

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	4/16/2012
File #	

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2011-027895

MICHAEL SMITHEM,

Respondent.

ADMINISTRATIVE COMPLAINT

The Department Of Business and Professional Regulation (Petitioner), files this Administrative Complaint before the Board of Building Code Administrators and Inspectors, against Michael Smithem (Respondent), and alleges:

1. Petitioner is the state agency charged with regulating the practice of building code administration and inspection pursuant to Section 20.165, Florida Statutes, and Chapters 455 and 468, Part XII, Florida Statutes.

2. Respondent is a licensed Standard Inspector (Building) in the State of Florida, having been issued license number BN 4509.

3. Respondent's address of record is 1945 Sheffield Ave., Marco Island, FL 34145.

Material Facts

4. The City of Marco Island hired Respondent as a Standard Building Inspector and Plans Reviewer on or about May 27, 2001.
5. Respondent applied to the Department for a Provisional Building Inspector license on July 2, 2001.
6. The Department issued Respondent a Provisional Building Inspector license on October 9, 2001.
7. While working with on the provisional license, Respondent was supervised by Robert Mahar, who also held only a provisional license as a building code administrator.
8. The Department issued Respondent a Standard Building Inspector license on February 28, 2003.
9. Respondent performed inspections for the City of Marco Island without holding a Provisional Building Inspector license.
10. Respondent performed inspections for the City of Marco Island on a Provisional License while under the supervision of another Provisional License holder.

Conclusions of Law

11. Section 468.621(1)(a), Florida Statutes, subjects a licensee to discipline for "[v]iolating or failing to comply with any provision of this part, or a valid rule or lawful order of the board or department pursuant thereto."

12. Section 468.609(7)(d), Florida Statutes, states: "A newly employed or hired person may perform the duties of a plans examiner or building code inspector for 90 days if a provisional certificate application has been submitted, provided such person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found such person qualified for a provisional certificate."

13. Based upon the facts set forth above, Respondent violated Section 468.621(1)(a), Florida Statutes, through a violation of Section 468.609(7)(d), Florida Statutes, when he:

- a. Performed inspections for the City of Marco Island without holding a provisional license.
- b. Performed inspections for the City of Marco Island while on a provisional license, under the supervision of another provisional license holder.

WHEREFORE, Petitioner respectfully requests the Building Code Administrators and Inspectors Board enter an order imposing one or more of the following penalties: suspension or permanent revocation or of Respondent's license, restriction of Respondent's practice, imposition of an administrative fine not to exceed \$5,000 for each count or separate offense, issuance of a reprimand, placement of Respondent on probation subject to specified conditions, corrective action, assessment of costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time or any other

relief that the Florida Board of Building Code Administrators and Inspectors is authorized to impose pursuant to Chapters 455 and 468, Florida Statutes, and the rules promulgated thereunder.

Signed this 10th day of April, 2012.

KEN LAWSON, Secretary
Department of Business and
Professional Regulation

By: LeChea C. Parson

LeChea C. Parson
Assistant General Counsel
Florida Bar No. 0016869
Office of the General Counsel
1940 N. Monroe Street, Ste. 42
Tallahassee, FL 32399-2202
(850) 488-0062 Telephone
(850) 414-6749 Facsimile

PC Found: 4/4/12
PC Found By: McCormick, Dudley, and Kymalainen

LP/pjm

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 FURTHER 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. 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 the Respondent in addition to any other discipline imposed.