

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Murray appeal of the decision of the Seminole County Building Contractor Examiner's Board

DEPARTMENT: Planning & Development **DIVISION:** Building & Fire Prevention

AUTHORIZED BY: Dan Matthys **CONTACT:** Tom Helle **EXT.** 7338

Agenda Date	<u>12-20-05</u>	Regular <input checked="" type="checkbox"/>	Consent <input type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
		Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Adopt the hearing officer's findings, conclusions and recommendation and in doing so, affirm the decision of the Building Contractors Examiner's Board and issue an additional letter of reprimand to be placed in the contractor's permanent file.

BACKGROUND:

A complaint from Ms. Toni Murray versus Robert Hampson and CVI Windows and Doors was filed with Seminole County on 5-11-04. The complaint was heard by the Building Contractor Examiner's Board on 12-07-04. The case was presented by staff with testimony provided by Ms. Toni Murray and Mr. & Mrs. Robert Hampson. The Examiners Board, at that time, rendered a decision to dismiss five (5) of the charges and found the respondent in violation of Section 489.1425, Florida Statutes, for failing to provide a recovery fund statement on the contract. The Examiners Board issued a letter of reprimand to the contractor.

Ms. Murray appealed the Examiner's Board decision to the Board of County Commissioners on 4-12-05. The Board of County Commissioners referred the matter to a hearing officer. The case was heard by Mr. Michael S. Orfinger, Hearing Officer, on 9-26-05 with both parties presenting their respective cases. In Mr. Orfinger's Recommended Findings and Order, he recommended that an additional letter of reprimand be issued to the contractor determined in violation of Section 489.126(2)(A), Florida Statutes, for failing to apply for the required permit within 30 days of receiving deposit money from Ms. Murray. Mr. Orfinger further recommends that the findings of the Examiners Board, as well as the discipline imposed, be left undisturbed and all other claims be dismissed.

Reviewed by:	<u>12-6-05</u>
Co Atty:	<u>[Signature]</u>
DFS:	_____
Other:	_____
DCM:	_____
CM:	_____
File No.	<u>rpdb01</u>

STAFF RECOMMENDATION:

Staff recommends that the Board of County Commissioners adopt the Recommended Findings and Order of Hearing Officer and issue to the contractor the additional letter of reprimand.

Attachments: Recommended Findings and Order of Hearing Officer

PROCEEDINGS BEFORE A HEARING OFFICER OF
THE BOARD OF COUNTY COMMISSIONERS
OF SEMINOLE COUNTY, FLORIDA

SEMINOLE COUNTY BUILDING
CONTRACTOR EXAMINERS BOARD,

Petitioner,

LICENCE #CGC060587

CASE NO.: 04-012-001B

RECEIVED
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v.

ROBERT HAMPSON, CGC060587,
and CVI WINDOWS AND DOORS,

Respondents.

**RECOMMENDED FINDINGS AND ORDER
OF HEARING OFFICER**

THIS MATTER came on for hearing before me, the undersigned hearing officer, on September 26, 2005. Complainant, TONI MURRAY ("Murray"), appeals the Findings and Order of the Seminole County Building Contractor Examiners Board ("Board") dated December 10, 2004 and executed by the Clerk of the Board on December 22, 2004. All parties were given notice of the hearing and an opportunity to be heard. Complainant appeared at the hearing together with her counsel. Respondents, ROBERT HAMPSON and CVI WINDOWS AND DOORS (collectively "Respondents") likewise appeared at the hearing, together with Robert Hampson's spouse Nancy Hampson. Present on behalf of Seminole County were Tom Helle and Paul Watson. I have heard the sworn testimony of witnesses, received documents in evidence, and reviewed the record of the proceedings before the Board. Being otherwise duly advised in the premises, and based upon the evidence I find more credible, I make the following recommended findings of fact, conclusions of law, and ruling.

The Order being appealed found Respondents in violation of Fla.Stat. §489.1425(1), by virtue of Respondents' failure to include on their contract with Complainant a written explanation of her rights under the Construction Industries Recovery Fund. The Board found a letter of reprimand to be the appropriate discipline for this violation. Respondents have not challenged these findings. Complainant, however, appeals the Board's dismissal of six other charges levied against the Respondents. The underlying facts, and the various charges, are discussed below.

FINDINGS OF FACT

The evidence shows that on or about November 6, 2001, Complainant and Respondents entered into a contract pursuant to which Respondents were to supply and install a bay window in Complainant's home, reconstruct the base wall underneath, and supply and install a sliding glass door. The contract price was \$7,990.64. The contract called for Complainant to pay an initial deposit of \$2,700.00, an additional \$2,000.00 at the time of delivery of materials to the job site, and the balance upon completion. The contract did not contain the notice required by Fla.Stat. §489.1425 regarding the Construction Industries Recovery Fund.

Complainant paid Respondents \$2,700.00 on or about November 6, 2001, and \$2,000.00 more on or about January 29, 2002. Respondents applied to Seminole County for a building permit on January 15, 2002, and the building permit was issued on that same date.

During the course of the project, Complainant became concerned about the size of the windows and doors being installed, and about Respondents' overall workmanship. Complainant further was concerned that Respondents' building permit did not encompass

reconstruction of the base wall beneath the bay window, or any electrical work associated therewith. After Complainant contacted the Seminole County Building Department, Paul Watson of that Department inspected the site and issued a verbal stop-work order. Respondent did no further work at the job site after that time.

The County requested that Respondents furnish sealed engineering drawings for the wall to be reconstructed below the bay window. Respondents did so on or about April 9, 2002. On April 24, 2002, however, Complainant terminated Respondents, and thereafter engaged another contractor to complete the project.

Complainant filed a complaint with the Board in May 2004.¹ The Board reviewed

and considered the following alleged acts of wrongdoing by Respondents:

- a. Failure to apply for a building permit within 30 days of receiving payment, in violation of Fla.Stat. §489.126(2)(a).
- b. Failure to provide a statement of Complainant's rights under the Construction Industry Recovery Fund, in violation of Fla.Stat. §489.1425.
- c. Failure to secure a permit for electrical work performed on the job, in violation of Fla.Stat. §489.127(1)(h); Seminole County Code §§40.4 and 40.71(a), and Florida Building Code §104.1.1.
- d. Allowing electrical work to be completed without a license, in violation of Seminole County Code §40.71(b).
- e. Allowing the work to continue in an unworkmanlike manner, in violation of Seminole County Code §40.34(a)(2).
- f. Pouring a portion of fill cells prior to inspection, contrary to Florida Building Code §105.4.
- g. Attempting to conceal work from the Building Division, in violation of Seminole County Code §40.34(a)(10).

The Board found that Respondents had committed violation (b) above, i.e. failed to provide Complainant with a statement of her rights under the Construction Industry

¹ I note that Complainant has not, at least as of this time, filed suit against Respondents.

Recovery Fund, but dismissed the remaining charges against them. Because the Board's finding of this violation remains unchallenged, I address only the remaining six alleged violations.

Failure to apply for a building permit within 30 days of receiving payment, in violation of Fla.Stat. §489.126(2)(a). The cited statute provides, in pertinent part:

(2) A contractor who receives, as initial payment, money totaling more than 10 percent of the contract price for repair, restoration, improvement, or construction to residential real property must:

(a) Apply for permits necessary to do work within 30 days after the date payment is made, except where the work does not require a permit under the applicable codes and ordinances,

unless the person who made the payment agreed, in writing, to a longer period to apply for the necessary permits or start the work or to longer periods for both. (emphasis added)

The evidence in this case shows without dispute that Complainant paid respondent \$2,700.00 on or about November 6, 2001, and this amount exceeded 10 percent of the contract price. The evidence is further undisputed that Respondents did not apply for a building permit until January 15, 2002, well over the 30-day time limit imposed by statute. Respondents' excuse that they believed it unnecessary to apply for a building permit until receiving the materials for the job is neither credible nor sufficient, and flies in the face of the plain wording of the statute. The Board articulated no reason for dismissing this charge, other than the statement of one member that, "I feel on a personal level that item one needs to be stricken from the complaint." See Transcript of Proceedings at p. 75, ll. 7-8. I therefore find that Respondents violated Fla.Stat. §489.126(2)(a).

Failure to secure a permit for electrical work performed on the job. Fla.Stat. §489.127(1)(h) prohibits any person from commencing or performing work “for which a building permit is required pursuant to Chapter 553 without such building permit being in effect.” Section 40.71(a) of the Seminole County Code further provides:

It shall be unlawful for any person to do any electrical work on any building without a permit issued by the Building Division; provided, however, that this section shall not apply to work done by employees of public utility companies as provided for in Subsection 40.26(b); or the repair of damaged apparatus or equipment and ordinary work necessary for its maintenance of the same; or service calls involving no wiring or installation of equipment or fixtures.

Complainant has failed to show by a preponderance of the evidence that Respondent performed “electrical work” at her property. At the very most, the evidence shows that Respondents detached the electrical outlet from the wall beneath the bay window, demolished and rebuilt the wall, and reattached the outlet to the newly rebuilt wall. The evidence does not show that Respondents provided new electrical wiring or equipment. Although there was some evidence that Respondents may have provided a new receptacle box to which the outlet would be mounted, that evidence on this point was equivocal and, in any event, does not rise to the level of “electrical work”.

Allowing electrical work to be completed without a license, in violation of Seminole County Code §40.71(b). This charge is tied to the preceding charge of failing to secure a building permit for electrical work. Because I find by the greater weight of the evidence that Respondents did not perform electrical work on the subject project, I likewise find no violation of Seminole County Code 40.71(b).

Allowing the work to continue in an unworkmanlike manner, in violation of Seminole County Code §40.34(a)(2). The evidence suggests that Respondents’ masonry

work was, at a minimum, sloppy. See Transcript of Proceedings at pp. 69, 75, 77. However, Complainant has failed to show by a preponderance of the evidence that Respondents' work failed to comply with applicable building codes. I find it significant that the County's Deputy Building Official, Tom Helle, withdrew this charge at the hearing before the Board, rather than prosecute it. I also note that Respondents' contract states that, "All work to be completed in a workmanshiplike Manner [sic] according to standard practices." However, because Complainant terminated Respondents after the "stop-work" order was issued, one cannot know whether the completed project would ultimately have met a "workmanlike" standard. Cf. North Am. Van Lines v. Collyer, 616 So.2d 177, 179 (Fla. 5th DCA 1993) ("a party who, by his own acts, prevents performance of a contract provision cannot take advantage of his own wrong").

Pouring a portion of fill cells prior to inspection, contrary to Florida Building Code §105.4. Complainant has failed to show by the greater weight of the evidence that Respondents performed this work. Indeed, the evidence appears instead to show that the contractor Complainant subsequently hired performed this work. I find no violation in this regard.

Attempting to conceal work from the Building Division, in violation of Seminole County Code §40.34(a)(10). This charge appears to be premised on the assumption that Respondents poured a portion of the fill cells prior to inspection. Because I find that Respondents did not do so, this claim of violation must fail as well.

CONCLUSIONS OF LAW AND RECOMMENDED RULING

A. I find that Respondents have violated Fla.Stat. §489.126(2)(a) by failing to apply for the necessary building permit within 30 days of receiving deposit money from

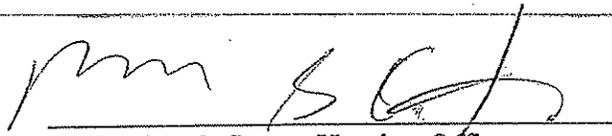
Complainant. It is my recommendation that a letter of reprimand be issued against Respondents, and placed in the County's files.

B. I leave undisturbed the finding that Respondents violated Fla.Stat. §489.1425, as well as the discipline previously imposed therefor.

C. As to the remaining claims of violation, I find in favor of the Respondents, and recommend that said claims be dismissed.

DATED this 5th day of October, 2005.

Respectfully submitted,



Michael S. Orfinger, Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by U.S. Mail to Stephen P. Lee, Esq., Deputy County Attorney, 1101 East 1st Street, Sanford, FL 32771-1468; and that a true and correct copy of the foregoing has been furnished by U.S. Mail to Earnest DeLoach, Jr., Esq., Shutts & Bowen, LLP, Post Office Box 3856, Orlando, FL 32802-4956; and Robert Hampson and CVI Windows and Doors, 510 Gatlin Avenue, Orlando, FL 32806-6914, all on this 5th day of October, 2005.



Michael S. Orfinger