

BEFORE THE BOARD OF ELECTRICAL EXAMINERS
DIVISION OF OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS
DEPARTMENT OF LABOR AND LICENSING
STATE OF ARKANSAS

IN RE: NATHAN R. BIRDSELL, individually and
 D/B/A DOUBLE B CONSTRUCTION

ORDER

On the 16th day of July 2019, this matter comes before the Board of Electrical Examiners of the State of Arkansas. Denise P. Oxley, General Counsel, Department of Labor and Licensing, represented the agency. Nathan R. Birdsell appeared personally in 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 February 5, 2019, the Arkansas Department of Labor issued a civil money penalty to Mr. Nathan R. Birdsell in the total amount of \$4850.00. This sum represented a \$250 penalty for performing electrical work without a license. Additionally, this sum includes a civil penalty of \$150 each for 28 separate violations of the State Electrical Code as adopted by the Board.
2. Nathan R. Birdsell timely requested a hearing before the Board.
3. Nathan R. Birdsell is not a licensed electrician. He is licensed by the Residential Contractors Committee with the Contractors' Licensing Board as a Residential Remodeler.
4. Nathan R. Birdsell doing business as Double B Construction entered into a contract with Barbara Taylor to build a new home in Sulfur Rock, Arkansas. The contract price was \$82,640.00 and the agreed upon budget for the project was \$67,500.00. Mr. Birdsell was

paid \$63,772.64. Ms. Taylor currently resides in that home located at 405 Vaughn Street, Sulfur Rock, AR 72579.

5. Prior to July 22, 2018, Ms. Taylor telephoned Charles Covington, Chief Electrical Inspector with the Department of Labor to complain regarding the electrical work performed by Mr. Birdsell.

6. On July 22, 2018, Mr. Covington performed an electrical inspection at the 405 Vaughn Street address. His inspection report reflects there were 28 State Electrical Code violations.

7. Nathan R. Birdsell performed the electrical work on the Taylor residence, although Mr. Birdsell did testify that the work was “looked at” by an unnamed licensed electrician.

8. There were 28 violations of the State Electrical Code as adopted by the board.

CONCLUSIONS OF LAW:

1. Ark. Code Ann. § 17-28-304 (Repl. 2018) prohibits any person from performing electrical work in Arkansas without a license.

2. Ark. Code Ann. § 17-28-309(b) authorizes the Department of Labor to assess a civil money penalty subject to appeal to the board for licensing violations; violations the Electrical Code Authority Act, Ark. Code Ann. § 20-31-101 *et seq.*; and violations of rules promulgated by the board. In terms of the standards for the performance of electrical work, the board has adopted the 2017 edition of the National Electrical Code. Rule 010.13-008(A)(Bd. of Electrical Examiners, Jan. 1, 2018).

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. § 17-28-309(b)(1)(D). The penalties also are within the guidelines established by rule of the board. Rule 010.13-015(D)(Bd. of Electrical Examiners, Jan. 1, 2018).

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.

Rule 010.13-015(C)(4).

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

a. Mr. Birdsell's own testimony and his text messages establish that he was aware he was performing work that required a licensed electrician. This was willful and intentional.

b. Mr. Birdsell 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 against Nathan R. Birdsell in the amount of \$4850.00 is affirmed.

BOARD OF ELECTRICAL EXAMINERS
STATE OF ARKANSAS

By: Charlotte Bradley
Charlotte Bradley, Chairman

Date: 9-17-19

Approved as to Form:

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