

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2018-059249
CILB

MICHAEL W. HILLIARY,

Respondent.

FINAL ORDER ON WAIVER

The Department of Business and Professional Regulation (hereinafter “Petitioner”) issues this Final Order against Michael W. Hilliary (hereinafter “Respondent”) as follows.

1. An Administrative Complaint was filed in this case on October 8, 2019, alleging that Respondent violated certain provisions of chapters 455 and 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 cover letter were hand served on Respondent on January 22, 2020. Proof of service by hand is attached hereto as Exhibit B.

3. 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.

4. Petitioner made all reasonable efforts to provide actual notice to Respondent.

5. 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.

6. 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.

7. Verification of Waiver is attached as Exhibit C.

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 has had previous violation(s) of chapter(s) 489 Florida Statutes, which resulted in the issuance of Final Order(s), in Department Case Numbers 2016-040423 and 2016-043624.

10. Respondent must pay a total administrative fine of \$10,000.00 pursuant to the penalty/disciplinary guidelines of rule 61-5.007, Florida Administrative Code.

11. 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 \$724.88.

12. 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.**

13. 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 4 day of June, 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 Michael W. Hilliary at 1008 NE 13th Street Ocala, FL 34470, by regular U.S Mail this 12th day of June, 2020.

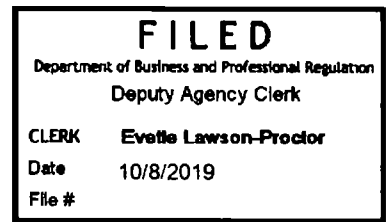


OFFICE OF THE AGENCY CLERK

Copy(s) Furnished to:

Daniel A. David - ULA

Respondent



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

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v.

Case No. 2018-059249
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MICHAEL HILLIARY,

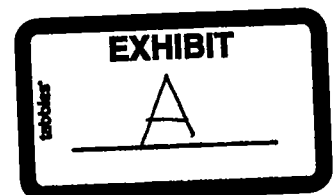
Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation (“Petitioner”) files this Administrative Complaint against Michael Hilliary (“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, 489.13, and 489.127(1)(c) 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/C Man Heating and Cooling an entity properly qualified under the provisions of chapter 489, Florida Statutes.
5. Respondent’s last known address is 1008 NE 13th Street, Ocala, FL 34470.
6. On or about November 16, 2018, an investigation revealed Respondent, D/B/A A/C Man Heating and Cooling, offered contracted, or performed regulated construction



contracting services, including but not limited to installation of an A/C system at 33 Larch Radial, Ocala, Florida 34480.

7. Respondent presented as his own the license number of “Bassam Nasser” #CAC1818030 who is licensed in the state of Florida.

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

COUNT I

9. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs one through eight as though fully set forth herein.

10. 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...”

11. 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.

COUNT II

12. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs one through eight as though fully set forth herein.

13. Section 489.127(1)(c), Florida Statutes, provides “no person shall present as his or her own the certificate or registration of another.

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

15. Based upon the foregoing, Respondent violated section 455.227(1)(q), Florida Statutes, by presenting as his own the license of another in violation of section 489.127(1)(c), Florida Statutes.

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 11th 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: 9/11/19
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.

Halsey Bershears, Secretary

Ron, DeSantis Governor

AFFIDAVIT OF SERVICE OR DILIGENT SEARCH

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
PETITIONER

VS

Michael Hullyary
SUBJECT

CASE NO 2018059249

COMES NOW AFFIANT, WHO FIRST BEING DULY SWORN, DEPOSES AND STATES THAT

AFFIANT IS AN INVESTIGATOR/INSPECTOR EMPLOYED BY THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, STATE OF FLORIDA

ON (DATE) _____, AFFIANT MADE A DILIGENT EFFORT TO LOCATE (SUBJECT), TO SERVE _____ ADMINISTRATIVE COMPLAINT AND RELATED PAPERS, _____ ORDER COMPELLING EXAMINATION(S) _____ SUBPOENAS), _____ FINAL ORDER, _____ NOTICE TO CEASE AND DESIST, _____ ERO/ESO/ISSO AND RELATED PAPERS, _____ CITATION (CHECK APPROPRIATE BLOCK)

(CHECK APPLICABLE ANSWER)
_____ AFFIANT MADE PERSONAL SERVICE ON RESPONDENT AT (LOCATION) _____ ON (DATE) _____

_____ SUBJECT WAS PERSONALLY KNOWN TO AFFIANT OR _____ SUBJECT IDENTIFIED HIMSELF _____ (CHECK APPROPRIATE BLOCK) (ALSO IDENTIFIED BY JAILORS) in

AFFIANT MADE SERVICE ON (NAME) Kayla Malice ON (DATE) 01/23/2020 AT SUBJECT'S USUAL PLACE OF ABODE AT 1910 SE 110th Ave 33130 AND SAID PERSON WAS OVER THE AGE OF 15, RESIDING THERE AS OF THE AFFOREMENTIONED DATE

_____ AFFIANT WAS UNABLE TO MAKE SERVICE AFTER SEARCHING FOR SUBJECT AT (A) ALL ADDRESSES FOR SUBJECT SHOWN IN THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION'S INVESTIGATION OF THE CASE, (B) ALL OFFICIAL ADDRESSES FOR SUBJECT SHOWN IN HIS/HER LICENSING RECORDS OF THE DEPARTMENT, (C) DIVISION OF DRIVER LICENSES, AND (D) ANY OTHERS

[Signature]
SIGNATURE OF AFFIANT

STATE OF FLORIDA,
COUNTY OF Alachua

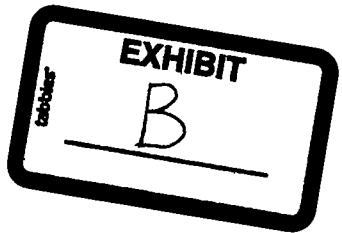
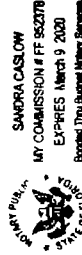
BEFORE ME, APPEARED Jackie Kennedy WHO IS PERSONALLY KNOWN TO ME OR WHOSE IDENTITY I PROVED ON THE BASIS OF _____, AND WHO ACKNOWLEDGES THAT HIS/HER SIGNATURE APPEARS ABOVE

SWORN TO OR AFFIRMED BY AFFIANT BEFORE ME THIS 22nd DAY OF January 2020

[Signature]
NOTARY PUBLIC-STATE OF FLORIDA

Sandra Caslow
TYPE OR PRINT NAME

MY COMMISSION EXPIRES _____



Halsey Beshears, Secretary

Ron DeSantis, Governor

MEMORANDUM

TO: File
FROM: Service of Process Unit
SUBJECT: Verification of Waiver
DATE: November 8, 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

<u>Name</u>	<u>Case No</u>
HILLARY, MICHAEL WAYNE	2018059249

