

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2019-017486
CILB

JAMES KELLY O'BRIEN,

Respondent.

FINAL ORDER ON WAIVER

The Department of Business and Professional Regulation (hereinafter "Petitioner") issues this Final Order against James Kelly O'Brien (hereinafter "Respondent") as follows:

1. An Administrative Complaint was filed in this case on July 16, 2019, alleging that Respondent violated certain provisions of chapter(s) 489, Florida Statutes. A copy of the Administrative Complaint is attached hereto as Exhibit A.
2. The Administrative Complaint, Election of Rights form, an Explanation of Rights, and a cover letter were mailed to Respondent via Certified and regular U.S. Mail on July 17, 2019. Proof of mailing by Certified and regular U.S. Mail is attached hereto as Exhibit B.
3. The Administrative Complaint, Election of Rights form, an Explanation of Rights, and cover letter were served on Respondent via Certified U.S. Mail on July 19, 2019. Proof of service by Certified U.S. Mail is attached hereto as Exhibit C.
4. The Election of Rights form, Explanation of Rights, and cover letter informed Respondent that a written response to the Administrative Complaint, including the right to request a hearing, was due within 21 days of actual service of the Administrative Complaint. See section 120.569(1), Florida Statutes, and rule 28-106.111, Florida Administrative Code.

5. Petitioner made all reasonable efforts to provide actual notice to Respondent.
6. Petitioner informed Respondent that the failure to file a timely response to the Administrative Complaint shall be deemed a waiver of the right to a hearing.
7. Respondent has not filed a timely response to the Administrative Complaint. Respondent has not submitted any evidence or made any allegations that would support the application of the doctrine of equitable tolling.

Having considered the Administrative Complaint, the evidence of Petitioner's reasonable attempts to provide actual notice to Respondent, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED:

8. The allegations of fact and the conclusions of law in the Administrative Complaint are adopted in their entirety herein.
9. Respondent must pay a total administrative fine of \$3,000.00 pursuant to the penalty/disciplinary guidelines of rule 61-5.007, Florida Administrative Code.
10. Pursuant to section 455.227(3)(a), Florida Statutes, which provides that "the department... may assess costs related to the investigation and prosecution of the case, excluding costs associated with an attorney's time," Respondent must pay costs of \$156.30.
11. Payment of the fine and costs by check or money order issued to the Department of Business and Professional Regulation must be received by the Department of Business and Professional Regulation, Revenue Unit, 2601 Blair Stone Road, Tallahassee, Florida 32399-2202 within 30 calendar days of the effective date of this Final Order. **Your case number(s) must be clearly referenced when making payment.**

12. This Final Order is effective on the date it is filed with the Agency Clerk of the Department of Business and Professional Regulation as indicated on the first page of this Final Order.

DONE AND ORDERED this 7 day of February, 2020.



Halsey Beshears, Secretary
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399-2202

NOTICE OF RIGHT TO APPEAL

Unless expressly waived, any party adversely affected by this Final Order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within 30 days of the effective date of this order, in accordance with Florida Rule of Appellate Procedure 9.110, and section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order on Waiver was provided to Respondent at 139 Highway 22, Wewahitchka, Florida 32465, by regular U.S. Mail this 14th day of February, 2020.

Brandon M. Nichols

OFFICE OF THE AGENCY CLERK

Copy(s) Furnished to:

Maureen White, Chief Attorney - ULA

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	7/16/2019
File #	

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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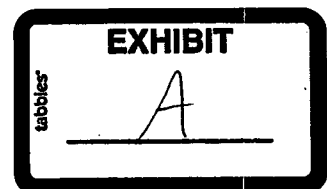
JAMES KELLY O'BRIEN,

Respondent.

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation ("Petitioner") files this Administrative Complaint against James Kelly O'Brien ("Respondent") and alleges:

1. Petitioner is the state agency charged with regulating the practice of construction contracting pursuant to section 20.165, Florida Statutes, and chapters 455 and 489, Florida Statutes.
2. Petitioner has jurisdiction over the unlicensed practice of construction contracting pursuant to sections 455.227, 455.228, and 489.13, Florida Statutes.
3. At no time material hereto was Respondent duly registered or certified to engage in the practice of construction contracting pursuant to chapter 489, Florida Statutes.
4. At no time material hereto was J.K. Construction of Florida Inc. an entity properly qualified under the provisions of chapter 489, Florida Statutes.
5. Respondent's last known address is 139 Highway 22, Wewahitchka, Florida 32465.



6. On or about February 19, 2019, Respondent, D/B/A J.K. Construction of Florida Inc., offered, contracted, or performed regulated construction contracting services, including but not limited to, a re-roof, at 24087 Lanier Street, Tallahassee, Florida 32310.

7. Respondent offered, contracted, or performed the regulated services at issue for compensation.

8. Section 489.13(1), Florida Statutes, provides “any person performing an activity requiring licensure under [chapter 489, part I, Florida Statutes] as a construction contractor is guilty of unlicensed contracting if he or she does not hold a valid active certificate or registration authorizing him or her to perform such activity...”

9. Based upon the foregoing, Respondent violated section 489.13(1), Florida Statutes, by performing an activity requiring licensure under chapter 489, part I, Florida Statutes, as a construction contractor without the requisite license.

WHEREFORE, Petitioner requests that a Final Order be entered imposing one or more of the following: an administrative fine, assessment of costs related to the investigation, and/or any other relief the Department is authorized to impose pursuant to chapters 455 and 489, Florida Statutes, and the rules promulgated thereunder.

(SIGNATURE PAGE FOLLOWS)

Signed this 8th day of July, 2019.

HALSEY BESHEARS, Secretary
Department of Business and
Professional Regulation

By: /s/ Maureen White

Maureen White
Florida Bar No. 0106794
Chief Attorney
Office of the General Counsel
Unlicensed Activity
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, FL 32399-2202
(850) 717-1234

PC Found: July 8, 2019
By: DBPR

KY

7006 0810 0005 9843 6276

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Administrative
 Complaint **JUL 17 2019**

Certified by _____

Return Receipt Fee (Endorsement) **JUL 16 2019**

Restricted Delivery Fee (Endorsement Required)

Postmark Here

James Kelly O'Brien
 2019 - 017486 CON UL
 139 Highway 22
 Wewahitchka, Florida 32465

See Reverse for Instructions

B

Administrative
Complaint

James Kelly O'Brien
2019 - 017486 CON UL
139 Highway 22
Wewahitchka, Florida 32465

JUL 17 2019

~~2019-017486~~

SENDER: COMPLETE THIS SECTION

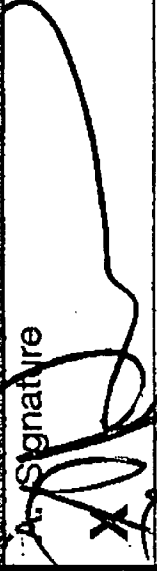
- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece or on the front if space permits.

1. Article Addressed to:
Administrative JUL 30 2019
Complaint
 Service of Process Unit
 DBPR
 James Kelly O'Brien
 2019 - 017486 CON UL
 NMO-139 Highway 22
 Wewahitchka, Florida 32465

2. Article Number (Transfer from service label)
 7006 0810 0005 9843 6276

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent

B. Received by (Printed Name) Wewahitchka F 32465 Addressee

C. Date of Delivery 7/19/19 Yes

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Insured Mail Restricted Delivery
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Domestic Return Receipt

