



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

HEARINGS OFFICER

2009 MAR 23 P 2:18

DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

In the Matter of the)	CLB 2007-636-L
Contractor's License of)	
)	BOARD'S FINAL ORDER
CHARLES J. EIMAN, dba ACTION)	
PLUMBING,)	
)	
Respondent.)	
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BOARD'S FINAL ORDER


On January 2, 2009, the duly appointed Hearings Officer submitted her proposed Findings of Fact, Conclusions of Law and Recommended Order in the above-entitled matter to the parties. On January 26, 2009, Charles J. Eiman, dba Action Plumbing ("Respondent") filed exceptions to the Hearings Officer's recommended decision and requested oral argument. On February 6, 2009, the Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs ("Petitioner") filed a statement in support of the recommended decision.


At its regularly scheduled meeting on March 20, 2009 the Board heard oral arguments from the parties. Upon review of the entire record of this proceeding, including the written exceptions, the Board is of the opinion that the exceptions do not warrant a modification or reversal of the Hearings Officer's findings of fact or conclusions of law. Accordingly, the Board adopts the Hearings Officer's proposed decision as the Board's Final Order and finds and concludes that Respondent violated HRS §§ 436B-16 and 436B-19(8).

For the violations found, the Board orders Respondent to pay a fine in the amount of \$500.00 within sixty (60) days of the Board's Final Order. If Respondent fails to pay the fine within the time specified, upon filing a declaration by Petitioner attesting to such failure, Respondent's license shall be automatically suspended. At that time, Respondent is required

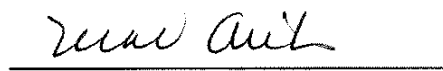
to return all indicia of licensure to the Executive Officer of the Board. Respondent's license will be automatically reinstated upon filing of a declaration by Petitioner attesting that Respondent has complied with the Board's Final Order.

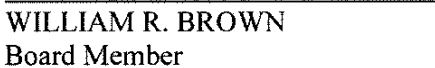
DATED: Honolulu, Hawaii, MAR 20 2009.


JADY T. ARISUMI
Chairperson

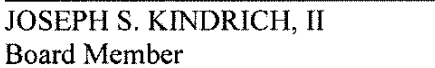

F.M. SCOTTY ANDERSON
Vice Chairperson


GUY M. AKASAKI
Board Member

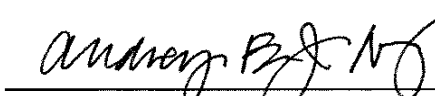

NEAL ARITA
Board Member

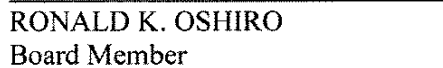

WILLIAM R. BROWN
Board Member



ERIC CARSON
Board Member

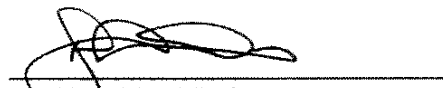

JOSEPH S. KINDRICH, II
Board Member



RANDALL B.C. LAU
Board Member


AUDREY E.J. NG, ESQ.
Board Member


RONALD K. OSHIRO
Board Member


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Board Member


DARYL SUEHIRO
Board Member


GERALD YAMADA
Board Member

Charles J. Eiman, dba Action Plumbing
CLB-2007-636-L
Board's Final Order



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2009 JAN -2 A 11: 54

HEARINGS OFFICE

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

In the Matter of the)	CLB 2007-636-L
Contractor's License of)	
)	HEARINGS OFFICER'S FINDINGS OF
CHARLES J. EIMAN, dba ACTION)	FACT, CONCLUSIONS OF LAW AND
PLUMBING,)	RECOMMENDED ORDER; APPENDIX
)	"A"
Respondent.)	
_____)	

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

I. INTRODUCTION

On June 3, 2008, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner") filed a petition for disciplinary action against the contractor's license of Charles J. Eiman, dba Action Plumbing ("Respondent"). 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 agreement of the parties, the hearing was rescheduled from August 14, 2008 to October 8, 2008.

On October 8, 2008, the hearing was conducted by the undersigned Hearings Officer. Wendy J. Utsumi, Esq. represented Petitioner. Respondent was present and was represented by Michael K. Kaneshiro, Esq. As a preliminary matter, Respondent orally moved to dismiss this matter or for summary judgment. After hearing arguments from the parties, Respondent's oral motion was denied.

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 was licensed by the Contractors License Board (“Board”) as a C-37 plumbing specialty contractor on March 12, 1990. Respondent’s license number is C 15798 and his license expires on September 30, 2010.

2. In June 2006, Respondent performed a plumbing job at Malia Wagner’s (“Complainant”) residence in Pearl City, Hawai’i.

3. On June 14, 2007, Complainant filed a lawsuit against Respondent in the District Court of the First Circuit, Ewa Division, alleging that Respondent’s plumbing job in June 2006 caused water damage. Complainant asked for judgment in the amount of \$5,623.00.

4. Respondent was served with the lawsuit on July 2, 2007 by personal service. The Summons required Respondent to appear on the day and time designated and warned that default judgment would be taken against him if he failed to attend the court hearing at the time and place designated. A copy of the Summons is attached hereto and incorporated herein as Appendix “A”.

5. On July 24, 2007, a default judgment in the amount of \$5,786.00 was entered against Respondent because he did not appear at the Ewa Division at 8:30 a.m. on the second Friday following the date of service, as instructed by the Summons.

6. As of May 28, 2008, Respondent had not provided written notice to the Board of the judgment obtained by Complainant against him.

7. Respondent explained that he did not appear as instructed by the Summons because he only saw “Wednesday” on the Summons and because the Summons “was just another piece of paper to me”.

8. Respondent did not know about the judgment until he was notified by Petitioner’s investigator sometime in November 2007.

9. By a letter dated December 19, 2007, Petitioner’s investigator notified Respondent of the default judgment and that it appeared that he failed to report the judgment to the Board. The letter also advised Respondent that this matter was being referred to Petitioner’s legal section.

10. On July 14, 2008, Respondent filed a Motion for Setting Aside Default Judgment in the District Court of the First Circuit Court, Ewa Division. On August 8, 2008,

the Court granted Respondent's Motion and the case was set for trial on October 3, 2008. However, the trial was postponed to a later date.

11. On October 24, 2008, the Court dismissed the Complaint filed by Complainant pursuant to a mediated agreement of the parties.

III. CONCLUSIONS OF LAW

Petitioner has charged Respondent with violating HRS §§ 436B-16 and 436B-19(8) which provides:

§ 436B-16 Notice of judgments, penalties. (a) Each licensee shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions.

(b) In addition to any other penalties provided by law, the failure of a licensee to comply with the provisions of this section is a violation punishable by a fine of not less than \$100 for the first violation, \$250 to \$500 for the second violation, and \$500 to \$1,000 for subsequent violations. Any action taken to impose or collect the fine provided for in this subsection shall not be considered a criminal action.

§ 436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses. In addition to any other acts or conditions as provided by law, the licensing authority may refuse to renew, reinstate or restore, or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

. . .

(8) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity[.]

It is not disputed that Respondent did not report to the Board, within thirty days, a judgment which found Respondent to be civilly liable for a loss caused by his conduct in the practice of contracting. However, Respondent contends that he did not violate HRS § 436B-

16 because he did not know about the judgment until Petitioner's investigator notified him about it in November 2007 and because the judgment has since been set aside and dismissed. However, it is not disputed that Respondent was served with the Complaint notifying him that default judgment would be taken against him if he did not attend the court hearing. In this situation, the Hearings Officer concludes that Respondent violated HRS § 436B-16 because to conclude otherwise would encourage licensees to ignore lawsuits related to their contracting business in order to avoid reporting judgments to the Board.

Based on Respondent's conduct described above, the Hearings Officer concludes that Respondent violated HRS § 436B-19(8) by failing to maintain a record or history of competency, trustworthiness and fair dealing.

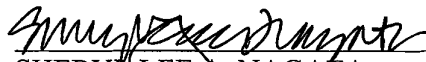
IV. RECOMMENDED ORDER

Based on the above, the Hearings Officer recommends that the Board find and conclude that Respondent violated HRS §§ 436B-16 and 436B-19(8).

For the violations found, the Hearings Officer recommends that Respondent be required to pay a fine in the amount of \$500.00 within sixty (60) days of the Board's Final Order. If Respondent fails to pay the fine within the time specified, upon filing 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 Executive Officer of the Board. Respondent's license will be automatically reinstated upon filing of a declaration by Petitioner attesting that Respondent has complied with the Board's Final Order.

JAN - 2 2009

DATED: Honolulu, Hawaii, _____.


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

SUMMONS

TWO-SIDED FORM

Form #1DC50

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

Ewa

DIVISION

STATE OF HAWAI'I

Plaintiff(s)

Malia D. Wagner
98-1820 V Ka'ahumanu St.
Pearl City, Hi 96782

Reserved for Court Use

Civil No.

Plaintiff(s)/Plaintiff(s)' Attorney (Name, Attorney Number, Firm Name (if applicable), Address and Telephone and Facsimile Numbers)

Defendant(s)

Mr. Charles Jay Eiman

Malia D. Wagner

SUMMONS

THE STATE OF HAWAI'I:

TO: The Director of Public Safety of the State of Hawai'i, his/her deputy or any police officer or other person authorized by the laws of the State of Hawai'i:

You are commanded to summon the Defendant(s) to appear before the District Judge of this Court in his/her Courtroom, to appear at the Court designated by the checked box on the reverse side.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a Judge of the above-entitled Court permits, in writing on this Summons, personal delivery during those hours.

TO THE DEFENDANT(S):

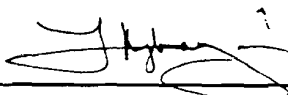
You are required to appear before the District Judge of this Court, in his/her Courtroom, on the day and at the time designated by the checked box on the reverse side. If the Defendant(s) is a corporation, Hawai'i law requires it to be represented by an attorney licensed to practice in the State of Hawai'i.

IF YOU OR YOUR ATTORNEY FAIL TO ATTEND THE COURT HEARING AT THE TIME AND PLACE DESIGNATED, DEFAULT AND DEFAULT JUDGMENT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

NOTICE TO ALL PARTIES (Honolulu Division only): If this case involves a residential lease and if the Defendant(s) disagrees with the statements in the Complaint, the Court may require the parties to submit their dispute to mediation at the Pre-Trial conference that will be scheduled on the Monday, not a holiday, following the court date specified above. If the Monday following your court date is a holiday, the Pre-Trial conference will occur on the next business day. If the parties are not able to resolve the dispute within 20 minutes of mediation, the Court will set a trial date.

Date:

Clerk of the above-entitled Court



COURT ADDRESSES AND RETURNABLE DATE

Honolulu Division, 1111 Alakea Street, 10th Floor Courtrooms 10A or 10B, Honolulu, Hawai'i

- at 8:30 a.m. on _____, 200__ for summary possession.
- or
- at 8:30 a.m. on the fifth day following date of service, excluding Saturdays, Sundays and legal holidays for summary possession.
- or
- at 1:30 p.m. on the second Monday following date of service, and should said Monday be a legal holiday then upon the next business day.

Ewa Division, 870 Fourth Street, Pearl City, Hawai'i,

- at 8:30 a.m. on Friday, _____, 200__ for summary possession.
- or
- at 8:30 a.m. on the second Friday following date of service, and should said Friday be a legal holiday then upon the next Friday.

Ko'olaupoko OR Ko'olaupoko Division, 45-939 Po'okela Street, Kāne'ohe, Hawai'i

- at 8:30 a.m. on **WEDNESDAY** _____, 200__ for summary possession.
- or
- at 8:30 a.m. on the second **WEDNESDAY** following date of service, and should said **WEDNESDAY** be a legal holiday then upon the next **WEDNESDAY**

Wahiawā OR Waialua Division, 1034 Kilani Avenue, Wahiawā, Hawai'i,

- at 9:00 a.m. Wednesday, _____, 200__ for summary possession.
- or
- at 9:00 a.m. on the second Wednesday following date of service, and should said Wednesday be a legal holiday then upon the next Wednesday.

Wai'anae Division, 87-1784 Farrington Highway, Nānākuli, Hawai'i,

- at 9:00 a.m. Tuesday, _____, 200__ for summary possession.
- or
- at 9:00 a.m. on the second Tuesday following date of service, and should said Tuesday be a legal holiday then upon the next Tuesday.

Mailing address for the Courts: 1111 Alakea Street, Civil Division, Third Floor, Honolulu, Hawai'i 96813

In accordance with the **Americans with Disabilities Act** if you require an accommodation for your disability, please contact the District Court Administration Office at PHONE NO. 538-5121, FAX 538-5233, or TTY 539-4853 at least ten (10) working days in advance of your hearing or appointment date. For Civil related matters, please call 538-5151.

C. FULLER