Board’s decision to deny Petitioner a license is **AFFIRMED**.

I. FINDINGS OF FACT

1. Petitioner is not currently licensed by the Board in any capacity. (Testimony of La Trenda Tyler-Jones¹).
2. On or about January 26, 2022, Petitioner submitted an application for a Residential Light Commercial Qualifying Agent license. (OSAH Form 1; Exhibit J-1; Testimony of Ms. Tyler-Jones).

¹ Ms. Tyler-Jones is the Executive Director of the Board.

3. The Board's rules provide that an individual may be eligible for a residential-light commercial qualifying agent license if, among other requirements, the individual:

- (a) Is at least 21 years of age;
- (b) Is of a good character and is otherwise qualified as to competency, ability, and integrity;
- (c) Meets eligibility requirements according to one of the following criteria:
 - 1. Has received a baccalaureate degree from an accredited four-year college or university in the field of engineering, architecture, construction management, building construction, or other field acceptable to the division and has at least one year of proven experience working as or in the employment of a residential contractor, general contractor, or other proven experience deemed substantially similar by the division;
 - 2. Has a combination acceptable to the division of academic credits from any accredited college-level courses and proven practical experience working as or in the employment of a residential contractor, general contractor, or other proven experience deemed substantially similar by the division equaling at least four years in the aggregate. For purposes of this subparagraph, all university, college, junior college, or community college-level courses shall be considered accredited college-level courses; or
 - 3. Has a total of at least four years of proven active experience working in a construction industry related field, at least two of which shall have been in the employment of a residential contractor, or other proven experience deemed acceptable by the division; and
- (d) Has had significant responsibility for the successful performance and completion of at least two projects falling within the residence-light commercial category in the four years immediately preceding application. To prove "successful performance and completion" the applicant must include, together with the application for licensure, an appropriate reference letter from a Georgia registered architect, a designer, a licensed professional engineer (predominately practicing structural engineering), or any other reference acceptable to the subdivision.
- (e) In order to satisfactorily prove (a), (b), (c) and (d) above, each applicant must swear on the application for licensure that the applicant satisfies each requirement and submit satisfactory proof of such when and where directed to do so by the application. In completing and submitting the application to the residential contractor division, the applicant consents to the division performing a background check, including a criminal history, on the applicant if the division so chooses.

Ga. Comp. R. & Regs. 553-3-.04(3). *See also* O.C.G.A. § 43-41-6(c).

4. On February 10, 2022, the Board sent Petitioner a deficiency letter notifying him that his application was incomplete and could not be processed. Specifically, Ms. Tyler-Jones testified

that Petitioner had not completely filled out his application and that it contained “a lot of blanks.” (Testimony of Ms. Tyler-Jones).

5. Petitioner sent in a second application, which was filed in the Board’s system on June 8, 2022. Ms. Tyler-Jones testified that this second application was “more complete,” but was still missing information. The primary issue in Petitioner’s second application involved Section Six, which required the applicant to list two residential-light commercial projects in which the applicant “as contractor, had significant responsibility for [their] successful performance and completion within four (4) years immediately preceding date of application submission.” For each project, the application requested the name and license number of a contractor “under which [the] project was completed.” According to the deficiency letter, Petitioner failed to provide a contractor name or license number for either of his listed projects. The letter instructed Petitioner to complete and resubmit that section of his application. The letter also noted that he failed to correctly complete the required certificate of insurance, and he did not check the “Qualifying Agent” box on the application as required. (Testimony of Ms. Tyler-Jones; Exhibits J-1, R-1).
6. Petitioner submitted a third application. He corrected the problems with the certificate of insurance and the “Qualifying Agent” box. However, although he resubmitted the project section of the application, he again failed to include the name and license number of a contractor for either project. (Exhibit J-1; Testimony of Ms. Tyler-Jones).
7. The Board denied Petitioner’s application for licensure on September 2, 2022. In its letter to Petitioner, the reason for denial was described as follows:

- a. Failed to Meet Qualifications – Specifically, applicant failed to demonstrate the qualifications for license under Board Rule 553-3-.01 by failing to meet the experience requirements. (Exhibit R-2; Testimony of Ms. Tyler-Jones).
8. Petitioner appeared before the Board on October 12, 2022, to contest the denial of his application; however, he did not provide any information pertaining to his experience working under a licensed contractor on that date. The Board voted to uphold the denial. (Testimony of Ms. Tyler-Jones).
9. Petitioner currently works as a consultant through his business, MLK Permit Expediter Consulting, LLC. He works with clients to help them find and hire the right contractor, designer, engineer, or architect for their project. He then makes sure all the paperwork to pull the correct permits from the county is completed properly. He described his role as a “project manager” who is working on the “administrative side” of a construction project. Previously, he worked at McKinley Construction, LLC, from 2016 through 2018 or 2019 as project manager or engineer². Before McKinley, he worked for various construction companies as a field engineer, designer, or drafter. Petitioner holds an Associate Degree in Business Administration from Southern Ohio College, a Bachelor’s Degree in Construction Management from Westwood College, and a Master of Business Administration Degree from Strayer University. (Testimony of Petitioner; Exhibits P-1, J-1).
10. Petitioner explained that for one of the completed projects he described on his application, he was unable to name a licensed contractor because the homeowner had done the contracting work, as is allowed with residential properties. He did, however, provide a reference letter from the homeowner stating that Petitioner had “knowledge of construction.” For the second

² It is unclear whether Petitioner has the necessary qualifications to work as an engineer.

completed project, it is unclear why Petitioner was unable to provide the name of a licensed contractor: the project was described as a “[t]enant fit-out for new Sushi restaurant,” so was presumably not residential. However, for this project, Petitioner submitted a reference from a registered architect who Petitioner had worked with in the past and who stated that Petitioner has a “solid understanding of the construction process overall.” (Testimony of Petitioner; Exhibit J-1).

11. At the hearing, Petitioner also provided information for three other recent projects that he had been involved in: one residential project (the specific nature of the project was not specified) and two pool installations. He testified that in all three projects, his role was essentially to obtain the necessary permits and to help his clients get in contact with the right people to complete their projects. (Testimony of Petitioner; Exhibit P-2).
12. It is unclear whether Petitioner has experience working under a general contractor. At least twice he said that he had not worked under a general contractor, but that he had worked *with* many general contractors. However, he also stated that his supervisor at McKinley Construction was a general contractor. (Testimony of Petitioner).
13. Petitioner testified that, while the work he does is more administrative “inside” work as opposed to the outside, ground-up construction aspect of a project, he has overseen many construction projects and “could say exactly what needed to be done on a house,” even though he has not done that work himself. (Testimony of Petitioner).

II. CONCLUSIONS OF LAW

1. Petitioner bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1)(b). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). The administrative hearing is *de novo*, and this Court must make an independent

determination on the basis of the evidence presented at the hearing. Ga. Comp. R. & Regs. 616-1-2-.21(1), (3).

2. The Board has the full power to regulate the issuance of residential and general contracting licenses. O.C.G.A. § 43-41-5(b)(6). A professional licensing board has the authority to refuse to grant a license when, based upon a finding of the majority of the board, the applicant has “[f]ailed to demonstrate the qualifications or standards contained in this Code section, or under the laws rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license.” O.C.G.A. § 43-1-19(a)(1).
3. Under O.C.G.A. § 43-41-2(11), a residential-light commercial contractor is defined as follows:

a person who performs any contractor work or activity performed by a residential-basic contractor and, additionally, shall include such contractor work or activity related to multifamily and multiuse light commercial buildings and structures, and their related accessory buildings and structures, which are less than four stories in height; less than 25,000 square feet in aggregate interior floor space, except as otherwise provided in this chapter; and are constructed of wood or light gauge metal frame, brick veneer, prefabricated, or manufactured type of construction; or are preengineered steel buildings not exceeding 50,000 square feet of interior floor space; provided that such buildings or structures are not of the type of building or structure that would constitute a special hazard to property or to life and safety of persons as defined in subparagraphs (A), (C), (D), (E), (F), (G), (G.1), (H), (I), and (J) and subparagraph (B), as it applies to a building of four or more stories, of paragraph (1) of subsection (b) of Code Section 25-2-13.

A residential-basic contractor is a person who “performs contractor work or activity relative to detached one-family and two-family residences and one-family townhouses not over three stories in height and their accessory buildings and structures.” O.C.G.A. § 43-41-2(10).

4. A “[q]ualifying agent” is “a person who possesses the requisite skill, knowledge, and experience and has the responsibility to supervise, direct, manage, and control all of the contracting activities within the State of Georgia of a contractor doing business in the form of a business organization, with which he or she is affiliated by employment or ownership; who


has the responsibility to supervise, direct, manage, and control construction activities on any project for which he or she has obtained the building permit . . . and whose technical and personal qualifications have been determined by investigation and examination as provided in this chapter.” O.C.G.A. § 43-41-2(7).

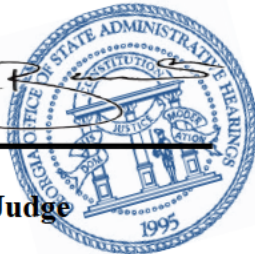
5. Having considered the evidence, the Court concludes that Petitioner has failed to meet his burden of showing that he is qualified for a residential-light commercial qualifying agent license. The application explicitly requested that Petitioner list two projects in which he, “as a contractor,” had “significant responsibility for [their] successful performance and completion.” He was also required to include the name and license number of the licensed contractor under which each of the projects was completed. Petitioner was given three chances to provide the name and license number of a contractor for each of his listed projects, but still failed to do so. Moreover, Petitioner provided no evidence that he has any actual experience as a contractor.

III. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Board’s denial of Petitioner’s application is **AFFIRMED**.

SO ORDERED, this 15th day of August, 2023.


Shakara M. Barnes
Administrative Law Judge



The seal is circular with a blue border. The outer ring contains the text "GEORGIA OFFICE OF STATE ADMINISTRATION & HEARINGS" at the top and "1995" at the bottom. The inner circle features a central emblem with a scale of justice and a building, surrounded by the words "INSTITUTION" and "JUSTICE".