

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	<b>Evette Lawson-Proctor</b>
Date	<b>2/23/2012</b>
File #	

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2011-028068

ROBERT MAHAR,

Respondent.

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ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation (Petitioner), files this Administrative Complaint before the Board of Building Code Administrators and Inspectors, against Robert Mahar (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. At certain times material to this complaint, Respondent was a licensed Building Code Administrator in the State of Florida, having been issued license number BU 1369, on February 5, 2004.

3. At prior times material to this Complaint, Respondent was licensed as a Provisional Building Code Administrator in the

State of Florida, having been issued license number PBC 131 on April 4, 2001.

4. Respondent's address of record is 7041 Appleby Dr., Naples, FL 34104.

MATERIAL FACTS

5. At all time material to this Complaint, Respondent was acting as the building code administrator for the City of Marco Island.

6. Respondent did not obtain his standard building code administrator license until February 5, 2004.

7. On or about April 1, 2002, the City of Marco Island hired Bruce Yakola as an electrical inspector.

8. Respondent knew or had reasonable grounds to know Mr. Yakola was hired as an electrical inspector on or about April 1, 2002.

9. On or about April 4, 2002, Mr. Yakola began performing electrical inspections for the City of Marco Island.

10. Respondent was Mr. Yakola's supervisor in performing his duties as a provisional electrical inspector.

11. Respondent submitted multiple Affidavits in support of Mr. Yakola's applications to the Board of Building Code Administrators and Inspectors to become a provisional electrical inspector and a standard electrical inspector.

12. On or about April 14, 2003, Respondent stated in an affidavit to DBPR (form DBPR BCAI 4252) that Mr. Yakola's employment for the City of Marco Island began in April 2003.

13. Respondent wrote: "Newly hired Electrical Inspector" in the comment section of the affidavit.

14. On or about May 14, 2003, Respondent stated in an affidavit to DBPR (form DBPR BCAI 4252) that Mr. Yakola's employment for the City of Marco Island began in April 2003.

15. Respondent wrote: "Newly hired Electrical Inspector" in the comment section of the affidavit.

16. On or about December 13, 2004, Respondent stated in an affidavit to DBPR (form DBPR BCAI 4252) that Mr. Yakola's employment for the City of Marco Island began in June 2003.

#### COUNT I

17. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs one (1) through sixteen (16) as though fully set forth therein.

18. Section 468.621(1)(f), Florida Statutes (2002-2004), subjects a licensee to discipline for "[m]aking or filing a report or record which the certificateholder knows to be false, or knowingly inducing another to file a false report or record, or knowingly failing to file a report or record required by state or local law, or knowingly impeding or obstructing such

filing, or knowingly inducing another person to impede or obstruct such filing."

19. Based upon the facts set forth above, Respondent violated Section 468.621(1)(f), Florida Statutes (2002-2004), in one or more of the following ways:

- a. Knowingly filed a false affidavit on or about April 14, 2003, which misstated Mr. Yakola's range of employment.
- b. Knowingly filed a false affidavit on or about May 14, 2003, which misstated Mr. Yakola's range of employment.
- c. Knowingly filed a false affidavit on or about December 13, 2004, which misstated Mr. Yakola's range of employment.

20. Based on the foregoing, Respondent violated Section 468.621(1)(f), Florida Statutes (2002-2004), when he knowingly made false statements to the Board of Building Code Administrators and Inspectors.

#### COUNT II

21. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs one (1) through sixteen (16) as though fully set forth therein.

22. Section 455.227(1)(a), Florida Statutes (2002-2004), subjects a licensee to discipline for "[m]aking misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession."

23. Based upon the facts set forth above, Respondent violated Section 455.227(1)(a), Florida Statutes (2002-2004), in one or more of the following ways:

- a. Knowingly filed a false affidavit on or about April 14, 2003, which misstated Mr. Yakola's range of employment.
- b. Knowingly filed a false affidavit on or about May 14, 2003, which misstated Mr. Yakola's range of employment.
- c. Knowingly filed a false affidavit on or about December 13, 2004, which misstated Mr. Yakola's range of employment.

24. Based on the foregoing, Respondent violated Section 455.227(1)(a), Florida Statutes (2002-2004), when he made misleading or deceptive statements related to the practice of building code inspection.

#### COUNT III

25. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs one (1) through sixteen (16) as though fully set forth therein.

26. Section 468.621(1)(a), Florida Statutes (2002-2004), 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."

27. Rule 61G19-6.012(6)(b), Florida Administrative Code, states "[f]ollowing the submission of an application for provisional certification as either an inspector or plans

examiner, the applicant shall be eligible to perform duties in the category for which the application has been submitted for up to a maximum of one hundred twenty (120) days from the date the application is submitted, and subject to the following conditions:

(b) All duties performed by the applicant under this exception shall be performed under the direct supervision of the building code administrator for the agency employing the applicant. The building code administrator shall hold a current, valid standard certificate as a building code administrator at all times when he or she is supervising the applicant. However, direct supervision may be provided by a building code administrator who holds a limited or provisional certificate in any county with population of less than 75,000 and in any municipality located within such a county."

28. Based on the facts set forth above, Respondent violated Section 468.621(1)(a), through a violation of Rule 61G19-6.012(6)(b), Florida Administrative Code, by supervising a provisional certificate holder while holding only a provisional building code administrator license instead of a standard certificate as a building code administrator.

#### COUNT IV

29. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs one (1) through sixteen (16) as though fully set forth therein.

30. Section 455.227(1)(m), Florida Statutes (2002-2004), subjects a licensee to discipline for "[m]aking deceptive, untrue, or fraudulent representations in or related to the

practice of a profession or employing a trick or scheme in or related to the practice of a profession."

31. Based upon the facts set forth above, Respondent violated Section 455.227(1)(m), Florida Statutes (2002-2004), in one or more of the following ways:

- a. Knowingly filed a false affidavit on or about April 14, 2003, which misstated Mr. Yakola's range of employment.
- b. Knowingly filed a false affidavit on or about May 14, 2003, which misstated Mr. Yakola's range of employment.
- c. Knowingly filed a false affidavit on or about December 13, 2004, which misstated Mr. Yakola's range of employment.

32. Based on the foregoing, Respondent violated Section 455.227(1)(m), Florida Statutes (2002-2004), when he made untrue and deceptive statements related to the practice of building code inspection by filing an affidavit in his position as a building code administrator.

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 22<sup>nd</sup> day of February, 2012.

KEN LAWSON, Secretary  
Department of Business and  
Professional Regulation

By: LeChea C. Parson  
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PC Found: 2/8/12  
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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.