



DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2012 FEB 27 P 12:13

HEARINGS OFFICE

CONTRACTORS LICENSE BOARD  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the )  
Contractor's Licenses of )  
 )  
THREE POINT RESTORATION, )  
INC., doing business as 3 POINT )  
RESTORATION HAWAII, INC., also )  
doing business as 3 POINT )  
RESTORATION HAWAII; EDWARD )  
J. DEMATTOS, )  
 )  
Respondents. )  
 )

CLB 2007-210-L

BOARD'S FINAL ORDER

BOARD'S FINAL ORDER

On November 1, 2011, the duly appointed Hearings Officer issued her proposed Findings of Fact, Conclusions of Law and Recommended Order in the above-entitled matter. The parties were given an opportunity to file written exceptions; however, no exceptions were filed.

Upon review of the entire record of this proceeding, the Contractors License Board ("Board") adopts the Hearings Officer's recommended decision as the Board's Final Order and finds and concludes that Respondents violated HRS §§ 444-25.5(a), 444-25.5(b) and HAR §§ 16-77-79, 16-77-80 and 16-77-97 and dismisses the charges that Respondents violated HRS §§ 444-9.3, 444-17(17) and HAR § 16-77-33(d). The charges that Respondent DeMattos violated HAR §§ 16-77-17 and 16-77-79 are also dismissed.

For the violations found, the Board orders that Respondent Three Point's license be revoked, and that Respondent Three Point return all indicia of licensure to the Executive Officer of the Board. The Board also orders that Respondent DeMattos pay a

fine in the amount of \$2,000.00 within sixty (60) days of the Board's Final Order. If Respondent DeMattos fails to pay the fine within the time specified, upon filing of a declaration by Petitioner attesting to such failure, Respondent's license shall be automatically suspended. At that time, Respondent will be required to return all indicia of licensure to the Board. Respondent's license will be automatically reinstated pursuant to the procedures set forth in HRS § 92-17(c)(3) upon filing of a declaration by Petitioner that Respondent complied with the Board's Final Order.

DATED: Honolulu, Hawaii, FEB 24 2012

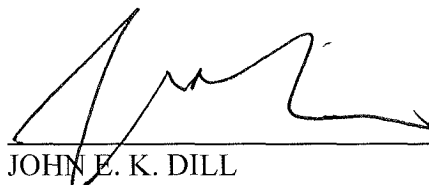


NEAL ARITA  
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Board Member



JOHN E. K. DILL  
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PETER LEE  
Board Member



ALDON K. MOCHIDA  
Board Member

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Vice Chairperson

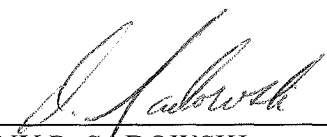
ANACELTO "JOEY" ALCANTARA, JR.  
Board Member



WILLIAM A. KAMA  
Board Member

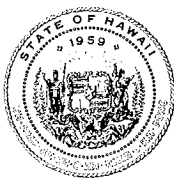
HAROLD L. MARTIN  
Board Member

  
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JOHN POLISCHECK, JR.  
Board Member

  
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DENNY R. SADOWSKI  
Board Member

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DARYL SUEHIRO  
Board Member

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GERALD YAMADA  
Board Member



OFFICE OF COMMERCE AND CONSUMER AFFAIRS

2011 NOV -1 P B 33

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CLB 2007-210-L

HEARINGS OFFICER'S FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
RECOMMENDED ORDER

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND RECOMMENDED ORDER

I. INTRODUCTION

On December 16, 2010, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner") filed a petition for disciplinary action against the contractor's licenses of Three Point Restoration, Inc., doing business as 3 Point Restoration Hawai'i, Inc., also doing business as 3 Point Restoration Hawai'i and Edward J. DeMattos ("Respondents"). The matter was set for hearing pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92, 436B and 444, and the Notice of Hearing and Pre-Hearing Conference ("Notice") was transmitted to the parties.

By a letter dated March 3, 2011, Respondent Edward J. DeMattos ("Respondent DeMattos") filed a Motion to Dismiss ("Motion"). A hearing on Respondent's Motion was scheduled for April 5, 2011. On March 21, 2011, Petitioner filed a memorandum in

opposition to the Motion and on March 29, 2011, Respondent DeMattos filed a response to Petitioner's memorandum in opposition to the Motion.

On April 5, 2011, a hearing was held on the Motion. Petitioner was represented by Wendy J. Utsumi, Esq. Respondent DeMattos appeared *pro se*. Respondent Three Point Restoration, Inc., doing business as 3 Point Restoration Hawai'i, Inc., also doing business as 3 Point Restoration Hawai'i ("Respondent Three Point") failed to enter an appearance. The matter was taken under advisement, and on April 7, 2011, the Hearings Officer issued an order denying the Motion.

On July 12, 2011, the hearing was conducted by the undersigned Hearings Officer. Wendy J. Utsumi, Esq. represented Petitioner. Respondent DeMattos appeared *pro se*. Respondent Three Point failed to enter an appearance. Notice having properly been given, the hearing proceeded as scheduled.

Having reviewed and considered the evidence and arguments presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order.

## II. FINDINGS OF FACT

1. Respondent DeMattos was licensed by the Contractors License Board ("Board") as a "B" general contractor on February 13, 1990, license number BC 15765. On March 24, 1995, the C-33 (painting and decorating), C-44 (sheet metal), and C-48 (structural steel) specialty contractor licenses were added to Respondent DeMattos' license. Respondent's license has been on inactive status since September 1, 2006.

2. Respondent Three Point was the holder of a "B" general contractor license from June 2, 2004 to August 2, 2008. Respondent's license number is BC 25166.

3. Respondent DeMattos was the only responsible managing employee ("RME") designated by Respondent Three Point from June 2, 2004 to August 31, 2006.

4. In June 2006, Respondent Three Point contracted with Reginald Pense, Jr. ("Complainant") to perform renovation work at Complainant's residence in Honolulu, Hawai'i (the "Project").

5. The Project included removing window units and installing them in a new position, preparation and repair of ceiling and wall damage, removal of carpeting and installation of underlayment and Pergo-type flooring.

6. Prior to starting work on the Project, Respondents failed to disclose to Complainant any lien rights, the approximate amount of the work to be subcontracted, or bond information. Respondents did not provide Complainant with a written contract.

7. Respondent Three Point provided Complainant with Invoice #622 dated June 5, 2006, which described the work to be performed and the cost. This invoice did not include Respondent Three Point's license classifications, the date the work was to commence and the number of days for completion, the approximate percentage of work to be subcontracted and the names and license numbers of all subcontractors, a clear statement of the risk of loss of any payments made to a sales representative, terms of any warranty, and the signatures of the homeowner and the contractor. The invoice amount was \$26,874.83. Complainant paid Respondent Three Point the full amount of the invoice but was later refunded \$1,000.00.

8. The invoice did not include the signature of the RME, Respondent DeMattos.

9. Complainant never met with Respondent DeMattos about the Project. The only person Complainant dealt with from Respondent Three Point was Jeff Klett.

10. DeMattos did not supervise the work at the Project.

11. At the Project, the living room sliding glass door frame was installed improperly and does not conform to industry standards.

12. At the Project, the laminate flooring was not installed properly and does not conform to industry standards.

13. Complainant was not satisfied with the work on the Project and the problems were not addressed or repaired to his satisfaction.

14. Jeff Klett is the owner of Respondent Three Point. It is Respondent DeMattos' recollection that Mr. Klett brought Jeff Green into the company about April or May of 2006. It is Respondent DeMattos' impression that Mr. Klett granted Mr. Green complete control of Respondent Three Point's operations and accounting.

15. Respondent DeMattos became uncomfortable with the way Messrs. Klett and Green were running Respondent Three Point so he chose to resign as RME of the company. However, as a courtesy to Messrs. Klett and Green, he did not resign immediately, but as a professional courtesy to them, extended the effective date of his resignation by several weeks so that they would have time to do the paperwork to get another RME in place.

16. On August 24, 2006, the Professional and Vocational Licensing Division received a letter from Respondent DeMattos dated August 24, 2006 stating that effective August 31, 2006, he was resigning as RME for Respondent Three Point.

17. Respondent DeMattos did not become aware of the Pense job until he received the Pense complaint from Petitioner. Upon receipt of the Pense complaint, Respondent DeMattos contacted Messrs. Klett and Green, and they assured him that they would take care of it and Respondent DeMattos did not need to be involved.

18. In a letter dated June 30, 2011, to the Hearings Officer, Mr. Klett states in part:

The purpose of this letter is to absolve [Respondent DeMattos] from any dealings or consequences concerning the Pense matter. He had no dealings with or knowledge of this matter.

As for Mr. Pense—I submitted a final invoice to him with a substantial discount (at his request because of his concerns), which he paid. This settlement was a final settlement on all the issues he is now attempting to raise in this matter. His file was subsequently closed as paid in full.

### III. CONCLUSIONS OF LAW

Petitioner has charged Respondents with violating HRS §§ 444-9.3, 444-17(17), 444-25.5(a), 444-25.5(b) and Hawai'i Administrative Rules (“HAR”) §§ 16-77-33(d), 16-77-17, 16-77-75, 16-77-79, 16-77-80 and 16-77-97 which provide:

**§ 444-9.3 Aiding or abetting.** Aiding or abetting an unlicensed person to evade this chapter or knowingly combining or conspiring with an unlicensed person, or allowing one’s license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade this chapter shall be a misdemeanor.

**§ 444-17 Revocation, suspension, and renewal of licenses.** In addition to any other actions authorized by law, the board may revoke any license issued pursuant to this section, or suspend the right of a licensee to use a license, or refuse to renew a licensed for any cause authorized by law including:

...

(17) Entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter[.]

**§ 444-25.5 Disclosure; contracts.** (a) Prior to entering into a contract with a homeowner involving home construction or improvements and prior to the application for a building permit, licensed contractors shall:

(1) Explain verbally in detail to the homeowner all lien rights of all parties performing under the contract including the homeowner, the contractor, any subcontractor or materialman supplying commodities or labor on the project;

(2) Explain verbally in detail the homeowner's option to demand bonding on the project, how the bond would protect the homeowner and the approximate expense of the bond; and

(3) Disclose all information pertaining to the contract and its performance and any other relevant information that the board may require by rule.

(b) All licensed contractors performing home construction or improvements shall provide a written contract to the homeowner. The written contract shall:

(1) Contain the information provided in subsection (a) and any other relevant information that the board may require by rule;

(2) Contain notice of the contractor's right to resolve alleged construction defects prior to commencing any litigation in accordance with section 672E-11;

(3) Be signed by the contractor and the homeowner; and

(4) Be executed prior to the performance of any home construction or improvement.



**§ 16-77-33 Limitation of classifications.**

...

(d) Any licensee who acts, assumes to act, or advertises in any classification other than for which the licensee is duly licensed under this chapter shall be construed to be engaged in unlicensed activity.

**§ 16-77-71 Principal and subordinate RMEs.** (a) Contracting entities may have in their employ more than one RME, but shall designate in every case a principal RME who shall be primarily responsible for the direct management of the business of the contracting entity and who shall be:

(1) In a position to secure full compliance with the laws governing contractors, including but not limited to chapter 444, HRS and this chapter;

(2) Familiar with all contracts the contracting entity enters into, sees that all contract provisions are carried out and signs or initials all contracts;

(3) Familiar with all projects the contracting entity undertakes and sees that records are kept on the projects, which shall include the amount of time the principal RME spends with the contracting entity and payroll records of the principal RME;

(4) In residence in the State during the time the license of the contracting entity is in effect or during the period a project is under construction; and

(5) Held responsible for any violation of this chapter or chapter 444 HRS[.]

**§ 16-77-75 Revocation, suspension, termination, withdrawal, forfeiture, and refusal to renew license of RME; fines.** (a) The license of an RME may be suspended, revoked, terminated, withdrawn, forfeited, or refused to be renewed if the license of the contracting entity for which the person is the RME is revoked, terminated, withdrawn, forfeited, suspended, or refused to be renewed pursuant to chapter 444, HRS, and this chapter. An RME may be fined if the contracting entity for which the person is the RME is fined for violating the provisions of chapter 444, HRS and this chapter[.]

**§ 16-77-79 Disclosure to homeowners.** (a) Contractors engaging in home construction or improvements shall, prior to obtaining a binding contract from the homeowner and prior to applying for a building permit:

- (1) Disclose all information pertaining to the contract and its performance, the absence of which might mislead the homeowner to the homeowner's detriment including but not limited to the lien rights of labor, suppliers, and subcontractors;
- (2) Disclose the scope of work to be performed;
- (3) Disclose the approximate percentage of work to be subcontracted;
- (4) Disclose whether the contractor is bonded or not and whether the owner has a right to demand bonding on the work to be performed;
- (5) Disclose the contractor's license number and contractor classifications;
- (6) Disclose all warranties, if any; and
- (7) Provide an estimate of the cost of work to be performed[.]

**§ 16-77-80 Homeowner contracts.** (a) All contractors shall provide homeowners with a written contract involving home construction or improvements which shall provide the following:

- (1) The name, address, license number, and classification(s) of the contractor;
- (2) The exact dollar amount due from the homeowner under the contract;
- (3) The date work is to commence and the number of days for completion;
- (4) The scope of work to be performed and materials to be used;
- (5) The approximate percentage of work to be subcontracted and the names and license numbers of all subcontractors, if any;

(6) A clear statement of the risk of loss of any payments made to a sales representative (printed in distinct capital letters next to the owner's signature line);

(7) A provision explaining the lien rights of all parties performing under the contract including the contractor, any subcontractor, or any materialman supplying commodities or labor on the project;

(8) The terms of any warranty offered; and

(9) The signatures of the homeowner and the contractor.

(b) The contract shall be executed prior to the performance of any home construction or improvement.

**§ 16-77-97 Performance.** Licensees shall perform all work in a workmanlike manner. Workmanship shall conform to trade standards.

The evidence presented established that Respondent Three Point's work did not conform to trade standards in violation of HAR § 16-77-97 and that they failed to provide Complainant with the homeowner disclosures required by HRS §§ 444-25.5(a), 444-25.5(b) and HAR §§ 16-77-79 and 16-77-80.

With respect to Respondent DeMattos, the evidence presented showed that he was the RME at the time of the Pense project, and accordingly, pursuant to HAR § 16-77-71, is held responsible for Respondent Three Point's violations of HRS Chapter 444 and HAR Chapter 16-77 even though he had no dealings or knowledge of the Project. Accordingly, the Hearings Officer concludes that Respondent DeMattos violated HRS §§ 444-25.5 (a) and 444-25.5(b) and HAR §§ 16-77-79, 16-77-80 and 16-77-97.

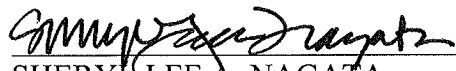
The Hearings Officer recommends that the charges relating to aiding and abetting unlicensed persons (HRS §§ 444-9.3, 444-17(17), HAR § 16-77-33(d)) be dismissed as the evidence presented was insufficient to show by preponderance of the evidence violations of those sections.

IV. RECOMMENDED ORDER

Based on the above, the Hearings Officer recommends that the Board find and conclude that Respondents violated HRS §§ 444-25.5(a), 444-25.5(b) and HAR §§ 16-77-79, 16-77-80 and 16-77-97 and dismiss the charges that Respondents violated HRS §§ 444-9.3, 444-17(17) and HAR § 16-77-33(d). The Hearings Officer also recommends that the charges that Respondent DeMattos violated HAR §§ 16-77-17 and 16-77-79 be dismissed as these sections are definitional in nature and should not be the basis for imposing discipline on a licensee.

For the violations found, the Hearings Officer recommends that Respondent Three Point's license be revoked, and that Respondent Three Point return all indicia of licensure to the Executive Officer of the Board. The Hearings Officer recommends that Respondent DeMattos pay a fine in the amount of \$2,000.00 within sixty (60) days of the Board's Final Order. If Respondent DeMattos fails to pay the fine within the time specified, upon filing of a declaration by Petitioner attesting to such failure, Respondent's license shall be automatically suspended. At that time, Respondent will be required to return all indicia of licensure to the Board. Respondent's license will be automatically reinstated pursuant to the procedures set forth in HRS § 92-17(c)(3) upon filing of a declaration by Petitioner that Respondent complied with the Board's Final Order.

DATED: Honolulu, Hawaii, NOV 01 2011.

  
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SHERYL LEE A. NAGATA  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs