

BEFORE THE BOARD OF ELECTRICAL EXAMINERS
STATE OF ARKANSAS

IN RE: JOSEPH STOCKS
 RM-0376

ORDER

On the 18th day of July 2017, this matter comes before the Board of Electrical Examiners of the State of Arkansas. Denise P. Oxley, General Counsel, Department of Labor, represented the department. Joseph Stocks appeared personally in his own behalf. The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. On April 12, 2017, the Arkansas Department of Labor (ADL) issued a civil money penalty to Mr. Joseph Stocks in the total amount of \$500 for two (2) licensing violations. Specifically, he was cited for working beyond the scope of his license (\$250) and for working an unlicensed person to perform electrical work (\$250).

2. Mr. Stocks timely requested a hearing before the Board.

3. Mr. Stocks is a licensed Residential Master Electrician. His license expired on July 31, 2016. It was not renewed until January 17, 2017.

4. On November 21, 2016, Kevin Stafford, a state electrical inspector stopped at the Super 8 Motel, 1330 US Hwy 62, Harrison, Arkansas, to conduct an inspection when he observed two (2) men working on an electrical sign. The men were Joseph Stocks and Henry Westerman.

5. Mr. Stafford testified that Joseph Stocks was on the ground and that Henry Westerman was up in the sign working. He asked both men for their license and photo

identification. Joseph Stocks provided his expired Residential Master license and driver's license. Henry Westerman did not have a license or any identification on him.

6. Mr. Stafford testified that he asked the men exactly what they were doing and was told by Mr. Stocks that they were removing the old ballast and putting a little compact LED light inside and making the terminations to tie it back in. Mr. Stafford testified that they were doing a retro fit on the sign, not just replacing bulbs.

7. Mr. Stafford testified that he asked Henry Westerman to complete an employee profile statement that they use for unlicensed workers. Mr. Westerman completed the form (Agency Exhibit No. 4), noting that his employer was "Joe Stocks Elect" and that he had a hire date of August 14, 2016.

8. Ron Baker, Code Enforcement Manager, testified that he assessed the civil money penalty initially against Mr. Stocks. He testified that he assessed \$250 for an electrician working an unlicensed person to perform electrical work in compliance with the Board's discretionary guidelines. Mr. Baker testified that he escalated the fine for Mr. Stocks working beyond the scope of his license to \$250, because Mr. Stocks was self-employed and contracting with a commercial business to work outside the scope of his license. Normally, this fine would be \$50. Mr. Baker also testified that working on an expired license was under the category of "other violations" in the guidelines and would have been a \$250 fine for a first offense.

9. Mr. Stocks testified that when Mr. Stafford walked up to the job, Henry Westerman was up in the sign finishing up. Mr. Stocks testified that Mr. Stafford asked if they were changing the ballast and the Mr. Stocks replied that they were not. They were just changing out the tubes. Mr. Stocks testified he did have some 4 foot long LED tubes on his truck. He did show those to Mr. Stafford, just making conversation because they were "cool."

10. Mr. Stocks testified that Henry Westerman was not licensed, but he was a good electrician. Mr. Westerman could not get a license based on his experience without admitting he had been working without a license in violation of the law. Mr. Stocks testified that he had no actual hire date for Mr. Westerman. He used him as needed. He used him for the Super 8 Motel because Mr. Westerman was thinner than he was and could fit in the gap necessary to change the tubes.

11. Mr. Stocks testified that he was not aware he could not work on an expired license.

12. Mr. Stocks testified the he knew sign work was not residential work, but that he thought it was a gray area that he could install a light fixture in a residential kitchen, but not the same light fixture in a grocery store.

13. Mr. Stocks admitted doing some commercial work, as well as residential work during the period August 1, 2016 through January 14, 2017. He testified his largest job during that period was at the Days Inn in Harrison. It immediately preceded the sign at the Super 8 Motel. Mr. Stocks changed out the light fixtures on the vanities in all the rooms at the Days Inn, replacing them with LED tubes in fixtures.

14. Mr. Stocks was issued a civil money penalty on August 11, 2015 in the amount of \$600.00 for two (2) violations of failure to supervise apprentices. Mr. Stocks did not personally pay the fine. It was paid by a company named Negawatt.

CONCLUSIONS OF LAW:

1. Ark. Code Ann. § 17-28-304 (Repl. 2010) prohibits any person from performing electrical work in Arkansas without a license.

2. The statutory provision provides that a Residential master electrician license may be limited to the installation, alteration, repair, maintenance, or renovation of electrical facilities for one- and two-family dwellings. Ark. Code Ann. § 17-28-101(10). The license is so restricted by administrative rule. Board of Electrical Examiners Rule 010.13-009(A)(3)(January 1, 2016).

3. No person licensed by the board shall employ unlicensed persons or unregistered apprentices to perform electrical work. Board of Electrical Examiners Rule 010.13-017(F).

4. A civil penalty may be assessed for violations of the applicable statutes, administrative rules, or condition of a license issued by the board. Ark. Code Ann. § 17-28-309(b). For each violation, the penalty shall not exceed \$250.00 for a first offense. *Id.*

5. The board has adopted a Violation Fine Schedule to serve as a guideline in the assessment of civil money penalties. Board of Electrical Examiners Rule 010.13-015(D). The board, in its discretion, may increase or decrease a penalty taking into consideration:

- a. The degree and extent of harm to the public safety or to property, or the potential for harm;
- b. The duration and gravity of the violation;
- c. Whether the violation was committed willfully or intentionally, or reflects a continuing pattern;
- d. Whether the violation involved elements of fraud or deception either to the public or the Board, or both;
- e. The violator's prior disciplinary record with the Board;
- f. Whether and to the extent which the violator profited by the violation.

Board of Electrical Examiners Rule 010.13-015(C)(4).

6. The Violation Fine Schedule provides for a \$250.00 penalty for a first offense of a employing an unlicensed person or unregistered apprentice to perform electrical work. Board of Electrical Examiners Rule 010.13-015(D). Ron Baker testified that this was the standard fine issued to licensees for such an offense.

7. The Violation Fine Schedule provides for a \$50.00 penalty for a first offense of performing work beyond the authorization of the license issued. Board of Electrical Examiners Rule 010.13-015(D).

8. In the present case the board concludes that Mr. Stocks did employ an unlicensed person to perform electrical work and the \$250.00 civil penalty for that offense is appropriate.

9. The board concludes that Mr. Stocks shall also pay a \$250.00 civil penalty for working beyond the scope of his license. The board concludes the penalty shall be escalated because:

a. Mr. Stocks' own testimony was that he was aware he was performing work that was not residential in nature on a continuing basis. This was willful and intentional.

b. Mr. Stocks had previously received a civil money penalty for different licensing violations.

c. Mr. Stocks did directly profit from his violation because he directly contracted with commercial entities to perform work beyond the scope of his license. He was not merely following the instructions of an employer.

IT IS THEREFORE ORDERED that the civil money penalty assessed by the Director of the Department of Labor against Robert Joseph Stocks in the amount of \$500.00 is affirmed.

BOARD OF ELECTRICAL EXAMINERS
STATE OF ARKANSAS

By: Danny King
Danny King, Chairman

Date: 9/29/2017

Approved as to Form:

Denise P. Oxley, 84117
General Counsel
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205
(501) 682-4504