

BEFORE THE DELAWARE BOARD OF ELECTRICAL EXAMINERS

In the Matter of:)
) Case No. 01-16-12
National Code Inspection Agency)
Lic. No. T6-0000110 (Expired))

RECOMMENDATION OF CHIEF HEARING OFFICER

Nature of the Proceedings

The State of Delaware, by and through the Department of Justice, has filed a licensure complaint against National Code Inspection Agency (“NCIA”), an electrical inspection agency whose owner and manager is Raymond L. Vincent of Greenwood DE. According to records of the Division of Professional Regulation, NCIA’s agency license expired on or about June 30, 2013.

The State’s complaint alleges that in June 2012, Mr. Vincent, acting on behalf of NCIA, performed certain electrical inspection services at a property in Smyrna DE. He represented to electrical employees at the work site that he was authorized to inspect the electrical work because he is a “federal electrical inspector”. He was permitted to inspect electrical work at the site.

The State alleges that Mr. Vincent failed to produce an application for electrical inspection in response to a request from an investigator of the Division of Professional Regulation. The State further alleges that Mr. Vincent wrongfully inspected and approved the work of an unlicensed electrician. Finally, the State alleges that Mr. Vincent inspected and approved electrical work by an electrician not licensed in Delaware to perform work in buildings with the number of residential units in the Smyrna properties. The State contends

that these acts or omissions by Mr. Vincent on behalf of NCIA constitute violations of the Delaware Board of Electrical Examiners Act, 24 *Del. C.* Ch. 14.

An open hearing on the State's complaint convened on due notice at 12:05 p.m., September 19, 2013 in the offices of the Division of Professional Regulation, 861 Silver Lake Blvd., Dover DE. Mr. Vincent attended the hearing without legal counsel. The State was represented by Katisha Fortune, Deputy Attorney General. All witnesses testified under oath or affirmation. A registered court reporter was present who made a stenographic record of the proceedings. This is the recommendation of the undersigned hearing officer to the Board of Electrical Examiners after due consideration of all relevant evidence.

Summary of the Evidence

On behalf of the State, Ms. Fortune waived opening statement. On behalf of NCIA, Mr. Vincent stated that any cancellation of NCIA's license would be unlawful. He is a federal agent, licensed by the federal government. His conduct can not be regulated by the State of Delaware. He is regulated by the "NEC". He does not want to be asked any questions about the "what, when, how and why". He intends to take this matter up in federal court.

The State first called Shawn Kirk. He is employed by and is the 50% owner of Encore Electric. Encore performs electrical contracting work in Delaware. The other co-owner of Encore holds a Delaware electrician's license. Mr. Kirk is licensed in New Jersey.

Mr. Kirk knows Mr. Vincent. He was hired to perform electrical inspections at the Heron Run project in Smyrna DE. Mr. Vincent was hired by Mark Abbott to perform inspections. Mr. Abbott had engaged Mr. Vincent previously.

Mr. Abbott was the on-site foreman of the Smyrna project. Mr. Abbott had informed Mr. Kirk about Mr. Vincent's services. Mr. Vincent appeared on several occasions at the

Smyrna work site. During his final visit Mr. Vincent stated that he was a “federal inspector” and could not be replaced. He would not leave the site. When police were called to come to the site, Mr. Vincent then left.

Mr. Kirk reiterated that Mr. Vincent was insisting that he could not be replaced with another inspector. He then proceeded to post his own inspection stickers at different locations on the site. Mr. Vincent was not “code-compliant” with regard to his directions. He had no written contract to perform inspections at the Smyrna site. Mr. Kirk does not know if Mr. Vincent was paid for the Smyrna inspections.

After Mr. Vincent left, another inspector was hired to examine electrical work at the Smyrna project site. They conducted multiple inspections at the project. The new inspector placed his own inspection stickers at locations on the site. Mr. Vincent then placed his own stickers over the stickers of the new inspector.

Mr. Kirk testified that the Smyrna project involved the construction of six residential buildings, each housing eight separate living units. Mr. Vincent had inspected only the project clubhouse and Building No. 1. Mr. Vincent stated that the cost of his inspections would be \$20 per unit for a total of \$160 for Building No. 1. Mr. Kirk stated that he had hired Mr. Vincent because his employer told him an inspector must be hired for the job.

Mr. Kirk observed Mr. Vincent inspecting Building No. 1. Mr. Abbott was working in Building No. 1 with a Mr. Clark. Mr. Vincent did not ask any of the electricians to produce their licenses. Mr. Kirk never received an inspection report from Mr. Vincent. There was no cross-examination of Mr. Kirk.

The State next called Ms. Jean Betley. She is the Division of Professional Regulation Lead Investigator. She investigates professional licensure cases on behalf of licensing boards.

She did not perform the direct investigation in this case. That was done by Paul Eihinger, a former Division investigator who has since retired. Ms. Betley reviewed Mr. Eihinger's file in conjunction with this case.

The file reflects that Mr. Eihinger spoke with Mr. Vincent. He asked Mr. Vincent to produce a copy of his application for electrical inspection for the Smyrna site on three separate occasions. Mr. Vincent never produced a copy. Mr. Vincent also told Mr. Eihinger that he had a "verbal contract" to inspect the Smyrna work. At this point the State rested.

Mr. Vincent then testified under oath. He stated that Mr. Abbott is his client. Mr. Vincent stated that he is a "federal agent". He works for a federal national licensing association. He is on the Board of the International Association of Electrical Inspectors.

Mr. Vincent testified that he had "trouble" with Mr. Kirk regarding the Smyrna job. He told Mr. Kirk that he was a licensed inspector working under Mr. Abbott. He began his "rough-in" inspection at the Smyrna site and the work passed. He informed employees of that fact. On his next visit Mr. Kirk was present and informed Mr. Vincent that Mr. Abbott had dismissed him (Mr. Kirk) based on his lack of appropriate licensure. Mr. Vincent called Mr. Abbott, who said that Mr. Kirk would be "thrown out" because of a lack of an active license.

Mr. Vincent returned and spoke with Mr. Kirk. Mr. Kirk informed him that a licensed individual had been hired to inspect the electrical work. Mr. Vincent inspected two buildings at the Smyrna site but was paid for neither inspection. First State was the new inspection agency. They began to put their inspection stickers on the site. Eventually all stickers were issued by First State. Mr. Vincent almost fought with Mr. Kirk. One inspection agency can not be replaced by another.

Mr. Vincent stopped all inspection work at the site and quit. He received no payments for his first and second inspections. According to Mr. Vincent, Mr. Kirk threatened his life. Mr. Vincent left without being paid. First State informed him that it was taking over the inspections. First State was paid for the work. First State was hired without Mr. Vincent's permission.

At this point Mr. Vincent made reference to his status as a "federal inspector". The State objected on the grounds of relevance. Mr. Vincent stated that he deals with the federal government. Ms. Fortune again argued that Mr. Vincent's alleged status as a federal licensee is irrelevant to this case. Mr. Vincent responded that he enforces the NEC.

In the middle of his testimony, and without having been subject to cross-examination by the State's attorney, Mr. Vincent stood up and again mentioned that he intended to go to federal court. He picked up some papers on the table before him and started to leave. The undersigned informed him that the hearing would continue even in his absence. Mr. Vincent left the building and did not return.

The State did not offer rebuttal evidence. Ms. Fortune gave a brief closing argument. She stated that the State has proved that Mr. Vincent failed, after repeated requests, to produce a copy of a permit authorizing him to inspect the Smyrna site. That is a violation of 24 *Del. C.* §1421(h). She further argued that the State has proved a violation of 24 *Del. C.* §1421(f). Mr. Vincent did not inquire as to whether all electricians working on the Smyrna project were in fact licensed. He observed and approved work while not licensed.

Ms. Fortune added that NCIA is a licensed inspection agency in Delaware. Its license has now expired and has not been renewed by Mr. Vincent. Discipline in this case should be assessed by the Board against NCIA should it seek to renew.

Findings of Fact

The notice of this hearing provided Mr. Vincent with the date, time, place and subject matter of the proceedings. It was in fact received by Mr. Vincent, who attended the hearing without legal counsel.

Until June 30, 2013, National Code Inspection Agency (NCIA) was an active licensed electrical inspection agency in Delaware. On that date the NCIA agency license expired and it has not been renewed. Raymond L. Vincent, a former Master Electrician licensee of the Board, is the owner and manager of NCIA.

During the period June-July 2012, Encore Electric, an electrical contractor, was performing electrical construction services in a series of six eight-unit residential dwelling buildings in Smyrna DE. Among the Encore Electric employees working at the Smyrna site were Shawn Kirk and Mark Abbott.

Shawn Kirk is not licensed to perform electrical work in Delaware. According to his testimony under oath, Mr. Kirk is a New Jersey licensee. According to the uncontested allegations in the complaint, Mr. Abbott held a "T2" license in Delaware which expired on June 30, 2012. Among other things, that level of licensure limits the number of dwelling units in a building where Mr. Abbott could lawfully perform electrical services.

Due in part to Mr. Vincent's premature departure from the hearing room, the role of NCIA at the Smyrna work site in 2012 remains somewhat clouded. Apparently Mr. Abbott had engaged Mr. Vincent's NCIA inspection services at other job locations prior to the construction of the Smyrna project. According to one version of events, Mr. Abbott therefore engaged Mr. Vincent to inspect the Smyrna work. The arrangement was apparently not reduced to writing, but was a "verbal contract".

Regardless of the formality of the retention of NCIA in Smyrna, Mr. Vincent began his inspections of the residential housing project on behalf of NCIA in mid-2012.

He made several visits to the site, and eventually inspected all or parts of two buildings.

Though his professional fee was \$20 per unit in the residential buildings, according to Mr. Vincent he was never paid for his inspections. According to Mr. Kirk, Mr. Vincent did not generate any reports concerning his inspections.

Eventually Mr. Kirk terminated Mr. Vincent's inspection services on behalf of NCIA at the Smyrna site either at his own choosing, or on behalf of a superior at the Smyrna site. When the decision was conveyed to Mr. Vincent, the two engaged in arguments. According to Mr. Vincent, Mr. Kirk made physical threats toward him. Mr. Vincent argued to Mr. Kirk that a contractor or property owner lacked the authority to terminate an inspector before the conclusion of a job.

Mr. Vincent argued that NCIA could not be replaced. During the hearing Mr. Vincent cited no legal authority for that proposition. Nor did he provide any binding contractual document which would preclude the termination of NCIA. It was not refuted that Mr. Vincent placed some signed NCIA inspection stickers at various locations within the Smyrna project which were then covered with First State stickers, and then re-covered by Mr. Vincent with NCIA stickers. When Mr. Vincent became disruptive after being notified of NCIA's termination, he was asked or ordered to leave, and only did so when police were summoned to the site.

During the investigation of this case by the Division of Professional Regulation, Mr. Vincent was asked on multiple occasions to produce a copy of his application for electrical inspection and/or inspection permit for NCIA's work at the Smyrna site. Mr. Vincent failed or

refused to produce such a document to the investigator. If he did not apply for such a permit, his decision not to apply may (or may not) have been driven by his view that, as a “federal inspector”, he could not be required to pull such a permit by state or local authorities. Regardless, his failure or refusal to present such documentation to the investigator leads to the fair inference that he had not applied for approval to inspect the Smyrna site.

During his inspections of two buildings in the Smyrna complex, he testified that he had approved much of the electrical construction which he examined. He knew that both Mr. Kirk and Mr. Abbott had been performing some of that construction at the site. The State alleges that he failed to make inquiry as to the licensure status of either of those Encore electricians. While he was present in the hearing room, Mr. Vincent did not refute those allegations. The allegations give rise to a clear inference that Mr. Vincent did not report or complain about Mr. Kirk’s lack of Delaware licensure, nor the fact that Mr. Abbott was performing electrical installations on buildings where he was forbidden from working under limitations imposed on his limited license.

Conclusions of Law

The notice of this hearing provided NCIA and its principal, Mr. Vincent, with the date, time, place and subject matter of this hearing. It otherwise comported with legal requirements for hearings before the Board of Electrical Examiners. The hearing notice was in fact received by Mr. Vincent. He attended a portion of the hearing before leaving in the middle of his testimony, thus precluding cross-examination by the State.

The primary objective of the Board is to protect the general public and those who are the direct recipients of electrical and inspection services from unsafe practices. 24 *Del. C.* §1401. A secondary objective is to maintain minimum standards of practitioner competency

and standards in the delivery of electrical services to the public. *Id.* The Board has the specific authority to promulgate regulations implementing the Board of Electrical Examiners Act. 24 *Del. C.* §1406(a)(1). The Board also has the authority to conduct hearings when licensees and licensed entities may be subject, after due notice and hearing, to professional discipline. 24 *Del. C.* §1406(a)(10). These are all valid means and ends rationally related to the legitimate state purpose of protecting the public from those persons and entities which would engage in electrical practice unprofessionally or incompetently.

As a current or formerly licensed Delaware electrical inspection agency, the Board has jurisdiction over NCIA in this case pursuant to 24 *Del. C.* §1421.

In its complaint in this case, the State alleges that NCIA and its agent or employee Raymond L. Vincent have violated six provisions of the Act. The State first alleges that NCIA, through the agency of its owner and operator Mr. Vincent, violated 24 *Del. C.* §1421(h) when Mr. Vincent failed or refused to produce for examination a copy of an application for electrical inspection at the Smyrna project site. According to the testimony in this case, he was requested to do so by a Division investigator on at least three separate occasions.

Sec. 1421(h) requires that records of licensed electrical inspection agencies be made available for examination by Division investigators on request. The unrefuted record in this case establishes by a preponderance of the evidence that Mr. Vincent, on behalf of NCIA, failed in his duty to present an inspection application or inspection permit to a Division investigator after repeated requests. Nor did he bring any such document to the hearing in this case to be made part of this record. The State has clearly proved this allegation. Indeed, the only fair inference I can make is that Mr. Vincent, on behalf of NCIA, had not made such an application.

The State next alleges that NCIA, through its principal Mr. Vincent, inspected and approved electrical work performed by Shawn Kirk, an unlicensed electrician. During the hearing Mr. Kirk admitted that, at relevant times in this case, he was only licensed in New Jersey, while the other co-owner of Encore Electric held a Delaware license. The State contends that Mr. Vincent's approval of Mr. Kirk's work at the Smyrna site violated 24 *Del. C.* §1421(f) and (l)(3).

Sec. 1421(f) requires that an agency such as NCIA make inspections within five days of receipt of applications for inspection and issue certificates of approval within 15 days of the date of completion of inspections. The section also requires that applications be filed by state-licensed electricians or by persons excepted under 24 *Del. C.* Ch. 14. I must admit that I am puzzled by the State's reference to Sec. 1421(f) in regard to Mr. Kirk's unlicensed status in Delaware. As noted, Sec. 1421(f) pertains to the timeliness of the conduct of inspections post-application, the timeliness of final approvals, and qualifications of those who apply for electrical inspections. The section does not appear to concern the approval of unlicensed electrical work.

The iteration of 24 *Del. C.* §1419 which presumably applied during June 2012 (when Mr. Vincent inspected the two Smyrna buildings) lists certain individuals who may be excepted from the licensure requirements of the Act. One such category of excepted persons includes those working under the supervision of a Delaware-licensed master or limited electrician who was responsible for the activities of the unlicensed person. The State called Mr. Kirk as a witness. In my opinion the State had an obligation to question Mr. Kirk as to the identity and Delaware license status of the other 50% co-owner of Encore Electric and whether Mr. Kirk was working under the supervision of that co-owner to show that the exception in 24

Del. C. §1419(a)(1) either did or did not apply to Mr. Kirk. Without that proof this record is insufficient for me to conclude that Mr. Vincent unlawfully inspected and approved Kirk's work as a matter of law.

The State also claims that the NCIA approval of Mr. Kirk's electrical work in Smyrna was a violation of 24 *Del. C.* §1421(1)(3). That section provides for discipline of an electrical inspection agency which is guilty of negligence, incompetence or misconduct in providing inspection services. Though that section of the Act may be applicable to other claims discussed below, the record in this case does not provide an adequate basis to conclude that approval of Kirk's work was negligence, incompetency or misconduct as a matter of law.

The final allegations in this case contend that NCIA's inspection and approval of electrical work in Smyrna by Mr. Abbott violated the Act in three respects because, at the time, Mr. Abbott held only a "T2" electrician license which permitted him to work on structures of four dwelling units or less. 24 *Del. C.* §1402(10). Each of the residential buildings in the Smyrna project was designed for eight dwelling units.

The State first claims that approving Mr. Abbott's work violated Sec. 1421(1)(3) of the Act. Again, that section provides for discipline of an electrical inspection agency which has, through its agents and employees, acted negligently or incompetently or has engaged in other misconduct.

In my opinion the State has proved this allegation by a preponderance of the evidence. Mr. Abbott was working under a "limited electrician" license in June 2012. Mr. Vincent, on behalf of NCIA, knew or should have known of Mr. Abbott's limited status. Either he failed to examine Mr. Abbott's license, or examined it and ignored the limitations on Mr. Abbott's

practice. Mr. Vincent observed Mr. Abbott performing electrical work, or inspected work he had completed, or both.

Neither the Board of Electrical Examiners Act nor Board regulations define “negligence” as that term is used in Sec. 1421(l)(3). The term has taken on a commonly accepted definition in Delaware courts and elsewhere. Negligence is a lack of ordinary care. In other words, negligence is the absence of the kind of care a reasonably prudent person would exercise in similar circumstances. *Del. P.J.I. Civ. Sec. 5.1*. Applying that concept here, negligence would be defined as the absence of the kind of care a reasonably prudent electrical inspector would exercise in similar circumstances. In my opinion Mr. Vincent did not exercise such care. It was his obligation to ascertain the licensure status of those electricians whose work he had been hired to inspect. Failure to do so or failure to reject work performed by a limited electrician constituted professional inspection negligence by Mr. Vincent on behalf of his company NCIA.

The State also contends that failing to appreciate the significance of Mr. Abbott’s licensure, or ignoring the consequences of Mr. Abbott performing electrical installations in a larger residential structure, was a violation of Sec. 1421(l)(4) of the Act. That section provides for discipline if an electrical inspection agency violates a provision of the Act or a Board regulation. I find that this allegation has also been proved on the record of this case. The Board has determined by regulation that an inspection agency shall promptly file an inspection report subsequent to an inspection which contains, *inter alia*, the types of licenses issued to electricians on the inspected job. Bd. Reg. 12.6. In this case it was claimed that Mr. Vincent filed no such reports on behalf of NCIA.

Had he requested a copy of the relevant application for inspection, and had he prepared the necessary inspection reports, he would have been aware of the limitations on Mr. Abbott's practice. His failure to ascertain that data was a violation of Board regulations. Further, his failure to enforce the restrictions on Mr. Abbott's license would have protected the eventual residents of the structure from electrical work performed by an electrician working outside the scope of his limited license.

The State finally alleges that Mr. Vincent's failure to note and enforce the restrictions on Mr. Abbott's license violated 24 *Del. C.* §1402(12). That is the section in the Act which establishes the four-dwelling unit restriction imposed on the "limited electrician". For the reasons stated above, Mr. Vincent, on behalf of NCIA, failed to enforce, through inspection, those important restrictions and permitted work of a limited electrician to go unreported and presumably unremedied. The State has also proved this charge by a preponderance of the evidence.

A concluding finding is in order in this case. A number of the investigative reports prepared by the Office of Maryland Fire Marshal allude to representations consistently made by Mr. Vincent (on behalf of NCIA) in Maryland. He fashions himself a "federal inspector" or a "federal agent", and therefore beyond the reach of state and local regulators. In his opening statement during this hearing, Mr. Vincent repeated that claim. Quoting, he stated, "I'm a federal agent. Licensed by the federal government."

In his opening he also stated that he is "regulated by the NEC", among other things. If by "NEC" Mr. Vincent makes reference to the National Electric Code (NEC), then all of his peers in Delaware may boast the same status. Delaware licensees are required to perform electrical services in accordance with standards established in the NEC. Bd. Reg. 1.2.

Delaware licensees are permitted to refer to the NEC while sitting for written examinations. Bd. Reg. 4.1.

But inspecting electrical work for evidence of compliance with the NEC does not elevate Delaware inspectors or their agencies to “federal” status. The National Electric Code has been developed by the NEC Committee of the National Fire Protection Association (NFPA). The NFPA and its committees are private organizations which are not vested with implicit or explicit federal or state authority. Nor do the various electrical and other codes which they produce carry the force of law. That said, the NEC has been adopted almost universally throughout the U.S. by state and local authorities as the consensus standard for electrical construction. State and local building officials, private inspection agencies and their employees and others enforce the provisions of the NEC. By doing so, they do not become “federal” agents cloaked with the authority of federal law. They are simply applying the provisions of an electrical code which has taken on national importance. That Mr. Vincent chose “National Code Inspection Agency” as the name for his business to suggest an aura of federal authority is of no import.

In the complaint the state alleges that NCIA, through the acts of Mr. Vincent, has violated Sec. 1421(1)(4) of the Act. That subsection provides for discipline of an agency which, through its agents, has violated any provision in the Act. One such provision is the clear language of Sec. 1421(1)(2). That subsection exposes an agency to discipline when it has engaged in deception of the public. In my opinion the evidence in this case supports a finding that this section has been violated by NCIA, through the representations of Mr. Vincent to public officials, contractors, property owners and perhaps others.

In Delaware law if a person commits a negligent or wrongful act while acting within the scope of his employment, then the conduct of the “agent” or employee typically becomes the legal responsibility of the “principal” or employer. Mr. Vincent has not refuted or contradicted the State’s assertion that he is the owner and manager of National Code Inspection Agency, and conducted electrical inspections on behalf of that entity. Consequently, his acts and omissions while conducting electrical inspections on behalf of NCIA are attributable or imputed to NCIA and its professional license.

Mr. Vincent characterizes himself as a “federal agent”. He made those representations in Maryland in an effort to avoid regulation there. He claimed that some recent pronouncement of the U. S. Supreme Court provided him with the authority to conduct electrical inspections in all 50 states without any state or local regulations. He was asked by Maryland officials to provide them with authority for his “federal agent” claim. According to records received from Maryland, he was unable to provide such documentation. He failed to present such evidence when it could have provided Mr. Vincent with an affirmative defense to prosecution in a Maryland state court for inspecting without valid licensure or permit. Rather than present written evidence of his claim of “federal” authority during the instant hearing, and rather than respond to the State’s cross-examination on the point, he got up and left the hearing. After careful thought on the matter, I have concluded that the evidence in this case supports a claim that Mr. Vincent and NCIA have engaged in public deception in violation of 24 *Del. C.* §1421(1)(2).

Due process has been afforded in these proceedings.

Recommendation

Based on the relevant evidence in this case and the findings of fact and conclusions of law set forth hereinabove, and based on the specific fact that Mr. Vincent, on behalf of NCIA, has sought to deceive the public and this hearing officer regarding his status as a “federal agent” and has relied on that illusion to seek to avoid all proper and necessary state regulation of his conduct as an electrical inspector, it is recommended that the Board of Electrical Examiners revoke the inspection agency license of National Code Inspection Agency.



Roger A. Akin
Chief Hearing Officer

Dated: October 16, 2013

Any party to this proceeding shall have twenty (20) days from the date on which this recommendation was signed by the hearing officer in which to submit in writing to the Board of Electrical Examiners any exceptions, comments, or arguments concerning the conclusions of law and recommended penalty stated herein. 29 Del.C. §8735(v)(1)d.