

FILED	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	12/5/2019
File #	2019-10140

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2018-016336
CILB

RIGER MARTINEZ d/b/a
MS FLORIDA CONSTRUCTION, INC.,

Respondent.

_____ /

FINAL ORDER ADOPTING SETTLEMENT AGREEMENT


The Department of Business and Professional Regulation (“Department”), in accordance with the provisions of section 120.57(4), Florida Statutes, hereby enters this Final Order incorporating and adopting *in toto* the Settlement Agreement entered into between Riger Martinez d/b/a MS Florida Construction, Inc., and the Department, attached hereto as Exhibit 1 and incorporated by reference. Upon consideration of the Settlement Agreement and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED:

1. The Settlement Agreement is approved, adopted, and incorporated herein by reference. Accordingly, the parties shall adhere to and abide by all the terms of the Settlement Agreement.

2. This Final Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 19 day of November, 2019.



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

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 Adopting Settlement Agreement was provided to Respondent c/o Jeff G. Peters, Esq., 3551 Blair Stone Road, Suite 105, Tallahassee, Florida 32301, by regular U.S. Mail this 5th day of December, 2019.



OFFICE OF THE AGENCY CLERK

Copy(s) Furnished to:

Mark S. Miller, Assistant General Counsel - ULA

STATE OF FLORIDA
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RIGER MARTINEZ d/b/a
MS FLORIDA CONSTRUCTION, INC.,

Respondent.

SETTLEMENT AGREEMENT II

Riger Martinez d/b/a MS Florida Construction, Inc., (“Respondent”), and the Department of Business and Professional Regulation (“the Department”), hereby agree to the following Settlement Agreement II and to the entry of a Final Order incorporating Settlement Agreement II as the final resolution of these matters.

STIPULATED FACTS

1. At no time material hereto was Respondent duly registered or certified to engage in the practices of construction contracting in the State of Florida.
2. Through an Administrative Complaint filed by the Department, Respondent was charged and properly served with alleged violations of sections 489.13(1), and 455.227(1)(q), Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit “A.”
3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint attached hereto as Exhibit “A.”



STIPULATED CONCLUSIONS OF LAW

4. Respondent admits that the Department is the state agency having jurisdiction over the practices of construction contracting pursuant to section 20.165, Florida Statutes, and chapters 455 and 489, Florida Statutes.

5. Respondent admits that the facts set forth in the Administrative Complaint, if proven, constitute violations of chapters 455 and 489, Florida Statutes, as alleged in the Administrative Complaint attached hereto as Exhibit "A."

STIPULATED DISPOSITION

6. **ADMINISTRATIVE FINE:** Respondent shall pay an administrative fine totaling \$1,000.00 to the Department.

7. **INVESTIGATIVE COSTS:** Respondent shall pay investigative costs in the amount of \$177.83 to the Department.

8. **METHOD OF PAYMENT:** The payments described above total \$1,177.83. These payments shall be paid within 120 days from the date of the filing of the Department's Final Order adopting Settlement Agreement II. All payments made pursuant to this paragraph shall be in the form of a cashier's or certified check made payable to the Department of Business and Professional Regulation and mailed directly to the Department of Business and Professional Regulation, Revenue Unit, 2601 Blair Stone Road, Tallahassee, Florida 32399. **Your case number must be clearly referenced when making payment.**

9. Respondent agrees to waive demand, notice of non-payment, and protest, and in the event a suit shall be brought for the collection of the outstanding balance of the fine, default interest, and costs, of Settlement Agreement II that has to be collected upon demand of an attorney, Respondent shall be liable to pay Court costs and a reasonable attorney's fee for such

collection.

10. It is expressly understood that a violation of the provisions of Settlement Agreement II shall be considered a violation of chapter 455, Florida Statutes, for which disciplinary action may be initiated.

11. Settlement Agreement II is to be construed and enforced according to the laws of the State of Florida and venue for any legal action related to Settlement Agreement II is agreed by Respondent to be in Leon County, Florida.

12. It is expressly understood that this settlement agreement is subject to the approval of the Secretary of the agency. In this regard, the foregoing paragraphs of the Stipulated Facts, Stipulated Conclusions of Law, and Stipulated Disposition shall have no force and effect unless a Final Order incorporating the terms of Settlement Agreement II is entered herein.

13. Should Settlement Agreement II be rejected, no statement made in furtherance of this settlement agreement by either party may be used as evidence in any subsequent proceeding herein.

14. Upon the filing of a Final Order adopting Settlement Agreement II, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Stipulation of Facts, Conclusions of Law, the Stipulated Disposition, and the Final Order incorporating said settlement agreement, or any part thereof.

15. Upon the adoption of Settlement Agreement II, the parties hereby agree that each party will bear their own attorney's fees and costs, except for investigative costs, resulting from the prosecution and/or defense of this proceeding. The parties waive the right to seek any attorney's fees or costs in connection with this disciplinary proceeding.

16. Settlement Agreement II is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the agency hearing officer and/or Secretary of the agency to review and examine all investigative file materials concerning Respondent, prior to or in conjunction with, consideration of Settlement Agreement II. Should Settlement Agreement II not be accepted, it is agreed that consideration of this settlement agreement and other documents and matters shall not unfairly or illegally prejudice the agency hearing officer and/or Secretary of the agency from further participation, consideration, or resolution of these proceedings.

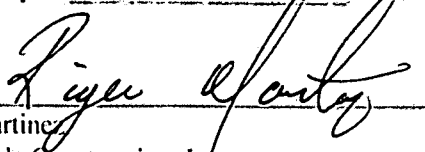
17. Settlement Agreement II may be signed in counterparts, and facsimile copies shall be treated as original.

18. The Department reserves the right to correct any typographical errors or make any non-material changes to this settlement agreement after it is signed.

(Signature Pages to Follow)

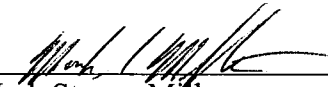
Signed this 22 day of Sept, 2019.

By:


Riger Martinez
MS Florida Construction, Inc.

APPROVED this 26th day of September, 2019.

By:



Mark Steven Miller
Florida Bar No. 0653020
Assistant General Counsel
Office of the General Counsel
Unlicensed Activity Unit
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, FL 32399
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STATE OF FLORIDA
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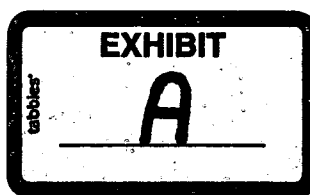
RIGER MARTINEZ d/b/a
MS FLORIDA CONSTRUCTION, INC.,

Respondent.

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation (“Petitioner”) files this Administrative Complaint against Riger Martinez d/b/a MS Florida Construction, Inc., (“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 MS Florida Construction, Inc., an entity properly qualified under the provisions of chapter 489, Florida Statutes.
5. Respondent’s last known address is 1832 West 72nd Street, Hialeah, FL 33014.



6. On or about August 17, 2017, Respondent, d/b/a MS Florida Construction, Inc., offered, contracted, or performed regulated construction contracting services, including but not limited to, demolition and plumbing services, at 6134 N.W. Hialeah Lakes, Florida 33015.

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 27th day of November, 2018.

JONATHAN ZACHEM, Secretary
Department of Business and
Professional Regulation

By: /s/ Mark S. Miller
Mark Steven Miller
Florida Bar No. 0653020
Assistant General Counsel
Office of the General Counsel
Unlicensed Activity
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399
Ph: 850.717.1201
Fax: 850.921.9186
mark.miller@myfloridalicense.com

PC Found: 11/27/18

By: DBPR

MSM

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.