

BEFORE THE DELAWARE BOARD OF ELECTRICAL EXAMINERS

In the Matter of:)
) Case No. 01-08-12
Raymond Vincent)
Lic. No. T1-02055-3 (Expired))

RECOMMENDATION OF CHIEF HEARING OFFICER

Nature of the Proceedings

The State of Delaware, by and through the Department of Justice, has filed a professional complaint against Raymond Vincent, a formerly licensed Master Electrician whose license expired in June 1986. The complaint alleges that Mr. Vincent filed a notarized application to renew his license with the Delaware Division of Professional Regulation in February 2012. Board records show that the Board denied his application in February 2013.

In his 2012 application Mr. Vincent represented to the Division and the Board that he denied that he had a record of criminal convictions. The State contends that statement is a false attestation. The State alleges that in September 2011 he was convicted in a court in Maryland for the offense of practicing as an unlicensed electrical inspector. The State further alleges that in April 1994 Mr. Vincent was convicted in a Delaware court of four felony sexual offenses. The State contends that Mr. Vincent's alleged false attestation and his record of convictions should subject him to professional discipline before the Board of Electrical Examiners under the State Board of Electrical Examiners Act, 24 *Del. C.* Ch. 14.

An open administrative hearing on the State's complaint was convened on due notice at 11:15 a.m. on September 19, 2013 in the offices of the Division of Professional Regulation, 861 Silver Lake Blvd., Dover DE. The State was represented by Katisha Fortune, Deputy Attorney General. Mr. Vincent failed or refused to attend the hearing. 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 after due consideration of all relevant evidence.

Summary of the Evidence

Though the hearing was noticed for 11:00 a.m. on September 19, 2013, the proceedings were not convened on that date until 11:15 a.m. in order to provide Mr. Vincent with ample time to appear. When Mr. Vincent had not appeared, the proceedings began with the State calling Ms. Devashree Brittingham, a paralegal employed in the Division Administrative Hearing Unit.

One of Ms. Brittingham's duties is to schedule and prepare notices of hearings before Division hearing officers. She prepared the notice of this hearing in the normal course of Division business and mailed it to Mr. Vincent on August 20, 2013. A copy of the hearing notice was admitted as State Exhibit 1 ("SX 1"). The notice provided Mr. Vincent with the date, time, place and subject matter of the proceedings. The notice advised Mr. Vincent of certain rights afforded to him in conjunction with the hearing. Enclosed with the hearing notice was a copy of the professional complaint in this case.

The notice was sent to Mr. Vincent by both First Class and certified mail at the last and most current address provided by him to the Board, and at the address which he recorded on his February 2012 renewal application. Ms. Brittingham testified that the First Class copy of SX 1 has not been returned to the Division as undeliverable by the U. S. Postal Service. That copy is therefore presumed to have been received by him. Mr. Vincent did in fact receive the certified copy of the hearing notice on August 23, 2013. His signature appears on the green card which was affixed to the notice and which has been returned to the Administrative Hearing Unit. The signed green card was attached for the record to SX 1.

Based on this record the undersigned determined that the State had achieved good and valid notice upon Mr. Vincent of the scheduling of these proceedings. Mr. Vincent had either failed or chosen not to appear for the hearing. Since good notice had been effectuated, the State was permitted to present its evidence on the complaint.

The State introduced an 81-page packet of documents which was admitted as SX 2. The State then called Ms. Jean Betley, Lead Investigator in the Division. Her duties include investigating professional complaints against licensees of professional licensing boards. She assumed responsibility for the investigation after the retirement of her predecessor on the file, Paul Eihinger.

Ms. Betley is identified as the complainant in this case. Her professional complaint is found at SX 2 at 1-4, and post-dates Mr. Vincent's renewal application. In it she reports that she had been informed by another employee of the Division that Mr. Vincent "may have fraudulently applied" to renew his license in light of criminal history information which had been retrieved while processing his application. SX 2 at 4.

Ms. Betley identified a copy of Mr. Vincent's 2012 licensure application. SX 2 at 5-8. She added that Mr. Vincent had been a Board licensee in the 1980's. His license had been placed in inactive status, and expired in 1986. The passage of time required him to reapply for licensure in 2012. Question No. 18 on the form asks the applicant to verify, under oath, whether he had "ever been convicted of or entered a plea of guilty or *nolo contendere* (no contest) to any felony, misdemeanor or any other criminal offense in any jurisdiction". In response to that question, Mr. Vincent checked the box "No". SX 2 at 8.

Ms. Betley testified that information secured while processing the application indicates that Mr. Vincen't's answer was not truthful. The answer was sworn to and notarized. *Id.* She

added that untruthful answers to such questions on applications are referred to the Department of Justice.

Ms. Betley identified certified copies of certain criminal docket sheets of the Delaware Superior Court which are found at SX 2 at 10-19. They were secured by Mr. Eihinger. Mr. Vincent had been charged with a number of sex offenses in 1994 after his arrest in 1993. SX 2 at 10-11. On April 25, 1994 he entered pleas of guilty to two counts of felony Unlawful Sexual Contact and two counts of Unlawful Sexual Penetration. *Id.* In exchange for those pleas, the State had dismissed approximately 53 other sex offenses *nolle prosequi*.

Ms. Betley reviewed other documents in Mr. Eihinger's investigative file. Mr. Eihinger had spoken with Jeffrey Thomas, Deputy Chief Fire Marshal in Maryland. Mr. Thomas and others had received information that Mr. Vincent had been conducting electrical inspections of buildings in Maryland without proper licensure or permit. Mr. Thomas further related to Delaware investigators that Mr. Vincent had been arrested on account of that conduct. Mr. Vincent had been found guilty in one case, and a second case was pending against him in Maryland.

Ms. Betley identified documents received from Maryland fire officials at SX 2 at 20-79. She testified that it had ultimately been determined in both Maryland cases that Mr. Vincent had presented documents in that state which purported to identify him as a "federal inspector" legally capable of performing electrical inspections in all states.

Ms. Betley noted that a report summarizing a September 23, 2011 trial in the Worcester County MD District Court is found at SX 2 at 29. In that report Deputy Chief Thomas reports that a bench trial was held and that Mr. Vincent had been found guilty of conducting electrical inspections without proper license or authorization. *Id.* Mr. Vincent was sentenced to six

months imprisonment, with all but 15 days suspended, was placed on probation for three years, and was fined \$300. *Id.* The records from Maryland also show that Mr. Vincent appealed his conviction. However, he did not appear for a pre-trial hearing in conjunction with the appeal, and it was dismissed. SX 2 at 28.

Ms. Betley also identified a “News Release” regarding Mr. Vincent which was issued on April 19, 2011 by the Maryland State Fire Marshal. SX 2 at 80. The release states that the charges against Mr. Vincent in Maryland were “Certification Required” under Sec. 12-606 of the Public Safety Article of the Maryland Code. According to the release, that section of the Maryland Code requires that a person must be certified by the Maryland Fire Marshal as a nongovernmental electrical inspector in order to inspect and certify or approve electrical work. *Id.*

Ms. Betley reiterated that when he applied for a license in February 2012, Mr. Vincent was required to disclose the 1994 Delaware sex offenses and the Maryland 2011 unlicensed inspection conviction or convictions. Since he failed to do so, this licensing case was referred to the Delaware Department of Justice for prosecution. This complaint followed. This concluded the State’s presentation of evidence. Mr. Vincent had still not appeared in the hearing room.

Findings of Fact

The notice of this hearing provided Mr. Vincent with the date, time, place and subject matter of the proceedings. SX 1. It was in fact received by Mr. Vincent, who failed or refused to appear for the hearing.

Mr. Vincent was once a licensed Master Electrician of the Delaware Board of Electrical Examiners. His license expired in or around 1986. In 2012 Mr. Vincent determined to renew

or reactivate his license. He was required to execute an "Application for Licensure as Electrician". The application which Mr. Vincent filled out on February 27, 2012 under oath or affirmation is found at SX 2 at 5-8.

Question No. 18 on the application form asks Mr. Vincent if he had *ever* been convicted of a felony, misdemeanor or *other* offense in *any* jurisdiction. To that question Mr. Vincent answered "No". SX 2 at 8. At the end of the form, Mr. Vincent swore before a Delaware notary that the information in the application was correct. By his signature he also acknowledged that "any intentionally fraudulent information will be reported to the Attorney General." *Id.*

In 1993 Mr. Vincent was arrested and eventually charged with approximately 57 sex offenses in the Delaware Superior Court including Unlawful Sexual Contact, Unlawful Sexual Penetration and Unlawful Sexual Intercourse. In April 1994 he entered pleas of guilty to two counts of Unlawful Sexual Contact and two counts of Unlawful Sexual Penetration. SX 2 at 10-11. The complaint avers that the Sexual Penetration charges involved a minor victim or victims under the age of 16. He was sentenced to a substantial period of confinement and, *inter alia*, was ordered to be psychologically evaluated and to be counseled regarding sex offenses against children. SX 2 at 14. Thereafter the Superior Court denied Mr. Vincent's request for post-conviction relief. SX 2 at 17. His motion for reduction of sentence was also denied. SX 2 at 19.

On April 19, 2011 Mr. Vincent was served with two criminal summons by the office of Maryland State Fire Marshal. The summons charged Mr. Vincent with two counts of violation of Maryland Public Safety Article 12-606 on account of his having performed certain electrical inspections in two Maryland counties without a valid state permit or license to do so. SX 2 at

33. At least one of the charges went to trial before a judge in Worcester County, MD on September 23, 2011. According to a summary of that proceeding, Mr. Vincent maintained that “this was a federal matter” and that Maryland authorities lacked authority to arrest him. The defense was apparently unavailing, and Mr. Vincent was convicted and sentenced to incarceration, probation and was assessed a fine. SX 2 at 29.

While conducting this investigation, the Division of Professional Regulation secured an extensive number of documents from the Maryland State Fire Marshal’s office. SX 2 at 20-80. Some of the Maryland investigative materials state that Mr. Vincent had been representing to public officials and private contractors or property owners that because of “new regulations coming from the Supreme Court”, he was now authorized to conduct electrical inspections throughout the United States. The files do not indicate that Mr. Vincent presented Maryland officials with acceptable documentary evidence supporting that contention. Mr. Vincent’s business entity trades as “National Code Inspection Agency”. He claimed to individuals in Maryland that Maryland and Delaware were parties to a “reciprocity” electrical inspection agreement. (Apparently in 2011 Mr. Vincent was licensed in neither.)

Mr. Vincent did not appear at the hearing to contradict any of these facts as presented by the State. Nor did he present any evidence of his claim of “federal” legal authority to inspect electrical work in all 50 states. The fact that he calls his inspection business the *National Code Inspection Agency* and that he has conducted electrical inspections for violations of the *National Electric Code* or the *National Electric Safety Code* does not cause him to be a “federal” inspector. Nor do those things cloak him with “federal” authority. I find that these facts have been proven by a preponderance of the evidence.

Conclusions of Law

The notice of this hearing provided Mr. Vincent with the date, time, place and subject matter of the hearing. It otherwise comported with legal requirements for hearings before the Board. It was in fact received by Mr. Vincent, who failed or refused to attend the hearing, and who did not contact the Administrative Hearing Unit to discuss the scheduling of the proceedings.

The primary purpose of the Board of Electrical Examiners is to protect the general public and those who are the recipients of electrical services from unsafe practices. 24 *Del. C.* §1401. The Board has been authorized by the legislature to conduct hearings when it is alleged that an individual has violated the Act. 24 *Del. C.* §1406(a)(9) and (10). These are valid means and ends rationally related to the legitimate state purpose of protecting the public from those who would practice electrical services unprofessionally or incompetently.

In the complaint the State alleges that, by his actions, Mr. Vincent has violated three provisions of the Board of Electric Examiners Act. The State first contends that Mr. Vincent violated 24 *Del. C.* §1412(a) by “failing to disclose his felony criminal history and convictions” in his 2012 license application. Sec. 1412(a) of the Act is a list of acts or omissions which may subject an individual to professional discipline if he is a “practitioner licensed under this chapter.” *Id.*

As noted above, according to this record Mr. Vincent allowed his Master Electrician license to expire in or about 1986. Because of the length of time which had passed since he was last licensed, Mr. Vincent was required in 2012 to file a new license application. As found above, on that application he failed to disclose either the 1994 Delaware sex offense

convictions or the more recent 2011 “inspecting without a valid license” conviction(s) in Maryland.

Though not conceding or making a finding on the point, if it is assumed that Mr. Vincent had some lingering property interest in his long-expired license, I will address the claims under Sec. 1402(a) as if the State were permitted to bring him under the ambit of that section. I presume, for the sake of this discussion, that in citing him under Sec. 1402(a), the State believes that any property interest Mr. Vincent may have in his former license may only be adversely impacted in this case upon due notice and hearing.

In my opinion, and but for the hearsay issue discussed below, Mr. Vincent violated 24 *Del. C.* §1412(a)(2) as a matter of law. That subsection allows for discipline of a “practitioner” if he “illegally, incompetently or negligently provided electrical services”. The Maryland documents which are part of this record (SX 2 at 20-80) establish that Mr. Vincent performed electrical inspections in that state without proper licensure or permit. Hence, his inspections there constituted unlawful acts, as evidenced in the summary report of his criminal conviction in Worcester County, MD. SX 2 at 29.

In addition, §1412(a)(3) exposes a practitioner to discipline if he performs electrical work in a category for which he was not licensed. Again, the Maryland documents and report of Mr. Vincent’s conviction demonstrate that he was performing certain electrical inspections in that state without a valid license or permit to do so.

Finally, the Maryland records also appear to establish adequate proof of violation of Sec. 1412(a)(6). That section of the Act provides for discipline when a practitioner engages in acts which constitute deception of the public. Throughout the Maryland records there are reports of Mr. Vincent’s method of operation there. He represented to both public officials and

contractors or property owners that he had the authority to inspect electrical work in all 50 states.

When challenged regarding that proposition, he stated that a recent U. S. Supreme Court decision or “regulation” now provided him with that authority. Though he promised some that he would produce authority for his assertion, he apparently never did so. At least not to the satisfaction of Maryland fire officials. A report by a Deputy Fire Marshal in Maryland relates that Mr. Vincent tried to advance that theory during his Maryland trial in September 2011. However, in the Maryland state court proceedings he either was unwilling or unable to produce the judicial decision or regulation or other authoritative document which would presumably have defeated his Maryland prosecution. Nor did he appear during this hearing before me to present any such authority. In my opinion his continual insistence that something had changed in the law such that he had become a “super-inspector” or an inspector who could go from state to state without deference to state inspection licensing authorities was an act of public deception in violation of Sec. 1412(a)(6).

Nonetheless, based on the record before me, I can not find that the Maryland documentation is adequate proof of the claim that Mr. Vincent’s unlicensed inspection practices in that state violated the three subparagraphs under Sec. 1412(a) summarized above. I so find not because Mr. Vincent is arguably no longer a “practitioner” subject to the provisions of 24 *Del. C.* §1412(a). Rather, I reluctantly come to this legal conclusion because of the form of proof presented by the State.

The rules of evidence are not applicable in administrative hearings such as this one. 29 *Del. C.* §10161(h). Decisions resulting from such hearings must be based on substantial evidence. However, a decision “must not be based exclusively on hearsay”. *Id.* That is

Delaware's iteration of the "residuum rule". Simply stated, the "residuum rule" holds that a finding in a licensure case such as this one may be based on some hearsay evidence, but not "on hearsay evidence alone." *Geegan v. Unemp. Comp. Comm'n*, Del. Supr., 76 A.2d 116, 117 (1950).

I find that the evidence establishing the nature of Mr. Vincent's unlicensed inspection activities in Maryland and the resulting conviction in Worcester County is solely of a hearsay nature. Most of the documents secured from the Maryland State Fire Marshal are the hearsay reports of certain of its officials. Though the State placed into the record a criminal summons (SX 2 at 54), a statement of charges (SX 2 at 55), an application for statement of charges (SX 2 at 56), and a bench warrant for Mr. Raymond's arrest (SX 2 at 58), none of those documents were certified by Maryland court officials as true and correct.

Nor did the State submit a certified or uncertified order of conviction in the "unlicensed inspection" case. Rather, the fact of a conviction is simply referenced in an anecdotal and hearsay summary report by Deputy Thomas. SX 2 a 29. The State did not describe on the records any efforts to bring any of the Maryland officials to this hearing. Even if the courtroom rules of evidence did apply in these proceedings, the State could not avail itself of the benefit of DRE 803 which lists exceptions to the hearsay rule when the availability of the out-of-court declarant is immaterial. Though most of the documents in the Maryland file which was placed in evidence here are "public records and reports" and may be otherwise admissible, that exception to the hearsay rule does not apply to investigative reports by police and other law enforcement personnel. DRE 803(8). It is evident that, in the context of this case, the Maryland Fire Marshal personnel were acting in a law-enforcement capacity with regard to Mr. Vincent.

To summarize, I have concluded that I may not make conclusions of law with regard to alleged violations by Mr. Vincent in Maryland under 24 *Del. C.* §1412(a) because the entire record submitted to establish that misconduct is hearsay in nature.

The State next contends that Mr. Vincent is in violation of 24 *Del. C.* §1412(a)(4) in that the sex offenses to which he pled guilty in 1994 are substantially related to the performance of electrical work. The State may support any such contention with a certified copy of the record of conviction. That has been done here. SX 2 at 10.

The Board of Electrical Examiners has been charged with the duty of promulgating regulations which specifically identify those crimes which are “substantially related to the work of an electrician.” 24 *Del. C.* §1406(c). The Board has promulgated such a list. Bd. Reg. 17.0 *et seq.* Unlawful Sexual Contact – 2nd Degree is a “substantially related” crime. Bd. Reg. 17.1.9. Since Mr. Vincent’s convictions in 1994, the previously denoted crime of Unlawful Sexual Penetration has been merged into the corresponding degree of the offense of Rape in the contemporary version of the Delaware Criminal Code. 11 *Del. C.* §761 *et seq.* Rape in the First, Second, Third and Fourth degrees are all included on the Board’s list as well. Bd. Reg. 17.1.11-14.

Hence, the four felonies to which Mr. Vincent pled in 1994 are all on the list of “substantially related” offenses which the Board has concluded “substantially relate to the performance of electrical work.” As such, and to the extent that he may still be deemed a “practitioner” in Delaware, he has clearly violated 24 *Del. C.* §1412(a)(4).

The State finally contends that Mr. Vincent has violated 24 *Del. C.* §1408(a)(10). That section of the Act dictates rejection of an application when the applicant has committed crimes substantially related to the provision of electrical services. I have concluded as a matter of law

that the State has proved the application of this section, and that Mr. Vincent has violated it. Certain applicants may seek a waiver from this rule under certain circumstances. 24 *Del. C.* §1408(a)(10)a-d. Since such an application is not before me, I am not required to discuss those circumstances or factors.

Nonetheless, to the extent that the Board is obligated to consider a license application or petition for waiver of the impediment imposed by 24 *Del. C.* §1408(a)(10) filed by Mr. Vincent in the future, the specific nature of the criminal history proved in this case should give the Board some concern under 24 *Del. C.* §1408(a)(10)(d).

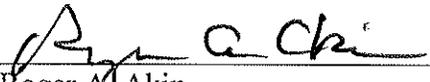
A final note on candor in the application process. The Board has highlighted the requirement of honesty and openness in regard to the filing of applications by requiring that they be submitted under oath or affirmation. Though neither the Act nor Board regulations specifically refer to the issue, in my opinion an application for the privilege of practicing licensed inspections in Delaware implicates a common law duty of candor. The filing of a verified application for an electrician's license is an implicit representation that the Board may rely on the accuracy of all of the statements in the application in making the licensure decision. An application that knowingly contains substantial misrepresentations or untruths is void or voidable as a matter of law because the Board may fairly infer that it has been filed with fraudulent intent.

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 above, the following is recommended to the Board in this case:

1. That the Board of Electrical Examiners finally reject the application filed by Raymond Vincent in February 2012;
2. That this recommendation and the final order of the Board be made a permanent part of Mr. Vincent's licensure file as maintained by the Board and by the Division of Professional Regulation so that the Board, as it may be constituted in the future, may be informed of these proceedings should Mr. Vincent file another license application or should he file a petition seeking a waiver under 24 *Del. C.* §1408(a)(10);
3. That Mr. Vincent be ordered to CEASE & DESIST from making any representations in the future to any public official or any other person or agency that he possesses any inspection or other licensure authority which he does not in fact possess as a matter of law;
4. That Mr. Vincent be ordered to CEASE & DESIST from conducting any electrical inspections or any other electrical work requiring a state or local permit or license until and unless he has secured the required licensure prior thereto.



Roger A. Akin
Chief Hearing Officer

Dated: October 15, 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.