

BEFORE THE HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION
LICENSING BOARD
DIVISION OF LABOR
DEPARTMENT OF LABOR AND LICENSING
STATE OF ARKANSAS

IN RE: **RUSTY RUCKER, individually**
2742 County Road 304
Jonesboro, AR 72401

ORDER

On the 14th day of October 2020, this matter came before the Heating, Ventilation, Air Conditioning and Refrigeration (HVACR) Licensing Board of the State of Arkansas. Marcus C. Devine, Associate Counsel, Department of Labor and Licensing, represented the agency. Rusty Rucker, although properly served and noticed, did not appear personally on his own behalf. Based on the testimony and other evidence, the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. On September 28, 2020, the Arkansas Department of Labor issued a civil money penalty to Mr. Rusty Rucker in the total amount of **\$2750.00**. This sum represented a \$250 penalty for performing HVACR work without a license. Additionally, this sum includes a civil penalty of \$250 each for 10 separate violations of the State HVACR Code as adopted by the Board.
2. Rusty Rucker timely requested a hearing before the Board which was held on Wednesday, October 14, 2020 at 10 a.m.
3. Rusty Rucker is not licensed by the HVACR Licensing Board.

4. Rusty Rucker is doing business and holding himself out to be a duly licensed HVACR contractor. Mr. Rucker entered into a contract with Charles and Cindy Rone to make alterations to their Evening Shade, Arkansas home. The contract price was \$4,000.00 and part of the agreement included Rusty Rucker securing and installing or having installed HVACR equipment.

5. Rusty Rucker performed the HVACR work on the Rone residence.

6. There were 11 violations of the State HVACR Code as adopted by the board.

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 the HVACR Code Authority Act, Ark. Code Ann. § 17-33-204 *et seq.*; and violations of rules promulgated by the board.

3. The civil money penalty in this case equals or is less than the \$250 per violation for a first offense established by statute. Ark. Code Ann. § 17-33-204. The penalties also are within the guidelines established by rule of the board.

4. 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.

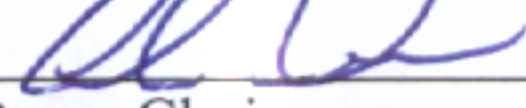
5. In the present case the board has not increased the civil money penalty assessed against Rusty Rucker. However, it is important to note:

a. Mr. Rucker's lack of testimony or defense left the Board with no basis to deny the Staff's recommended findings and proposed penalty. This was willful and intentional.

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

IT IS THEREFORE ORDERED that the civil money penalty assessed by the Director of the Department of Labor and Licensing against **Rusty Rucker in the amount of \$2750.00** is affirmed.

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

By: 
Alan Dean, Chairman

Date: 10/28/2020

Approved as to Form:

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