

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2019019359
CILB

DONALD SMITH JR.,

Respondent.

_____ /

FINAL ORDER ON WAIVER

The Department of Business and Professional Regulation (hereinafter “Petitioner”) issues this Final Order against Donald Smith Jr. (hereinafter “Respondent”) as follows:

1. An Administrative Complaint was filed in this case on October 14, 2019 alleging that Respondent violated certain provisions of chapter 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 October 15, 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 October 23, 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. Verification of Waiver is attached hereto as Exhibit D.

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 \$200.90.

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 13 day of March, 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

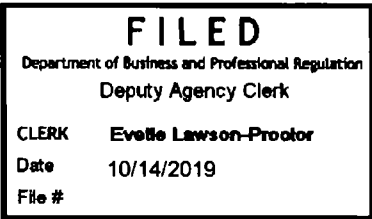
I HEREBY CERTIFY that a true and correct copy of this Final Order on Waiver was provided to Donald Smith, Jr., 210 Highlands Glen Cir., Winter Springs, FL. 32708 by regular U.S. Mail this 15th day of April, 2020.


OFFICE OF THE AGENCY CLERK

Copy(s) Furnished to:

Daniel A. David, Asst. General Counsel- ULA

Respondent



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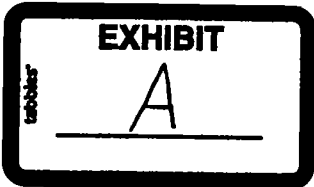
Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation (“Petitioner”) files this Administrative Complaint against Donald Smith 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 Don Smith Heating and Air an entity properly qualified under the provisions of chapter 489, Florida Statutes.
5. Respondent’s last known address is 210 Highlands Glen Circle, Winter Springs, FL 32708.
6. On or about June 1, 2018, Respondent, D/B/A Don Smith Heating and Air offered, contracted, or performed regulated construction contracting services, including but not



limited to installation of heat pumps and air-conditioning at 1281 Falconcrest Blvd., Apopka, FL 32712.

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 24th day of September, 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: 9/24/19
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

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

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

7006 0810 0005 9844 4417

OCT 15 2019

Don Smith
 2019-019359 CON UL
 210 Highlands Glen Circle
 Winter Springs, FL 32708

PS Form 3800, July 2013

EXHIBIT
 B

Administrative Complaint

Don Smith
2019-019359 CON UL
210 Highlands Glen Circle
Winter Springs, FL 32708

OCT 14 2019

USPS Tracking®

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Tracking Number: 70060810000598444417

[Remove X](#)

Your item was delivered to an individual at the address at 11:50 am on October 23, 2019 in WINTER SPRINGS, FL 32708.

Delivered

October 23, 2019 at 11:50 am
Delivered, Left with Individual
WINTER SPRINGS, FL 32708

[Get Updates](#) 

Feedback

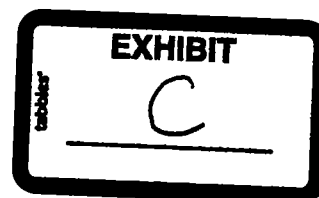
Text & Email Updates 

Tracking History 

October 23, 2019, 11:50 am
Delivered, Left with Individual
WINTER SPRINGS, FL 32708

Your item was delivered to an individual at the address at 11 50 am on October 23, 2019 in WINTER SPRINGS, FL 32708

October 20, 2019
In Transit to Next Facility



October 16, 2019, 1:44 pm

Arrived at USPS Regional Facility
SEMINOLE-ORLANDO FL DISTRIBUTION CENTER

October 15, 2019, 11:07 pm

Departed USPS Regional Facility
TALLAHASSEE FL DISTRIBUTION CENTER

October 15, 2019, 9:52 pm

Arrived at USPS Regional Facility
TALLAHASSEE FL DISTRIBUTION CENTER

Product Information



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Feedback

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FAQs

Halsey Beshears, Secretary

Ron DeSantis, Governor

MEMORANDUM

TO: File
FROM: Service of Process Unit
SUBJECT: Verification of Waiver
DATE: November 15, 2019

Please be advised as of this day no response has been received in the SOP Unit regarding the following case(s) The file(s) is being returned to Legal today

Name
SMITH, DON

Case No
2019019359

