

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,**

Petitioner,

v.

CLINTON WEST DAVIS JR.,

CASE No. 2018-059520

CILB

Respondent,

FINAL ORDER

The Department of Business and Professional Regulation (Department) hereby enters this Final Order for the above styled matter. On January 29, 2020, Alison Parker, the designated Hearing Officer for the Department presiding over the Informal Hearing, issued the Recommended Order in this matter. That Recommended Order is attached to this Final Order and incorporated herein by reference.

FINDINGS OF FACT

The Findings of Fact contained in the Recommended Order are hereby adopted as the Findings of Fact of the Department.

CONCLUSIONS OF LAW

The Conclusions of Law contained in the Recommended Order are hereby adopted as the Conclusions of Law of the Department.


ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law adopted from the Recommended Order of the Department's Informal Hearing, it is hereby **ORDERED** that the:

1 Respondent shall pay an administrative penalty in the amount of \$1,200.00 and investigative costs in the amount of \$136.56 for a total amount of \$1,336.56. Total payment shall be made payable to the Department of Business and Professional Regulation, Revenue Unit, 2601 Blair Stone Road, Tallahassee, Florida 32399-2202 within 365 calendar days of the effective date of this Final Order. Case number **2018-059520** must be referenced when making your payment.

2 This order shall become effective on the date of filing with the Department's Agency Clerk.

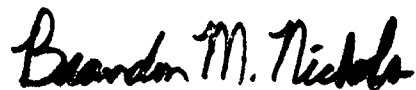
DONE AND ORDERED this 13 day of February 2020.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided via Regular U.S. Mail to: Clinton West Davis Jr. at 5232 Stewart Drive, Panama City, City, Florida, on this 18th day of February, 2020.



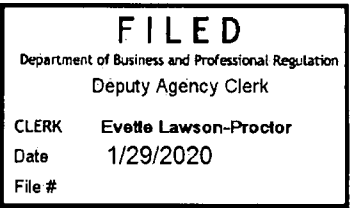
AGENCY CLERK' S OFFICE

cc:

Alison Parker, Hearing Officer
Maureen White, ULA Chief Attorney
Daniel David, Assistant General Counsel

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review Proceedings are governed by Rules 9.110 and 9.190, Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Department of Business and Professional Regulation, Attn: Ronda L. Bryan, Agency Clerk, 2601 Blair Stone Road, Tallahassee, Florida 32399-2202 and a Second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Florida Appellate District where the Party Resides. The Notice of Appeal must be filed within thirty (30) Days of Rendition of the Order to be reviewed.



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CLINTON WEST DAVIS JR.,

Respondent.

_____ /

HEARING OFFICER'S RECOMMENDED ORDER

THIS MATTER came before Alison A. Parker, designated Hearing Officer for the Department of Business and Professional Regulation ("Department") on January 7, 2020, in Tallahassee, Florida, in accordance with the provisions of Section 120.57(2), Florida Statutes, for consideration of the Department's Administrative Complaint filed April 19, 2019. Daniel David, Assistant General Counsel, represented Petitioner. Respondent appeared *pro se* at the hearing telephonically. Both sides were allowed to call witnesses, provide sworn testimony, proffer items into evidence, and otherwise fully participate in the hearing.

FINDINGS OF FACT

1. At no time material hereto was Respondent duly registered or certified to engage in the practice of construction contracting pursuant to chapter 489, part I, Florida Statutes.
2. At no time material hereto was A-1 Insulation and Construction LLC an entity properly qualified to engage in the practice of construction contracting pursuant to chapter 489, Florida Statutes.
3. Per the Administrative Complaint, on or about September 20, 2018, Respondent, D/B/A A-1 Insulation and Construction LLC, offered, contracted, or performed regulated construction

contracting services including but not limited to, replacing a metal roof at 2503 East 9th Street, Panama City, Florida 32401 ("Property Site").

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

5. On or about April 19, 2018, the Department filed a one-count Administrative Complaint charging Respondent with violating 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.

6. On or about May 10, 2019, the Department received Respondent's Election of Rights. Respondent had selected option 2, indicating he wished to dispute the material facts set forth in the Administrative Complaint in front of an Administrative Law Judge at the Division of Administrative Hearings.

7. Respondent's answer, however, failed to specify what issues of material fact alleged in the Administrative Complaint are in dispute, thereby failing to sufficiently dispute any issues of material fact.

8. On or about June 20, 2019, Petitioner served a Notice of Non-Compliance and Amended Election of Rights upon Respondent via US certified mail.

9. Respondent's Notice of Non-Compliance, sent by certified mail, was unclaimed and returned to the Department on or about August 12, 2019.

10. On or about December 9, 2019, Respondent was notified of his right to attend an informal hearing, scheduled for January 7, 2020.

11. On January 7, 2020, an informal hearing was conducted pursuant to section 120.57(2), Florida Statutes. Respondent appeared at the hearing telephonically.

12. At the informal hearing, Respondent testified that he performed some of the work for free and that some of the funds he did receive went right back into purchasing materials for the Property Site.

CONCLUSIONS OF LAW

13. Petitioner is the state agency charged with regulating the practice of construction contracting pursuant to section 20.165, Florida Statutes, and chapter 489, part I, Florida Statutes.

14. Petitioner has jurisdiction over the unlicensed practice of construction contracting pursuant to section 489.13 and 455.227, Florida Statutes.

15. The undersigned Hearing Officer has the jurisdiction to hear this case pursuant to section 120.57(2), Florida Statutes.

16. Section 489.13(1), Florida Statutes, provides that “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...”

17. 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.

18. Section 455.227(1)(q), Florida Statutes, provides “violating... the applicable professional practice act...” shall constitute grounds for which disciplinary actions may be taken.

19. Based upon the foregoing, Respondent violated section 455.227(1)(q), Florida Statutes, by falsely holding himself out as a licensee in violation of section 489.127(1)(a), Florida Statutes.

20. Rule 61-5.007, Florida Administrative Code, provides disciplinary guidelines for unlicensed activity. The rule provides that:

(4) For using a professional title or designation without holding the requisite license to do so, the following penalties shall apply:

- (a) First violation - \$1,000 administrative fine;
- (b) Second violation - \$2,500 administrative fine; and
- (c) Third and subsequent violations - \$5,000 administrative fine.

(6) For practicing a profession without holding the requisite license to do so, the following penalties shall apply:

- (a) First violation - \$3,000 administrative fine;
- (b) Second violation - \$4,000 administrative fine; and
- (c) Third and subsequent violations - \$5,000 administrative fine.

(7) Notwithstanding the foregoing, violations of Section 468.8419, F.S., may result in the imposition of a \$10,000 administrative fine.

21. Pursuant to Rule 61-5.007(8), Florida Administrative Code, the penalty guidelines allow for mitigation. Herein, Respondent performed some of the work for free, which both attests to alleged rehabilitation and to the amount of actual consumer harm. Respondent also stated that some of the monies he received went back into materials for the Property Site. Respondent was contrite and avowed to become more astute as to licensure requirements in the future.

22. Section 455.227(3)(a), Florida Statutes, provides that "In addition to any other discipline imposed pursuant to this section or discipline imposed for a violation of any practice act, the board, or the department when there is no board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time."

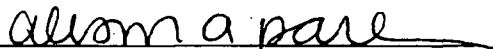
23. Considering the totality of the evidence, a reasonable penalty is \$1,200.00. It is also reasonable that investigative costs be assessed.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is: RECOMMENDED that the Department of Business and Professional Regulation enter a Final Order:

Requiring Respondent pay an administrative fine in the amount of \$1,200 and pay investigative costs in the amount of \$136.56, for a total amount of **\$1,336.56** within 365 calendar days of the effective date of the applicable Final Order rendered in this case. This is a reasonable penalty considering the totality of the evidence.

Respectfully Submitted this 29th day of January 2020.


Alison A. Parker, Hearing Officer
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, FL 32399-2202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to Clinton West Davis Jr at 5232 Stewart Drive, Panama City, Florida 32404, on this 29 day of

January 2020, by regular U.S. Mail.


AGENCY CLERK'S OFFICE

Copies:

Alison A. Parker, Hearing Officer

Daniel A. David – Assistant General Counsel

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to the Recommended Order should be filed with the Department.

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	4/19/2019
File #	

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DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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Case No. 2018-059520
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Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation (“Petitioner”) files this Administrative Complaint against Clinton West Davis Jr. (“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 A-1 Insulation and Construction LLC an entity properly qualified under the provisions of chapter 489, Florida Statutes.

5. Respondent’s last known address is 5232 Stewart Street, Panama City, Florida 32404.

6. On or about September 20, 2018, Respondent, A-1 Insulation and Construction LLC, offered, contracted, or performed regulated construction contracting services, including but not limited to, replacing a roof at 2503 East 9th Street. Panama City, Florida 32401.

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 21st day of February, 2019.

HALSHEY BESHEARS, Secretary
Department of Business and
Professional Regulation

By: /s/ Daniel A. David
Daniel David
Florida Bar No. 0650412
Assistant General Counsel
Office of the General Counsel
Unlicensed Activity
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, FL 32399-2202
Ph: (850) 488-0062

PC Found: 2/21/19
By: DBPR

NOTICE OF RIGHTS

Please be advised that mediation under section 120.573, Florida Statutes, is not available for administrative disputes involving this type of agency action.

Please be advised that Respondent has the right to request a hearing to be conducted in accordance with sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested. Any request for an administrative proceeding to challenge or contest the charges contained in the administrative complaint must conform to Rule 28-106.2015, *Florida Administrative Code*. Rule 28-106.111, *Florida Administrative Code*, provides in part that if Respondent fails to request a hearing within 21 days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to section 455.227(3)(a), Florida Statutes, the Board, or the Department when there is no Board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time, against Respondent in addition to any other discipline imposed.