BEFORE THE HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION LICENSING BOARD

DIVISION OF LABOR

DEPARTMENT OF LABOR AND LICENSING

STATE OF ARKANSAS

IN RE: **Joe Wagner, individually and**
Thermocare HVACR
138 Hwy 141 N
Paragould, AR 72450

ORDER

On this 12th day of January 2022, this matter came before the Heating, Ventilation, Air Conditioning and Refrigeration (HVACR) Licensing Board of the State of Arkansas. Miles Morgan, Associate Counsel, Department of Labor and Licensing, represented the agency. Joe Wagner was properly notified and informed of the hearing but did not attend. Based on the testimony and other evidence, the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. On December 27, 2021, the Arkansas Department of Labor and Licensing issued a civil money penalty to Mr. Joe Wagner in the total amount of **$5,750.00.** This sum represented a $250.00 penalty for performing HVACR work without a license on 8 separate occasions. Additionally, this sum includes a civil penalty of $250.00 each for 15 separate violations of the State HVACR code as adopted by the Board.
2. Joe Wagner was timely notified of his hearing before the Board which was held on Wednesday January 12, 2022 at 10 a.m.

3. Joe Wagner is not currently licensed by the HVACR Licensing Board. His license expired on October 31, 2020.
4. Joe Wagner is doing business as "Joe Wagner" or "Thermocare HVACR." He held himself out as being licensed and able to contract for and complete HVACR work.
5. There were two separate inspections arising from two separate complaints regarding work performed by Mr. Wagner.
6. Inspectors determined 15 violations of the State HVACR Code as adopted by the Board plus penalties for performing HVACR work without a license on 8 separate occasions.
7. Included in the inspection reports were invoices from Mr. Wagner reflecting each date that work was performed.
8. Dates of work performed for the Clay County Detention Center:
    a. December 28, 2020;
    b. June 4, 2021;
    c. August 17, 2021
    d. September 20, 2021.
9. Dates of work performed for Darrel and Jaynetta Tyler:
    a. June 9, 2021;
    b. June 14, 2021;
    c. July 5, 2021;
    d. July 9, 2021.

CONCLUSIONS OF LAW:

1. Ark. Code Ann. § 17-33-301 (a) and (b) prohibits any person from performing heating, ventilation, air conditioning and refrigeration work in Arkansas without a license.
2. Ark. Code Ann. § 17-33-202 *et seq.* authorizes the Department of Labor and Licensing to assess a civil money penalty subject to appeal to the Board for licensing violations; violations of the HVACR Code Authority Act, Ark. Code Ann. § 17-33-204 *et seq,*; and violations of rules promulgated by the Board.
3. Ark. Code Ann. § 17-33-307(2) authorizes the Board to suspend or revoke any license or registration if it finds that the holder of the license or registrant has demonstrated incompetency to act as a license holder or registrant according to rules and standards promulgated by the board.
4. The civil money penalty in this case equals or is less than the $250.00 per violation for a first offense established by statute. Ark. Code Ann. § 17-33-204. The penalties are also within the guidelines established by the rule of the Board.
5. 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 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.

6. In the present case, the Board has not increased the civil money penalty assessed against Joe Wagner. However, it is important to note:

   a. There was no testimony from Mr. Wagner to explain or attempt to mitigate the proposed violations and the absence of a defense established to the Board Mr. Wagner's awareness that the work he was performing required licensed HVACR personnel. This was willful and intentional.

   b. Mr. Wagner did directly profit from his violations because he was the contracting party. He was not a mere employee following the instructions of an employer.

7. Furthermore, the Board decided that Mr. Wagner's HVACR license be suspended for one (1) year and that he must retake the licensing examination only after the civil money penalty is paid.

8. Mr. Wagner is allowed to work as a registrant provided, he meets those requirements.

IT IS THEREFORE ORDERED that the one-year suspension and civil money penalty assessed by the Director of the Department of Labor and Licensing against Joe Wagner in the amount of $5,750.00 is affirmed.

HEATING, VENTILLATION, AIR CONDITIONING and
REFRIGERATION LICENSING BOARD, DEPARTMENT
OF LABOR AND LICENSING,
STATE OF ARKANSAS

By: _____

Alan Dean, Chairman

Date: 2-9-2022

Approved as to Form:

Miles Morgan, 2017-049
Assistant Counsel
Arkansas Department of Labor and Licensing
900 West Capitol
Little Rock, AR 72201
(501) 682-4507