

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

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,**

Petitioner,

v.

GUILLERMO CALDERON

CASE NO. 2018-028301

ECLB

Respondent,

FINAL ORDER

The Department of Business and Professional Regulation (Department) hereby enters this Final Order for the above styled matter. On October 28, 2019, 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 \$500.00 and investigative costs in the amount of \$102.95 for a total amount of \$602.95. 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 180 calendar days of the effective date of this Final Order. Case number **2018-028301** 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 24 day of November 2019.



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 Certified U.S. Mail to: Respondent at 6205 Kendall Lakes Circle, Apt. F186, Miami, Florida 33183, on this 9th day of December, 2019.



AGENCY CLERK'S OFFICE

cc:

Alison Parker, Hearing Officer
Maureen White, ULA Chief Attorney
Eduardo Morles, 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.

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	10/29/2019
File #	

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case Nos. 2018-028301
ECLB

GUILLERMO CALDERON,

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 September 17, 2019, in Tallahassee, Florida, in accordance with the provisions of Section 120.57(2), Florida Statutes, for consideration of the Department's Administrative Complaint filed February 11, 2019. Eduardo Morles, under the supervision of Maureen White, Chief Attorney, represented Petitioner. Respondent appeared at the hearing in person. 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 electrical contracting pursuant to chapter 489, Florida Statutes.
2. On or about February 12, 2018, Respondent offered, contracted, or performed regulated electrical contracting services including, but not limited to, replacing electrical panel, installing kitchen outlets, replacing switches and smoke detectors, at 5700 SW 55th Street, Miami, Florida 33155.

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

4. On February 11, 2018, the Department filed an Administrative Complaint charging Respondent with “violating section 455.227(1)(q), Florida Statutes, by practicing electrical contracting without the requisite license, in violation of section 489.531(1)(a), Florida Statutes.”

5. On or about February 12, 2018, the Department received Respondent’s Election of Rights in Case number 2018-028301. Respondent had selected option 2, indicating he wishes to dispute the material facts set forth in the Administrative Complaint in front of an Administrative Law Judge at the Division of Administrative Hearings.

6. 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.

7. On or about March 5, 2019, Petitioner served a Notice of Non-Compliance and Amended Election of Rights upon Respondent for this case via U.S. mail.

8. Ultimately, Respondent failed to timely return an Amended Election of Rights.

9. On or about September 5, 2019, Respondent was notified of his right to attend an informal hearing, scheduled for September 17, 2019.

10. At the informal hearing on September 17, 2019, the undersigned granted Petitioner’s *ore tenus* Motion for Informal Hearing. Subsequently, an informal hearing pursuant to section 120.57(2), Florida Statutes was conducted with all parties in attendance.

11. During the informal hearing, Respondent testified that he was an independent contractor working under the owner’s license.

CONCLUSIONS OF LAW

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

13. Petitioner is the state agency charged with regulating the practice of electrical contracting pursuant to section 20.165, Florida Statutes, and Chapters 455 and 489, Florida Statutes.

14. Petitioner has jurisdiction over the unlicensed practice of electrical contracting pursuant to sections 455.227, 455.228, and 489.531, Florida Statutes.

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

16. Section 489.531(1)(a), Florida Statutes, provides “a person may not practice [electrical] contracting unless the person is certified or registered.”

17. Based upon the foregoing, Respondent violated section 455.227(1)(q), Florida Statutes, by practicing electrical contracting without the requisite license, in violation of section 489.531(1)(a), Florida Statutes.

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

- a. “(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.”

19. However, according to Rule 61-5.007(8), Florida Administrative Code, mitigation may be considered in certain circumstances:

- (a) Monetary or other damage to the unlicensed person's customer and/or other persons, in any way associated with the violation, which damage the unlicensed person has not relieved as of the time the penalty is to be assessed.
- (b) The severity of the offense.
- (c) The danger to the public.
- (d) The number of repetitions of offenses.
- (e) The number of complaints filed against the unlicensed person.
- (f) The length of time the unlicensed person has been engaging in unlicensed activity.
- (g) The actual damage, physical or otherwise, to the unlicensed person's customer.
- (h) The deterrent effect of the penalty imposed.
- (i) The effect of the penalty upon the unlicensed person's livelihood.
- (j) Any efforts at rehabilitation.

20. For purposes of the penalty guidelines, Respondent is a first-time offender. There was not malicious intent and it does not appear the customer was harmed or unduly harmed in this case. Even though it is impermissible to work under someone else's license as an independent contractor, it does appear that the owner was confirming that his work was sufficient and safe.

21. With additional education on the requirements of state licensure law, Respondent is not likely to be a recidivist or a danger to the public; however, a fine should be assessed as a deterrent to committing future unlicensed activity. Respondent simply cannot work under another electrician's license as an independent contractor, even if the ostensible danger to the public appears low.

22. Considering the totality of the circumstances, mitigation is appropriate to apply when assessing the penalty in this case.

23. 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."

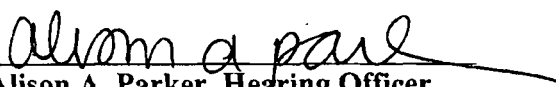
24. Respondent is cautioned that subsequent acts of unlicensed activity will be dealt with in a much more stringent manner, and he is encouraged to fervently educate himself on licensure law or seek counsel from those who can assist him with this endeavor.

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 \$500.00 and investigative costs in the amount of \$102.95, for a total amount of **\$602.95** within 365 days within the date of the applicable Final Order in this matter.

Respectfully submitted this 28th day of October 2019.


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 Respondent at 6205 Kendall Lakes Circle, Apt. F186, Miami, Florida 33183, this 29 day of October 2019, by regular U.S. Mail.


AGENCY CLERK'S OFFICE

Copies Furnished to:

Alison A. Parker, Hearing Officer
Maureen White, Chief Attorney – ULA
Eduardo Morles, 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	2/11/2019
File #	

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2018-028301
ECLB

GUILLERMO CALDERON,

Respondent.

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation ("Petitioner") files this Administrative Complaint against Guillermo Calderon ("Respondent"), and alleges:

1. Petitioner is the state agency charged with regulating the practice of electrical contracting pursuant to section 20.165, Florida Statutes, and chapters 455 and 489, Florida Statutes.

2. Petitioner has jurisdiction over the unlicensed practice of electrical contracting pursuant to sections 455.227, 455.228, and 489.531, Florida Statutes.

3. At no time material hereto was Respondent duly registered or certified to engage in the practice of electrical contracting pursuant to chapter 489, Florida Statutes.

5. Respondent's last known address is 6821 SW 147th Avenue, Apt. 3E, Miami, Florida 33193-1008.

6. On or about February 12, 2018, Respondent offered, contracted, or performed regulated electrical contracting services, including but not limited to, replacing electrical panel, installing kitchen outlets, replacing switches and smoke detectors, at 5700 SW 55th St, Miami, Florida 33155

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

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

9. Section 489.531(1)(a), Florida Statutes, provides “a person may not practice [electrical] contracting unless the person is certified or registered.”

10. Based upon the foregoing, Respondent violated section 455.227(1)(q), Florida Statutes, by practicing electrical contracting without the requisite license, in violation of section 489.531(1)(a), 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 31st day of January, 2019.

HALSEY BESHEARS, Secretary
Department of Business and
Professional Regulation

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

PC Found: January 31, 2019
By: DBPR

DS

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.