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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA
Case No.: 35-2021-CA-000866-AXXX-XX

Lower Tribunal: Lake County Board of Building Examiners
Case Nos.: 2020100244, 2020100245, and 2020100246

GREGORY SEGHERS,

Petitioner,

vs.

LAKE COUNTY, FLORIDA,

Respondent.

ORDER ON PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before the Court for review and consideration without a request for oral argument upon the Petition for Writ of Certiorari filed by Petitioner, Gregory Seghers (“Petitioner”), on May 14, 2021 (“Petition”). The Court, having reviewed the Petition including the documents in the Appendix¹, and being otherwise fully advised in the premises, finds and concludes as follows:

**I.
INTRODUCTION**

Petitioner seeks certiorari review of Lake County’s Board of Building Examiners’ “Final Order of Fine (Unlicensed Individual: LCC, Chp. 6, Article VII)” dated April 15, 2021. (App., 46-47). Petitioner argues that the County’s decision to find him in violation of Section 6-100(b)(6) of the Lake County Code² (“LCC”)

¹ Citations to the Appendix will be denominated as “App.” followed by the page number(s) and, in the case of testimony, the line number(s).

² The Lake County Code is sometimes referred to as the Lake County Code of Ordinances.

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violated his right to procedural due process, departed from the essential requirements of the law, and was not supported by competent and substantial evidence. Therefore, he requests that the Court quash the County's actions and issue an Order to Show Cause as to why the relief sought by Petitioner should not be granted. Based upon the Court's initial review of the Petition and the Appendix, the Court did not issue an Order to Show Cause. As more fully explained below, and based on the record and applicable law, the Court will deny the Petition.

II. JURISDICTION

This Court's jurisdiction is founded upon Article V, Section 5(b) of the Florida Constitution, section 171.081, Florida Statutes (2020), and Florida Rule of Appellate Procedure 9.030(c)(3).

III. STANDARD OF REVIEW

In this proceeding, the Court functions as an appellate court. Fla. R. App. P. 9.100(c). As such, the Court considers only the information contained in the record. In *Town of Manalapan v. Gyongyosi*, 828 So. 2d 1029, 1032 (Fla. 4th DCA 2002), the Court summarized the two-tier system of certiorari review as follows:

Certiorari review of a board's decision must be in accord with *City of Deerfield Beach v. Villant*, 410 So.2d 624, 626 (Fla.1982), which established a two-tier review of such decisions. In the "first-tier" review, a party may seek certiorari review in the circuit court, which is more akin to an appeal and is not discretionary. *See Dusseau v. Metro. Dade County Bd. of County Comm'rs*, 794 So.2d 1270, 1273-74 (Fla.2001); *Fla. Power & Light Co. v. City of Dania*, 761 So.2d 1089, 1092 (Fla.2000). The court must review the record from the commission's decision and determine whether: (1) procedural due process has been afforded; (2) whether the essential requirements of law have been observed; and (3) whether competent substantial evidence supports the commission's judgment. *See Vaillant*, 419 So.2d

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at 626. The “competent, substantial evidence” standard of review applied to this first-tier review “is tantamount to legally sufficient evidence.” *Fla. Power & Light*, 761 So.2d at 1092.

Certiorari review in general does not permit the Court to substitute its judgment for the judgment of the lower tribunal or agency. *Haines City Cmty. Dev.* at 530. For this reason, if there is *any* competent substantial evidence in the record to support the County’s actions this Court must uphold those actions. *See Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089 (Fla. 2000); *Gyongyosi*, 828 So. 2d at 1032.

IV. PROCEDURAL HISTORY

A. Petitioner’s “Contextual History”

Pages 1-6 of the Petition consists of a narrative history that is labeled “Contextual History”. The Court notes that only two record citations were made in the entire Contextual History section of the Petition. In the Certiorari Standard of Review section beginning on page 6 and running through page 9 of the Petition, Petitioner also gives some of the procedural history. Beginning on page 9 of the Petition, Petitioner provides the “Facts on Appeal” section which contains most of the procedural history. For purposes of considering the Petition, the Court is not giving any weight to the “Contextual History” section on pages 1-6 of the Petition.

The Court will, however, consider paragraphs 7, 8, and 9 appearing under the “Certiorari Standard of Review” section on pages 6-9, along with paragraphs 10-41 under the heading “Facts on Appeal” beginning on page 9 and running through page 21, to be the Petitioner’s Statement of Procedural History. It will be accorded the deference to which it is entitled, recognizing that some of the language is argumentative and some of it is purely factual. Putting aside the argumentative context in which the statements were made, the paragraphs identified above appear to be an

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accurate recitation of the major procedural milestones during the proceedings under review.

B. The Citations

Lake County's charging documents for code enforcement violations are called citations and each have a unique identifying number associated with them. The one page citations are completed by a license investigator and provide not only the allegations of violation against the individual receiving the citation, but also provide the date, time, and place of the hearing to be held on the citation and require the individual receiving the citation to sign an acknowledgement of receipt.

Although the citation is the core charging document that forms the basis of the County's allegations against the recipient, also common to each of the cases is an investigative report completed by the license officer which did not exceed one page in any of the cases under review. Each case also includes a document entitled "Certificate of Non-Licensure" on Lake County letterhead completed by a license investigator and indicating that a diligent search was made of the Department of Business and Professional Regulation's electronic records and it was confirmed that the individual whose records were being sought did not have a current or active license as a construction contractor in Lake County or the State of Florida.

In this case, the Certificate of Non-Licensure in each of the cases under review indicated that Gregory Seghers did not have a current or active license as a construction contractor in Lake County of the State of Florida. (App. 4-47).

1. Citation Number: 2020100244 (CN244).

CN244 relates to an estimated date of violation of May 29, 2020, at 16640 Lake Smith Road, Umatilla, Florida. The Investigative Report attached to CN244 states that on May 29, 2020, Petitioner contracted with Mike Church to build a dock and a boat house with a roof system at the subject property. The deposit for the boat house was

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paid by Mr. Church directly to Petitioner.

The work was cancelled by the property owner and the check was cancelled. However, Petitioner had already cashed the check and no work was performed. A Power of Attorney was obtained from a licensed contractor to obtain permits and act in the capacity of a licensed contractor.

County staff searched with the Lake County Database of the Department of Business and Professional Regulation and confirmed there was no contractor license issued for Petitioner. A civil citation was issued for contracting and acting in the capacity of a contractor without being duly licensed. It was also noted that Petitioner has been disciplined by Lake County prior to this citation for unlicensed contracting and working without the proper license.

2. Citation Number: 2020100245 (CN245).

CN245 relates to an estimated date of violation of May 12, 2020, at 13408 Country Club Drive, Tavares, Florida. The Investigative Report attached to CN245 states that on May 12, 2020, Petitioner obtained payment and performed work that requires a contractor's license. The work was a new 24x10 boathouse with a walkway, gable metal roof and a lift system.

County staff searched with the Lake County Database of the Department of Business and Professional Regulation and confirmed that there was no contractor license issued for Petitioner. A civil citation was issued for contracting and acting in the capacity of a contractor without being duly licensed. It was also noted that Petitioner has been disciplined by Lake County prior to this citation for unlicensed contracting and working without the proper license.

3. Citation Number: 2020100246 (CN246).

CN246 relates to an estimated date of violation of May 6, 2020. The Investigative Report attached to the citation for CN246 states that on May 6, 2020,

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Petitioner was advertising to perform work that requires a contractor's license. Specifically, he was indicating on his Facebook page that he can perform work by installing metal roofs, building docks, remodeling, windows, and doors. The State license posted on the advertisement belongs to a separate contractor. This resulted in an investigation against the other contractor, John Murphy, and it was observed that they too had indicated this on the Petitioner's Facebook page.

County Staff searched with the Lake County Database of the Department of Business and Professional Regulation and confirmed there was no contractor license issued for Petitioner. A civil citation was issued for contracting and advertising oneself as a contractor without duly being licensed. It was also noted that Petitioner has been disciplined by Lake County prior to this citation for unlicensed contracting and working without the proper license.

C. Final Order of Fine (“FOF”)

After the hearing on April 1, 2021, the Lake County Board of Building Examiners³ (“Board”) entered the FOF pursuant to the evidence presented at the hearings. The findings of fact section of the order includes testimony offered by the County, and introduction of each investigative file into evidence as proof of the facts alleged in the citation. The Board's findings of fact set forth in the civil citation are approved, adopted and incorporated by reference into the order as findings of fact by the Board.

The Board reached conclusions of law that included finding there was substantial evidence that Petitioner violated Section 6-100(b)(6) of the LCC, which

³ Section 6-2 of the LCC, entitled “General enforcement” states that “[t]his chapter, the Florida Building Code and the codes adopted hereunder shall be enforced by the board of building examiners; however, notwithstanding any of the provisions herein, the county shall have the right to enforce the provisions of this chapter and the building codes adopted hereunder by any other lawful means. This chapter is enacted pursuant to F.S. Ch. 489, Ch. 162, Ch. 455, Ch. 775, and Ch. 286. (Ord. No. 2016-04, § 2, 2-2-16).

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prohibits engaging in the business or acting in the capacity of a contractor, or advertising oneself or a business organization as available to engage in the business of acting in the capacity of a contractor, without being duly licensed or registered. (App. at 46-47). Therefore, the Board ordered and adjudged a civil penalty in the amount of \$1,000 payable to Lake County within ten (10) days from the execution date of the order. (App. at 47). This appellate proceeding timely followed.

V.

SUBSTANTIVE LAW REGARDING CONTRACTOR LICENSURE

In Part I of Chapter 489, Florida Statutes, the Legislature provided for the licensing, registration and certification of construction contractors. In *Kvaerner Construction, Inc. v. American Safety Casualty Insurance Co.*, 847 So. 2d 534, the court noted that “Section 489.128 was enacted to protect the public from the activities of incompetent contractors,” citing to § 489.101, Florida Statutes (“the Legislature deems it necessary in the interest of the public health, safety, and welfare to regulate the construction industry”). Construction by unlicensed contractors implicates “concerns over whether the other party and the public at large are sufficiently protected from shoddy workmanship.” *MGM Construction Services Corp. v. Travelers Casualty & Surety Co. of America*, 57 So. 3d 884, 889 (Fla. 3d DCA 2011).

Section 489.13(1), Florida Statutes, states that “Any person performing an activity requiring licensure under this part as a construction contractor is guilty of unlicensed contracting if he or she does not hold a valid active certificate or registration authorizing him or her to perform such activity, regardless of whether he or she holds a local construction contractor license or local certificate of competency.”

When a licensed individual seeks to operate under the umbrella of a business organization, “including any partnership, corporation, business trust, or other legal entity, or any name other than the applicant’s legal name or a fictitious name where the

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applicant is doing businesses as a sole proprietorship, the applicant must apply for registration or certification as the qualifying agent of the business organization.”

Furthermore, Section 489.127(4)(b), Florida Statutes (2020), states as follows:

(4)(a) A certified or registered contractor, or contractor authorized by a local construction regulation board to do contracting, may not enter into an agreement, oral or written, whereby his or her certification number or registration number is used, or to be used, by a person who is not certified or registered as provided in this chapter, or use, or to be used, by a business organization that is not duly qualified as provided for in this chapter to engage in the business, or act in the capacity, of a contractor.

(b) A certified or registered contractor, or contractor authorized by a local construction regulation board to do contracting, may not knowingly allow his or her certification number or registration number to be used by a person who is not certified or registered as provided for in this chapter, or used by a business organization that is not qualified as provided for in this chapter to engage in the business, or act in the capacity of, a contractor.

Subsection (d) criminalizes this conduct by making it a misdemeanor of the first degree. *RTM General Contractors v. G/W Riverwalk, LLC*, 893 So. 2d 583, 584 (Fla. 2nd DCA 2004).

The Legislature also enacted Section 489.128, Florida Statutes, which renders contracts performed by unlicensed contractors unenforceable after October 1, 1990, in order to protect the public from incompetent contractors.

Lake County adopted these prohibitions as its own code and provides for their local enforcement through code enforcement officers investigating and issuing citations. Those issued citations due process through administrative hearings before a board. See Chapter 6, Article VII, of the LCC. In Section 6-1 of the LLC, the Board of County Commissioners found “it is necessary to the interest of the public health, safety, and welfare to regulate the licensing of those persons engaged in the

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construction industry . . .” Further, Section 6-2 the LCC states that Chapter 6, “the Florida Building Code, and the codes adopted hereunder shall be enforced by the board of building examiners; however, notwithstanding any of the provisions herein, the county shall have the right to enforce the provisions of this chapter and the building codes adopted hereunder by any other lawful means.”

Section 6-100 of the LLC, under which the citations against the Petitioner were issued, specifically states that “[i]t shall be a violation of this section for any person to engage in the business or act in the capacity of a contractor or advertise himself, herself, or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified pursuant to F.S. Ch. 489, or obtaining a local license pursuant to this chapter unless exempted pursuant to section 6-5.”

Further clarity and detail about the restrictions on unlicensed contractors is contained in subsection (b), entitled “Prohibited activities”. See Exhibit “A” hereto, which contains Sections 6-100 through 6-105 of the LCC, governing the proceedings that occurred before the Board.

VI. HEARING ON FEBRUARY 4, 2021

Hearings before the Board occurred on two separate dates. The first hearing was on February 4, 2021 and the second was on April 1, 2021. Each of the hearing transcripts are in the record and will be summarized where pertinent to the issues on appeal.

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A. Case Number 2020100249 – Administrative Complaint against John Murphy⁴

The first witness called at the hearing on February 4, 2021, was license investigator Joann Sala. (App. 213).

1. Testimony of Investigator Joann Sala

On May 2, 2019, John Murphy gave a power of attorney to Carla Seghers to “pull any and all permits and documentation for his certified licensing and certified building contractors license.” (App. 214).

On July 23, 2020, a building permit was applied for by Carla Seghers on behalf of John Murphy for a dock addition to a residence in Tavares. The permit was issued on August 4, 2020. (App. 214/5). On August 26, 2020, investigator Sala observed Mr. Seghers performing work at a residence located in Tavares. Investigator Sala took photographs and obtained a copy of the contract from the owner, both of which were received in evidence. (App. 214/10-17). The contract was entered into between the property owners and Mr. Seghers, and the checks were written to and cashed by Mr. Seghers. (App. 214/18-20).

On July 23, 2020, a building permit was applied for by Carla Seghers on behalf of John Murphy for a new dock and walkway to a residence located at 30303 Island Club Drive. The permit was issued on September 17, 2020. (App. 214/21-25).

On October 2, 2020, Investigator Sala observed Mr. Seghers’ work again at a residence located at 30303 Island Club Drive. Mr. Seghers was on the job performing the dock work and several pictures were taken at that time. Investigator Sala determined that the contract was entered into between the property owners and

⁴ Case Number 2020100249 was brought only against John Murphy. However, Petitioner appeared, was represented by counsel, and testified. John Murphy also testified. The record of proceedings was included in the Appendix and cited by Petitioner.

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Gregory Seghers, and the checks were written to and cashed by Gregory Seghers. The contracts show there is a certified building contractor's license on top of those contracts showing Mr. Murphy's license on those contracts. But the work was being done by Mr. Seghers and the checks were being cashed by Mr. Seghers. (App. 215/1-19).

On August 20, 2020, a building permit was applied for and issued to Carla Seghers on behalf of John Murphy for an addition to a boat's lift and an existing dock at a residence located at 16640 Lake Smith Road in Umatilla. (App. 215/20-24).

On September 15, 2020, the building services department received a cancel letter from Carla Seghers on behalf of John Murphy requesting cancellation of permit number 2020080886 due to the property owner having cancelled the work. On September 22, 2020, Investigator Sala obtained a copy of the contract from the property owners and showed a copy of the check they had given to Gregory Seghers. On top of the contract was information about Gregory Seghers and John Murphy. (App. 216/5-13).

In addition, a Facebook post was obtained by Investigator Sala showing that on May 6, 2019, Gregory Seghers, Inc., was advertising his services "working in partnership with John Murphy, Inc." (App. 216/14-17).

John Murphy does not qualify Gregory Seghers, Inc. Both companies are separate businesses in the Division of Corporations. (App. 216/18-21).

Investigator Sala testified that her investigation revealed that John Murphy is aiding and abetting an unlicensed contractor by providing his power of attorney to Ms. Carla Seghers to pull permits for Mr. Seghers. The record showed civil citations were issued on this case. (App. 271/18-21).

2. Testimony of John P. Murphy

John P. Murphy testified that he is accused of pulling permits for Mr. Seghers and claimed he did not understand that. He testified that Mr. Seghers works for him

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and has done so for six (6) years. He also referred to the fact that they has been in code enforcement proceedings previously. (App. 218/12-20).

Mr. Murphy went on to discuss the manner in which he worked with Mr. Seghers. He said he oversees all the jobs and goes to them to check on them all the time and knows exactly what goes on. (App. 219/8-12). He gives Mr. Seghers the authority to bid on jobs because he is not a framer anymore; Mr. Murphy works on roofs now. So Mr. Seghers goes out, bids the jobs, and comes back to Mr. Murphy with a price that he agrees upon. All of his proposals have his name at the top followed by John Murphy, Inc., Mr. Murphy's license number, and his telephone number. (App. 219/13-20).

Investigator Sala testified that they explained to Mr. Murphy that Mr. Seghers has to be his employee, not a 1099 employee because that is a subcontractor. If you are going to use a subcontractor, he/she must be licensed. It cannot be two corporations. One is the corporation and the other is the employee. Mr. Seghers cannot be running a job and cashing checks as if he was a contractor. (App. 220/18 – 221/1).

Mr. Murphy denied that the contracts were between Mr. Seghers and the homeowners. He claimed the documents were his proposal. His name was on top and Mr. Seghers had his name on top with his phone number in case they needed to contact him. (App. 221/7-15).

Mr. Murphy admitted that it was a mistake for the checks to be cashed by Mr. Seghers. He said the homeowners wrote the checks out before he had a chance to tell them the checks should be payable to him. He does not believe it was illegal but said he made arrangements to never let it happen again. He admitted that it got away from him. (App. 221/12-25/26-13).

The financial arrangement between Mr. Murphy and Mr. Seghers was that Mr. Seghers works on a percentage. They paid the bills and he gets a percentage of the

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amount. He works on commission and Mr. Murphy provides him with a 1099. Mr. Murphy conceded that they are making arrangements to qualify him, adding “we are looking into our alternatives in how to get him legal.” Further, “if this is a problem, then we need to fix it.” (App. 222/14-22).

Mr. Murphy acknowledged that there are limitations on 1099 individuals. He looked into it extensively and it boggles his mind sometimes. He added “we are trying to get it straightened out where there is not going to be this problem anymore.” (App. 222/23-25).

Investigator Sala added that for the record, she spoke to every one of the homeowners that gave checks and copies of the contracts and they do not know Mr. Murphy. They only met Mr. Seghers and wrote out all of the checks to him. Mr. Seghers denied that was true. (App. 223/6-12).

One of the commissioners noted that the checks were written out to Gregory Seghers, Inc., indicating there is another corporation involved.

At this time the case involving Mr. Murphy was tabled⁵ so the Commission could consider the four (4) separate cases involving four (4) separate instances where Mr. Seghers allegedly worked in cooperation with Mr. Murphy as an unlicensed contractor. (App. 229/7-231).

B. Case Number 2020100237-30303 Island Club Drive, Tavares, FL – (Seghers)

1. Testimony of Investigator Joann Sala

Investigator Sala testified that the work was performed by Mr. Seghers and his

⁵ Later that evening, the Board resolved the administrative complaint against Mr. Murphy with a recommendation and motion that was seconded and approved unanimously by the Board to revoke Mr. Murphy’s permitting privileges for thirty (30) days to allow him to get everything in order. It would also require him to pay \$790 of the administrative fees and then report the situation to the Department of Business and Professional Regulation. (318/25-320/13).

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vehicle was on the job site. Mr. Seghers had a power of attorney given to him by Mr. Murphy and used his wife Carla Seghers to obtain the permits. Confirmation was made with the Department of Business and Professional Regulation and the Lake County database showing that Mr. Seghers has no license. Further, Investigator Sala testified that he had received a civil citation for contracting and acting in the capacity of a contractor without being duly licensed, and was disciplined prior to the case at hand for working without the proper licenses. (App. 231/7-25).

Attorney Zackary J. McCormick (“Petitioner’s counsel”) appeared on behalf of Gregory Seghers and addressed the Commission. Petitioner’s counsel expressed much appreciation for the courtesy he was shown by the Board on this date.

Petitioner’s counsel had Investigator Sala admit that she is seeking to prove Mr. Seghers violated a very specific rule, i.e. Section 6-100 of the LCC. Investigator Sala confirmed they are not seeking enforcement of Chapter 489 as the Code Enforcement Department only focuses on Chapter 6 of the LCC. (App. 232/19-233/12). Petitioner’s counsel confirmed that Investigator Sala knew the County had the burden of proof at the hearing. (App. 223/2-12).

At 30303 Island Club Drive, Deer Island, Florida, Investigator Sala confirmed she spoke with both of the owners on their front porches and provided further explanation. (App. 235/3-22).

Investigator Sala testified she has no data within the Lake County database that shows Mr. Seghers is a licensed contractor. However, Mr. Murphy is a licensed contractor. Investigator Sala was relying upon the information she received that led her to the conclusion that a 1099 contractor cannot work as the agent of a licensed contractor except she clarified to say the position she took was that a 1099 employee is a subcontractor employee.

Investigator Sala’s Citation specifies that Mr. Seghers contracted [with the

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homeowners] and performed the work. Both of those jobs required a contractor's license which Mr. Seghers does not have and that is why he was cited.

There was a colloquy between counsel for Mr. Seghers and one of the commissioners that was not of much evidentiary value. However, at the end of the exchange the commissioner stated "the bottom line here is, you got an unlicensed contractor on top of a contract. You got an unlicensed contractor that signed a contract. You got an unlicensed contractor that cashed a check. You got an unlicensed contractor that did the work." (App. 244/19-23).

Counsel for Mr. Seghers made an argument about the case he is presenting, stating as follows:

The evidence in this case is that homeowners, who have no vested interest in this, has saw fit to write a statement stating explicitly that they read the plain language of the proposal, which had the license contractor's name on it, and then apparently told the investigator that they had no knowledge of the fact that my client worked for a licensed contractor.

(App. 245/13-24).

Continuing, counsel for Mr. Seghers made his case that there is no violation of the law "[b]ecause rule 6-100 does not say that it is illegal for a contractor to use an agent." (App. 246/2-7). After further colloquy with counsel for Mr. Seghers, an unidentified commissioner stated as follows:

Well, I want to tell you this: I got my first license in 1994, and the one thing they teach you - - and Mr. Murphy can get up here and say it all day long - - is, you don't sell your license. And that's exactly what we got going here.

(App. 247/11-16).

The conflict between one of the commissioners identified as Commissioner Moore and Petitioner's counsel continued during the hearing with Commissioner

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Moore instructing Petitioner's counsel not to badger Investigator Sala with technical questions. After a continuing colloquy Petitioner's counsel asked Commissioner Moore if he was prejudging the matter. Commissioner Moore responded more particularly as follows:

No. I'm telling you right now. I am not prejudging it. But so far what I have seen is you got an unlicensed contractor that did work and cashed a check. Show me how he's not unlicensed. That's what I'm asking for.

Petitioner's counsel responded "yes, sir." (App. 249/18-25).

2. Testimony of Dennis Williams

The next witness to testify was Dennis Williams, a long-term resident of Lake County who gave a testimonial about the work performed by John Murphy and Petitioner, Gregory Seghers. He referred many customers to them for review and possible hiring, and did not make any commission. (App. 258/5-259-23). Mr. Miller purported to testify as to how the monies paid to Gregory Seghers ended up with John Murphy. However, he still testified "no matter who check - - who the check goes to, John knows where the money is, and he gets the money." (App. 51/9-21).

Every time Petitioner has done work from Mr. Williams in the past, he told him that John Murphy was the contractor that he worked for. (App. 264/19-25).

Mr. Williams also confirmed that he saw Mr. Murphy supervising Mr. Seghers numerous times on the job. (App. 265/1-7).

At this time Petitioner's counsel summed up his position on the first case and asked that he be able to have due process in the other three cases that would follow. (App. 55/19-25). According to Petitioner's counsel, the issue is whether there is a rule that prohibits an independent contractor in the financial sense that the Petitioner has violated. He does not believe there is such a rule. (App.57/1-7).

Petitioner's counsel next turned to the language of the contract itself. Reading

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from left to right he indicates the first name is John Murphy, Incorporated, along with a telephone number and the various contractor's license numbers that he has. He did not believe it could be any clearer than that as to who the individual driving the truck works for. (App. 58/15-23).

At this juncture the topic turned to the cashing of checks by Petitioner instead of giving those checks to Mr. Murphy. Petitioner's counsel took the position that the use of that mechanism does not violate any law. In other words, Mr. Murphy was free to give assignments to his agents as he wishes and he is allowed to have people advertise for him and collect his money for his as well. Counsel argued that using Mr. Seghers as a financial agent is acceptable. (App. 271/5-272/5).

Also at issue was the advertising on the truck driven by Petitioner. However the matter was suddenly dropped and they pivoted to Mr. Seghers collecting money for Mr. Murphy. For this purpose counsel recalled Mr. Murphy and had him testify that he told Mr. Seghers he could do work for him. He also supervised the work that Mr. Seghers did for him. He was not aware of any rule that forbids him from allowing someone else to handle his money. (App. 275/6-277/5).

Mr. Seghers' wife, Carla Seghers, works for Mr. Murphy's company as an actual employee. She was hired to pull permits for him. (App. 276/15-25).

Mr. Seghers' truck has Mr. Murphy's company name and license numbers on it. When asked if he had anything else to tell the Board about the situation, he stated he was going to stay quiet. (App. 267/6-19).

Mr. Murphy testified that approximately three years earlier when Petitioner was in violation of the codes at that time, he was cited for impersonating a contractor and they told him he could not have his name on his truck. They made him scrape it off at the job site. (App. 278/7-15). When asked by one of the Commissioners whether Mr. Murphy ever used his corporation to qualify Gregory Seghers. Inc., as

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a “doing business as” entity under John Murphy, Inc., Mr. Murphy responded in the negative. When asked if he had any plans or objections to qualify Mr. Seghers he responded “No. We are working on that. We have filed the papers to try to get him qualified. We are looking for our best options, I should say, maybe, if that’s the deal. Yeah. (App. 279/3-19).

3. Testimony of Petitioner, Gregory Seghers

Petitioner, Gregory Seghers, was next called as a witness. A few exhibits were introduced into evidence. First was a written statement that Trefor and Vicki Powell provided to Mr. Seghers on or about November 16, 2020. (App. 280/22-25). The next exhibit was a photograph of the vehicles. (App. 281/15-25). However, the issue was not decided at that moment. Rather, there was continuing questioning about the facts of the case. One Commissioner questioned Mr. Seghers about the photograph. He confirmed it stating he was a subcontractor. (App. 282/14-17). The Commissioner next asked whether the County maintains that a subcontractor needs a license to perform this type of work. Mr. Seghers responded in the negative but the County took more time to answer the question. Tom Allen, the Building Official for Lake County, responded that “in our process for permitting we do require a subcontractor to be listed for structural work, masonry, carpentry. And the contractor of record can name themselves that they are going to do the work, or that they’re supposed to name a licensed subcontractor.” (App. 283/20-284/2).

Before the vote on either of these evidentiary issues was taken, counsel for Mr. Seghers withdrew his request for introduction of the written statement by Trefor and Vicki Powell. Counsel for Mr. Seghers, however, renewed his request for introduction into evidence of the photograph of the vehicles. (App. 284/19-24). The photograph was taken February 4, 2021. The County’s counsel objected to the relevance of the photograph because it was well after the time Mr. Seghers was cited

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which occurred after the investigation by Officer Sala. (App. 285/12-25). After a colloquy among counsel, the Board members agreed that all of the photographs of the trucks were admitted into evidence. (App. 288/4-17).

Mr. Seghers was tendered to the County's attorney for cross-examination. Mr. Seghers began a long narrative answer without any question being asked. He explained that he has been working for Mr. Murphy for six years. About two years into that timeframe Mr. Murphy told Mr. Seghers he would not be around forever and that he needed to start thinking about his own future. Therefore he suggested that Mr. Seghers get incorporated and start learning about how to be a subcontractor so he could start doing something with his life. (App. 289/9-17). Mr. Murphy calls him and tells him he has a dock or a lead for a job. Mr. Seghers stated that "My job is to go out there, sit down with the homeowner, figure out what they want, design the dock with them, give them a price. I write the proposal. I run it through Mr. Murphy first." (App. 289/9-23). Continuing, Mr. Seghers explained that "the first thing I do is when I get on the job with the homeowner, I tell them, I'm Gregory Seghers, I work for Mr. John Murphy. I am his project manager, design coordinator, and I'm the subcontractor that is going to be building the dock for you guys." (App. 289/24-290/4). He confirmed that he did this in the *Powell* case and with every homeowner since he got in trouble with the County three years ago. (App. 296/9). He further admitted that it happened in this citation. (App. 12-21).

Mr. Seghers was questioned whether it was his intention and if he needed to, to have Mr. Murphy act as the qualifier for his company. He responded "Yes. Absolutely. Well, we are working on that now. We've already started filing paperwork. I'm just - - I didn't know we were doing anything wrong. Nothing." (App. 291/8-14).

Mr. Seghers was asked whether Mr. Murphy has always supervised his work

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from start to finish. At first, he responded “Absolutely.” Then he added “He’s on the job two or three times a week. Absolutely. Every job. Everything - - John knows everything. All the equipment is his. All my contracting with - - you know, the barge, everything’s his. How I am out here being a contractor - -.” (App. 292/10-20). At this juncture counsel for Mr. Seghers stated, “I have nothing further for Mr. Seghers.” (App. 292/14-22).

Next was the opportunity for the County’s attorney to ask questions of Mr. Seghers. He stated he had no questions for the witness. He then tendered the witness to the questions of the Board.

Chairman Lawson stated to Mr. Seghers “I got one thing to say to you. Nobody wants - - get your license. Nobody is trying to keep you from having a - - making a living and doing your job.” (App. 292/23-293/4).

Chairman Lawson stated to Mr. Seghers that “It looks like your acting as a subcontractor to Mr. Murphy. And what you’re trying to tell us is that you are an employee.” (294/6-8). Mr. Seghers responded “No. Well, I’m both. Yes. I get a percentage, yeah.” (294/9-10). Chairman Lawson responded, “You’re in business or you’re qualified or you’re an employee.” (App. 294/15-16).

One of the commissioners asked Mr. Seghers whether he paid his employees with a paycheck that has John Murphy on it. He responded that “I pay my guys from my account. It says ‘Gregory Seghers, Inc.’ on it.” All of his employees are exempt from worker’s compensation, meaning he does not pay any worker’s compensation insurance for them. (App. 295/23-296/11).

Next, Mr. Seghers made the following statement:

Guys, I want to say, if there was anything that was done wrong, I need to take the brunt. My. Murphy’s been a contractor out here 25 years, man. He’s never been in trouble, not once, in the 25 years of contracting in Lake County. If there was something wrong, it was my

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fault. He didn't have no knowledge. I didn't realize I was doing something wrong. And, if I was, I apologize. I thought we tried - - I meant, you know, he was giving me an opportunity to learn how to run a business, which is great. I wouldn't be where I am at without him. And I am learning more and more every day. But to - - who knew we were doing anything wrong?

(App. 296/22-297/10).

Further colloquy between Mr. Seghers and one of the commissioners confirmed that the checks were written to Gregory Seghers, Inc. and given to him by the customers for deposit. The commissioner made the statement that when you receive monies for work done you are a contractor. Mr. Seghers did not agree with that and thought he could accept checks paid to his company for work that his company did. (App. 297/15-298/16). On this very point, Officer Sala had the cancelled checks and confirmed they are made payable to Gregory Seghers, Inc. and were deposited into that account. They did not say that they were paid to the order of John Murphy, Inc. Those checks are in evidence. (App. 299/13-23).

The County gave a very brief closing argument (App. 300/7-301/10). Thereafter, counsel for Gregory Seghers gave his closing statement. (App. 301/11-304/2).

The staff's recommendation on the first of four citations against Gregory Seghers (2020100237) was a \$1,000 civil penalty. (App. 304/25-305/10).

The exhibits that were to be received in evidence were briefly summarized. (App. 4-25).

The County's recommendation was that the first citation against Gregory Seghers result in a civil penalty of \$1,000. (App. 307/3-308/2).

Mr. Murphy was allowed to address the Board during the administrative

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complaint Board discussion and indicated that “I am willing to comply with any rules that this Board finds that we need to do. I am not out to break the rules.” He added that “we try our best to stay within the boundaries of the regulations” (App. 313/9-23). Continuing, Mr. Murphy acknowledged that although he was not sure that qualifying Mr. Seghers was the answer, he has been looking into that and he believes the choice that he has is either to qualify Mr. Seghers’ company or put him back on the payroll of Mr. Murphy’s corporation. (App. 104/15-23). The commissioner also told Mr. Murphy that even if he was to put Mr. Seghers on his payroll, he would still have to remove his name off of the contracts. Mr. Murphy acknowledged the same. (App. 314/15-315/1).

The commissioners continued to ask Mr. Murphy what he could do to resolve the issue. He stated, “I am willing to do whatever it takes to make it right.” (App. 316/4-7). Continuing, in response to a commissioner’s statement that “the simplest thing would be to do is just take his name off of your contracts until it’s legit.” To which Mr. Murphy responded, “no problem.” (App. 316/16-19).

The Board resolved the administrative complaint against Mr. Murphy with a recommendation and motion that was seconded and approved unanimously by the Board to revoke Mr. Murphy’s permitting privileges for thirty (30) days to allow him to get everything in order. It would also require him to pay \$790 of the administrative fees and then report the situation to the Department of Business and Professional Regulation. (App. 318/25-320/13).⁶

The question next arose what to do about the remaining three citations against Gregory Seghers, Inc. following resolution of the administrative

⁶ This action is not an issue in this appellate proceeding brought only by Gregory Seghers.

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complaint against Mr. Murphy. A proposal was made to postpone the action for thirty (30) days but that would result in a sixty (60) day delay because of a lack of a Board meeting in one of the intervening months and that idea was not brought to a vote. Further discussion occurred concerning what to do about the remaining three cases and whether to continue the hearing to another date or hear them the same day. After being unable to agree on moving the cases ahead one month, a motion was made to postpone the remaining three citation cases against Gregory Seghers for sixty (60) days, or until the April 2021 meeting of the Board. The motion carried unanimously. (App. 332/15-333/11).

VII. HEARING ON APRIL 1, 2021

A. Case Number 2020 100 244 (Seghers)

After the decision was made to go forward on the merits on April 1, 2021, counsel for the County reminded the members of the Board that they delayed the conclusion of the cases on February 4, 2021 “to give Respondent - - and the exact words of this board were, so that Mr. Murphy and Mr. Seghers could clear up what’s going on here and give them a chance to fix their deficiencies in the way they were conducting business, so that Mr. Seghers could continue to work, just in a lawful way under Florida’s contracting law. Mr. Murphy has since worked with our office, and he is in compliance.” (App. 87/15-24).

Further, counsel for the County stated that they did not receive any “verification or confirmation from Mr. Seghers that he has changed any practices. We haven’t had any communications.” (App. 88/2-5).

Counsel then stated that Section 489.1928, Florida Statutes, provides, in subsection (1)(a) that “[a] business organization is unlicensed if the business

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organization does not have the primary or secondary qualifying agent in accordance with this part concerning the scope of the work to be performed under the contract.” (App. 89/14-23). Counsel then summarized the County’s position that Mr. Seghers “is operating Gregory Seghers, Inc, without a primary or secondary qualifying agent which makes Mr. Seghers and Gregory Seghers, Incorporated, unlicensed and unqualified.” (App. 90/2-5).

Counsel then cited to the Board packet for this case and indicated that the record includes a copy of the contract which was signed by Mr. Seghers and the check which was made payable to Mr. Seghers. Signing the contract and receiving a check for the work to be done under the contract is contracting under Florida law. (90/6-15).

The County then called as its first witness Investigator Joann Sala, who was sworn and testified.

1. Testimony of Investigator Joann Sala

Investigator Sala testified via Zoom from Wisconsin, where she now resides. Previously, she was a license investigator for Lake County and held that position until February 5, 2022. Investigator Sala testified that her investigation revealed that Mr. Seghers was violating the County Code because “he contracted to perform some work and cashed a check that the property owners gave him, and the work was not performed, but he did contract with them and obtain monies.” (App. 101/1-6). Further, she testified that he contracted with the homeowner to build a boathouse. Investigator Sala had been trained while employed for Lake County on how to become an investigator and had a supervisor who worked over her. She was trained on what a general contractor does and other types of contractors in the State of Florida. The work Mr. Seghers was doing in this case was work that was typically done by a contractor of some kind. It was marine work. (App. 102/4-21).

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Investigator Sala identified a copy of the contract that the homeowners provided to her. (App. 103/5-13). She also was given a copy of the check the property owners provided to Mr. Seghers. (App. 103/14–104/5). Further, she identified a letter that was sent to cancel a permit application that the property owners had obtained for the work at that address. The letter was from “John P. Murphy, Inc., Contractor, Gregory Seghers, Inc., and there is a, slash, subcontractor.” (104/6-20). Kayla Seghers submitted the plans and permit application with a power of attorney to obtain the permit. (App. 104/21-105/6).

In the course of her investigation, Investigator Sala made contact with Gregory Seghers and issued him a civil citation for this particular party and others, because she determined that he was practicing unlicensed contracting. (App. 105/16-22).

As part of the investigation they looked at their database, copies of contracts, to see if they are licensed, whether through the State of Florida, through the county, or a particular city, and to see what kind of trade they are doing and what kind of license they actually need. That is how she investigates a case like this one. (App. 105/23-106/15).

If Investigator Sala finds during an investigation that the company has a qualified agent – meaning a licensed contractor that allows them to do the work because the licensed company has taken the necessary steps to qualify their company, at that point they are qualified, i.e. they are a legitimate company. (App. 106/17-25). However, in the course of her investigation in this matter, she did not find that Gregory Seghers, Inc., had a qualified agent.

On cross-examination, Petitioner’s counsel established that the contract Investigator Sala was referring to in evidence contained John Murphy, Inc., in the upper left-hand corner of the first page, along with a phone number and two license numbers. (App. 109/7-110/13).

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Investigator Sala spoke with Mr. Murphy about whether or not he approved of the proposal executed by the Church's at the request of Gregory Seghers. She talked to him when she issued the citation to Mr. Seghers and Mr. Murphy and he did not know about the proposal. "He just said that Gregory was his subcontractor and that, you know, he's [Gregory Seghers] the one that filled out that form." (App. 111/3-11). Investigator Sala asked Mr. Murphy whether he qualified Mr. Seghers and he responded "No."

The work was not actually completed in the case of the Church's because they sent a letter to cancel the permit. However, Mr. Seghers received a check from the homeowners and they never received a refund after cancelling the contract. Mr. Seghers had already cashed the check even though no work had been done at that time. (App. 112/25-113/23).

When the homeowners (the Church's) cancelled the agreement they said they did not know who Mr. Murphy was. They only knew Mr. Seghers, and they wrote the check out to Mr. Seghers, and then Mr. Seghers cashed the check. (App. 56/21-25).

Investigator Sala was asked to state in summary fashion what she believed occurred when Mr. Seghers allegedly broke any rule in this case. She stated that "the facts are that he contracted with a property owner - - to perform work - - that he is not licensed to do - - and then he cashed a check." (App. 117/1-12) [attorney interruptions removed from quote for clarity]. Because the answer to the question had been interrupted by counsel, the question was asked again and Investigator Sala responded that "they [referring to the property owners, the Church's], had contracted - - he contracted with the homeowners. He doesn't have a contractor's license. He cashed monies for that job that would have been for the deposit, which states that he obtained monies as a contract[or] in which he does not have a contractor's license to perform that kind of work." (App. 117/21-118/3).

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Counsel pressed Investigator Sala by asking her whether his client actually ever did any work that required a license in this case, and she responded “Sir, contracting is unlicensed. It’s under Chapter 6. Under our Chapter 6 under 100 it shows and it states that if you contract, act in the capacity of a contractor, you are violating codes. And that’s what I wrote him under.” (App. 118/4-10).

Investigator Sala spoke to Mr. Murphy when she wrote the citation to Mr. Seghers. She told him that Mr. Seghers must be a licensed contractor to perform his type of work, or he has to have a qualifier. (App. 118/15-25-119/1-2). When asked whether Mr. Murphy approved the work that was done by Mr. Seghers, Investigator Sala responded that the homeowners did not know who Mr. Murphy was, so she does not know how he would have approved that work. (App. 119/7-19).

Case Number 2020 100 245 (Seghers)

At the commencement of the hearing on CN245, counsel for the County reiterated that the statutes previously passed out for CN244 were also applicable to this case. Next, Investigator Sala was called by the County in its case-in-chief.

1. Testimony of Investigator Sala

Investigator Sala testified that she came across a homeowner named Mr. Carl Harris and his wife, Helen Harris, who entered into a contract with Gregory Seghers. (App. 160/21-161/25). The contract was for a boathouse with a walkway and some decking. Investigator Sala saw Mr. Seghers’ van at the location and initiated contact with Mr. Harris. She never met Mrs. Harris. At that time Mr. Seghers’ vehicle was there, but Mr. Seghers was not on the jobsite. (App. 160/25-162/7). In addition to obtaining a copy of the contract, Investigator Sala received a copy of the check that the property owner sent to her in reference to that job. (App. 162/8-162/18).

Mr. Seghers was paid a deposit and then a final payment, and copies of both documents were identified by Investigator Sala. (App. 103/17-105/3). After receiving

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copies of the contract and the checks, Investigator Sala spoke with Mr. Seghers and Mr. John Murphy in the same room and explained to Mr. Seghers that he had contracted and taken monies for the work performed, and that she was on the jobsite and had seen his vehicle there. So at that time she issued him a civil citation. (App. 163/4-12).

Investigator Sala observed Mr. Seghers' truck and his equipment on the jobsite. She could not tell how many people were working there but could see that Mr. Seghers' van was there. (App. 163/13-22). Investigator Sala took photographs of what she saw that day. (App. 163/23-24). The County moved the file into evidence and it was accepted by the Board Chairman. (App. 163/25-164/11).

The petitioner's cross-examination was next. With regard to the proposal, Investigator Sala admitted that John Murphy, Inc., along with his phone number and his license number, appears on the top of the left-hand corner of the contract. (App. 164/14-21).

Counsel for Petitioner asked a series of questions ostensibly intended to show that the contract was understood by the Harris' when they executed it and nothing in the agreement was inaccurate. Investigator Sala maintained a consistent position that she established that they signed the agreement with Mr. Seghers, provided him with money, and that he performed the work. The first time she saw Mr. Harris was in August 2020. Later she saw him to obtain checks that he ordered from the bank. (App. 166/32-168/14).

Investigator Sala acknowledged that Mr. Harris told her that he was happy with the job. He did not say anything about Mr. Murphy being out there and said he wrote everything to Mr. Seghers, referring to the checks, the contract, and the fact that the work was done by Mr. Seghers. Investigator Sala was not familiar with the letter that the Harris' wrote at the request of Mr. Seghers which was sent to the County.

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Investigator Sala stated that Mr. Harris never said to her that he had spoken to Mr. Murphy and just praised the work they did on the job and said he was happy with the job. (App. 186/15-25).

Pressed on this issue again, Investigator Sala stated again the information she obtained from Mr. Harris. She reiterated a few times that the checks were written to Mr. Seghers, the contract was done through Mr. Seghers and signed by him, and then Mr. Seghers did the work. (App. 169/1-17). At this stage of the proceedings Petitioner's counsel tendered into evidence a letter from Mr. Carl Harris dated November 16, 2020. The letter was read aloud into the record and accepted into evidence, with the objection of the County's attorney not to its admissibility, but to the credibility that it deserved. He commented that Mr. Harris did not show up to the hearing to authenticate the letter or answer questions about it, and therefore, one does not know who asked him to write it or who helped him draft it if anybody did. (App. 172/2-25-174/6).

With the letter in evidence, Investigator Sala was questioned further about it. During the investigation itself the letter was not given to her. After hearing the letter read at the trial, she maintained that Mr. Harris never said anything to indicate he was aware of Mr. Murphy, and that all he said to her during her investigation was that "he contracted with Mr. Seghers, he wrote checks to Mr. Seghers, and Mr. Seghers was out there doing the work." (App. 174/20-25-175/15).

When asked if she ever spoke with Mr. Murphy about this case directly, she replied in the affirmative. Mr. Murphy was sitting in the same room as Mr. Gregory Seghers when she wrote the citations to Mr. Seghers. Mr. Murphy told Mr. Seghers, "Gregory, just sign them and don't worry about it. I will take care of them. I will just pay them." (App. 175/25-176/6). At the same time she charged Mr. Murphy with aiding and abetting. (App. 176/12-16).

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Investigator Sala followed up with Mr. Murphy about his charge of aiding and abetting an unlicensed contractor. That was the case heard on February 4, 2021. She explained that if Mr. Murphy wanted to work with Mr. Seghers, they should not have two incorporated entities on the same job. Mr. Seghers would have to be Mr. Murphy's employee, not a 1099 employee because 1099 means self-employed under the IRS regulations. (App. 178/13-24). Investigator Sala referred to Chapter 489, Florida Statutes, which show "you that contracting and obtaining checks and doing work and not being licensed is [what constitutes] an unlicensed contractor." (App. 179/7-18).

2. Testimony of Gregory Seghers

The next witness called was Mr. Gregory Seghers. The letter from Mr. Harris was reviewed by Mr. Seghers and authenticated by him. He stated that Mr. Harris' praise for the job done at his residence was how every job is conducted. (App. 183/20-24). Mr. Seghers testified that Mr. Murphy spoke with Mr. Harris about the job at his house for hours. When he was asked if he recalled when that first conversation would have occurred with Mr. Harris, Mr. Seghers responded as follows:

A it was - - four or five times he was on the job. I don't - - multiple. He was on the job all the time. I - - you know, I can't remember - -.

(App. 182/5-13).

Closing arguments of three minutes duration for each of the sides was allowed. The differences between the positions was striking. Petitioner's counsel argued that Mr. Murphy is entitled to delegate authority and work, he can do so as long as he supervises which he did in this case. The county argued in pertinent part as follows:

We keep hearing a lot, there is no law you can't do this, there is no law you can't do that. Well, yes, there is. I handed those statutes to the Board today. You can't engage in contracting when you are not a contractor, you are an unlicensed contractor.

(App. 188/17-24).

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The County's counsel pointed out that there is no signature of Mr. Murphy on the contract, Mr. Seghers is accepting the payment, and he is doing the majority of the work. Yet Gregory Seghers, Inc., does not have a qualified agent. As the County stated, "that is the issue. That is why what he is doing is not legal." Further, the County's attorney argued "and, yes, Mr. Murphy can delegate work to employees, but not other contractors, that's the whole issue." (App. 188/13). The final point made by counsel for the County follows:

And I'm afraid that Mr. Seghers may be missing the whole point. And I want to make sure that that's - - that he understands that is the law and that is what we are trying to get him to comply with. We are not picking on him, harassing him. We are trying to get him to follow the law. That's all."

(App. 189/5-20)

Following the conclusion of the closing arguments by the attorneys, one of the Board members had a question about the role of Mrs. Seghers. She works for Mr. Murphy's company and does all of his permitting, and also puts in the request for permits for Gregory Seghers, Inc. (App. 189/22-192/20).

After further brief discussion a motion was made to uphold the fine imposed by the County and the motion carried unanimously.

B. Case Number 2020 100 246 (Seghers)

The final citation heard on April 1, 2021, was citation number 246, which was based on a Facebook advertisement from Gregory Seghers, Inc. It states "I work in partnership with John Murphy, Inc. We do all phases of custom carpentry, including docks, remodels, metal roofs, windows, doors, trim, and much more." (App. 137/4-10) and then it says state certified building contractor, and license number followed by certified roofing contractor, and states another license number. The advertisement

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does not make clear whether the licensed contractor is Gregory Seghers, Inc. or John Murphy, Inc.

In its case in chief, Lake County called Investigator Joann Sala. Ms. Sala testified that during the course of her investigation of Gregory Seghers, who runs Gregory Seghers, Inc., she found advertising for his company as a contractor. She explained that she obtained a screenshot of the Facebook page showing that he was advertising to perform work in partnership with Mr. Murphy and just stating some license numbers but not saying whose license it was. (App. 196/14-197/2).

Investigator Sala testified that Mr. Seghers was looking for employees using this ad on Facebook and after the citation was issued, it was taken off of Facebook. She does not know if the page is active now or not. (App. 197/3-16).

On cross-examination, Petitioner's counsel asked Investigator Sala to admit that the plain language of the advertisement stated that Mr. Seghers works in partnership John Murphy. (App. 198/22-24). Petitioner's counsel emphasized the "we" in the advertisement, whereas Investigator Sala was focused on the "I" in the advertisement. However, Investigator Sala testified that "we" tells her there are two licenses but does not state who the license belongs to. (App. 199/1-24).

With that Petitioner's counsel concluded his cross-examination of Investigator Sala and the County had no further questions on redirect-examination.

Although closing argument was referenced it did not occur. Rather, a Board discussion occurred about whether a violation should be found on the advertisement. Ultimately the Board voted unanimously to accept the movant's recommendation to hold the Petitioner responsible for advertising by an unlicensed contractor in violation of the LCC. (App. 201/10-146/10). The balance of the proceedings were a banter between the Commissioners and Mr. Seghers and his counsel, with Mr. Seghers

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showing frustration with the findings of the board and the Board justifying its decisions based on the evidence presented. (App. 204/11-208/3).

VIII. ANALYSIS

The main defense asserted at the hearings on February 4, 2021, and April 1, 2021, was that the Petitioner, Gregory Seghers, did not need a license for his own company, Gregory Seghers, Inc., because he was, at all material times, acting as the agent of John P. Murphy, Inc. However, the actual events proven at the hearings demonstrate that Gregory Seghers, through his company, Gregory Seghers, Inc., was having direct contact with homeowners, writing and signing contracts for work, accepting money in exchange for the work, and generally doing all of the work on the job site subject to occasional visits by Mr. Murphy on behalf of John P. Murphy, Inc. Mr. Murphy admitted the insufficiency of this argument when he testified that he provided 1099 tax reporting for the money paid to Petitioner's company, rather than hiring Petitioner and his company's employees as payroll employees of his own company.

Petitioner's argument must fail because the way the construction industry works under existing law, either the licensed contractor performs the work with his own employees who are subject to his or her right of control as such, or the licensed contractor hires a licensed subcontractor in that specialty area to perform the work under their general supervision as a subcontractor, but with accountability for the work they do through their licensing requirements and oversight by the State of Florida or its subdivision, the County of Lake.

Requiring subcontractors to have and work within the scope of their license protects the public. As stated in Section 6-1 of the LCC:

The board of county commissioners recognizes that the construction and home improvement industries are significant industries within eh

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county. Such industries may pose significant harm to the public when incompetent or dishonest contractors provide unsafe, unstable, or short-lived products or services. Therefore, it is necessary to the interest of the public health, safety, and welfare to regulate the licensing of those person engaged in the construction industry and to provide minimum codes and standards for construction in the county.

(Ord. No. 2016-04, § 2, 2-2-16).

In sum, there is more than ample basis in the record for concluding that the arrangement between the licensed John P. Murphy, Inc. and the unlicensed Gregory Seghers, Inc., was an attempt to enable Gregory Seghers, Inc. to work as a contractor without having a license or a licensed qualifying agent.

In addition to the preceding general substantive analysis, the Court will review whether the County's action (1) violates Petitioner's right to procedural due process; (2) departs from the essential requirements of the law; and (3) was not supported by competent and substantial evidence. Each of these prongs will be addressed in turn.

A. **Whether the County's decisions violated Petitioner's right to due process.**

At its core, with respect to a government decision affecting the substantial rights of individuals, the fundamental right to due process requires notice and an opportunity to be heard. The requirement for legal notice of a government meeting is contained in section 286.011, Florida Statutes (2020), which states that local government boards and commissions "must provide reasonable notice of all such meetings." The statute does not specify an exact definition for what constitutes "reasonable notice," leaving it variable and dependent upon the facts and circumstances of the particular meeting in question. *See Transparency for Florida v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018).

In this case, notice was given to Petitioner and his counsel of all hearings in

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the proceedings under review. Both counsel and his client attended all of the hearings and had an opportunity to be heard at each. The continuance of the matters from February 4, 2021, to April 1, 2021, was decided at the board meeting on February 4, 2021, at which Petitioner and his counsel were present. Subsequently, Petitioner received notice from the Board about the April 1, 2021, hearing but apparently his counsel did not receive the same notice. Nevertheless, the client's communications with informed counsel of the existence of the hearing and he did attend. Although his appearance was of record by then, and he did not receive actual notice the way his client did, when the Board continued the case from February 4, 2021, to the April meeting of the Board, that was sufficient to put Petitioner's counsel on notice of the fact that he needed to calendar a meeting as his client's cases were going to be decided then.

In addition, Petitioner's counsel did not demonstrate any prejudicial impact from the apparent late notice to him even though timely notice was sent to his client. He has not made any arguments that there were witnesses that could not be called or that somehow he would discover and be able to introduce into evidence a license for his client's activities. Thus, any delay in actual notification to Petitioner's counsel was harmless and, in any event, did not reach the level of a constitutional violation of due process of law.

- (1) Whether the Board failed to allege specifically how Petitioner violated Section 6-100(b)(6).

The hearings were conducted with full knowledge that the issue at hand was whether Petitioner engaged in contracting without a contractor's license. There was no doubt that was the issue and the prohibition in Section 6-100(b)(6) of the Lake County Code was referenced in the citations and adequately understood to be the main issue of the hearings. Accordingly, the Board's allegations regarding Section 6-100(b)(6)

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of the Lake County Code were sufficient and, in any event, did not violate the Due Process Clauses of the U.S. or Florida Constitutions.

(2) Whether the Board unreasonably delayed discovery responses.

There is no evidence in the record supporting the conclusion that any delays in discovery responses violated the Due Process Clauses of the U.S. or Florida Constitutions. The argument about discovery being a constitutional due process violation ostensibly affecting the outcome of the board's actions against the Petitioner is unfounded. No specific allegations were made of particular documents or other things that were not produced and that such failure prejudiced the ability to litigate whether the licensing arrangement between Petitioner and John Murphy, Inc. was satisfactory under the law. Neither one of them made any serious effort to defend the system they had, both acknowledging mistakes were made and that they needed to be corrected. The simply argued that Petitioner was an agent of John Murphy, Inc. and therefore allowed to practice contracting without a license because his agency relationship somehow gave him a pass under current state and local law requiring a license before contracting with consumers. There is nothing to indicate that any discovery requested and not received would have somehow changed the conclusion of the Board below, and this Court in this proceeding, that the arrangement between Petitioner and John Murphy, Inc. was legally insufficient. Accordingly, the argument about discovery is a red herring and not worthy of further analysis.

(3) Whether the Board ignored competent evidence presented.

It was undisputed that Gregory Seghers, Inc. did not have a license of his own nor did he have a qualifying agent providing licensure compliance. There is no indication the Board ignored competent evidence whatsoever. For the evidence that was admitted, the relative weight to be given evidence is within the province of the Board and the Board in weighing the evidence did not violate the Due Process Clauses

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of the U.S. or Florida Constitutions.

(4) Whether the Board failed to give adequate notice of hearing.

When the hearing on February 4, 2021, was concluded there was a ruling and a consensus that the matter would be brought back during the meeting in April. The date of the meeting was April 1, 2021. Notice was given to Gregory Seghers but not to his counsel. However, counsel was notified by his client of the notice received and was able to attend the hearing. There is no allegation of specific prejudice, i.e. a witness that would have been called and was unable to be called because of the lack of adequate notice or some other prejudicial impact. In any event, there is no evidence in the record supporting the conclusion that there was inadequate notice, or that the notice actually provided violated the Due Process Clauses of the U.S. or Florida Constitutions.

(5) Whether the Board failed to communicate through Petitioner's counsel.

On April 1, 2021, prior to the hearing of any evidence on any of the cases that were not reached on February 4, 2021, a discussion ensued between the Board members and their attorneys and the attorney for Mr. Seghers as to whether another continuance of the hearing should be granted. Apparently, Petitioner's counsel had committed himself to other matters in the morning of April 1, 2021, and he was not aware of the exact date and time of the hearing because a formal notice had not been given to him but rather had been sent only to his client. Ultimately, the Board decided to proceed with the remaining cases against Mr. Seghers on April 1, 2021, rejecting a request by Petitioner's counsel to grant a second continuance of the trial in the matter, as it had been done previously.

During the several pages of transcript that are devoted to the issue of a motion for continuance, the Board members and the attorneys for the Board and Lake County were advised by Petitioner's counsel that his client, Gregory Seghers, Inc., had

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reported being approached by an employee of the County to discuss a possible resolution of the cases. Petitioner's counsel reported that on March 31, 2021, Officer Vaughn had "conducted an investigation" and "he elicited testimony from my client who is not an attorney." (App. 62/14-25). Further, Petitioner's counsel stated that he believed "that he made certain statements about my client's need to accept some purported plea deal and Mr. Vaughn states he was apparently going to bat for my client." (App. 63/2-5). Continuing, he stated "[o]f course the county has been aware of my representation of Mr. Seghers since I first filed my notice, which first took place in November of last year." (App. 63/6-9). Petitioner's counsel stated "There can be no doubt about this issue being a problem, and we have an attendant issue which relates to a scheduling issue. At the last proceeding, which of course was quite lengthy, the matter concluded by the postponement of the hearing as to the outstanding citations. There were initially a total of four, and there are three left remaining, as Mr. Langley has indicated." (App. 63/9-17). Petitioner's counsel stated that he thought the issue had taken far longer than any of them present had anticipated, everyone needed to basically move on. (App. 63/18-21).

Petitioner's counsel also reported that his office had not received notice of the particular hearing until earlier that day. It occurred "happenstance." Continuing further, Petitioner's counsel stated that "the Vaughn incident has now raised a specter that needs to be resolved. At a bare minimum we have a right to depose Mr. Vaughn; prepare for that deposition. We have a right to procure certain documents from the County which may indicate why Mr. Vaughn found it necessary to reach out." (App. 64/17-23).

Petitioner's counsel went on to state that he "intend[s] to investigate this matter as it pertains to Mr. Vaughn. "It may be that it ultimately has no bearing on the proceedings. It may that has quite a considerable bearing. I do not know what will

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happen. But my client has a right to know what this was all about. So I propose at this time, and that is the substance of my motion for an extension, is that the matter be postponed.” (App. 65/14-22).

A discussion ensued concerning whether there was any prohibition against an employee of the County speaking directly to Mr. Seghers about the same cases that the investigator had investigated. The Board’s attorney pointed out that this was not a criminal proceeding and in his experience in civil proceedings parties converse with one another all the time. His clients ask him whether they can talk to the opposite party and he tells them that they can talk to them as long as they want as far as he is concerned. The Board’s attorney’s point was that Mr. Vaughn was not bound by the same code of ethics that attorneys are bound by. (App. 68/8-21). Petitioner’s counsel stated as follows:

It is also true that even if there was no ethical breach, we still have an absolute right to see exactly what was going on during that conversation and exactly what Mr. Vaughn derived from it, what he said, why he said it, why he made the call in the first place. (App. 73/17-22).

Continuing, Petitioner’s counsel stated:

I don’t think anyone here is trying to make the argument that that was proper, especially in light in of the fact that there was no question about my representation. So regardless of the ultimate effect of that, it may, as I say, amount to nothing, but without discovering it, we won’t know. And that’s where the depositions side of it comes from.⁷ (App. 74/2-5).

After more colloquy among those present, the crystallization of the issue became apparent when Commissioner Newman stated if Petitioner’s counsel had told his client not to talk to anyone other than his attorney, they would not even be having

⁷ It is unclear why counsel would want to take depositions about Mr. Vaughn’s settlement overture since evidence of compromise and offers to compromise is inadmissible under Section 90.408, Florida Statutes (also known as the Florida Evidence Code).

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the conversation they were having that evening. (App. 82/17-25).

Another Commissioner (unidentified) picked up the point that Commissioner Newman had made with Petitioner's counsel about advising his client not to talk to others outside of his presence, and ultimately Petitioner's counsel responded to the inquiry as follows:

Commr (unidentified): Did your client - - just like Mr. Newman said, did your client, when he talked to Mr. Vaughn, say, you need to talk to my attorney?

MR. MCCORMICK: Yes.

Commr (unidentified): He did?

MR. MCCORMICK: Yes. At the beginning of the conversation - -.

Commr (unidentified): Before he answered any questions he just said you need to talk with my attorney?

MR. MCCORMICK: Yes.

(App. 83/11-22).

After hearing that information and having the discussion concerning prior continuances and the need to resolve the cases, the Board voted unanimously to proceed with the hearing on April 1, 2021.

Distilled to its essentials, the fact that Mr. Vaughn attempted to communicate with Mr. Seghers directly about the cases did not cause prejudice to the position of the Petitioner in this matter whatsoever. Petitioner's counsel confirmed that he advised his client not to speak with anyone about the case other than his attorney, and his client properly followed this advice when Mr. Vaughn made his overture for a conversation. Thus, despite his protestations to the contrary, Petitioner's counsel would have no reason to take four separate depositions to find out what Mr. Vaughn had on his mind when he asked Mr. Seghers if they could speak briefly. The conversations never occurred on the merits of the case, and therefore there is no reason to disturb the ruling

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of the Board at the time it was made.

There is no evidence in the record supporting the conclusion that there was a failure to communicate, or that the communications that actually occurred violated the Due Process Clauses of the U.S. or Florida Constitutions.

(6) Whether the Board displayed open hostility towards the Petitioner.

The hearings on February 4, 2021, and April 1, 2021, were contested in most respects. Nevertheless, proper decorum was maintained and any evidence of frustration expressed by any of the Board members or litigants or their counsel were infrequent and immaterial to the purpose of the hearings or the outcome thereof. There is no evidence in the record supporting the conclusion that any open hostility towards the Petitioner occurred, or that the Board was rude or disrespectful in its interactions with Petitioner or his counsel.

(7) Whether the Board failed to give adequate notice of the final judgment.

There is no evidence in the record supporting the conclusion that there was a failure to give adequate notice of the final judgment, or that the notice actually provided violated the Due Process Clauses of the U.S. or Florida Constitutions.

B. Whether the County's Final Order of Fine, finding Petitioner in Violation of Section 6-100(b)(6) of the LCC, departed from the essential requirements of the law.

A local governmental body's decisions made when acting in a quasi-judicial capacity must be upheld if there is competent and substantial evidence to support the decisions. *Orange County v. Butler*, 877 So. 2d 810, 831 (Fla. 5th DCA 2004); *see also Bd. of County Comrs. of Brevard County v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993). Competent substantial evidence has been interpreted to be "evidence a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

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In this case, the issue was whether Petitioner and his company engaged in unlicensed contracting. The evidence was overwhelming that he did. There is no doubt that the board had competent substantial evidence before it in order to reach its conclusions.

Petitioner has not argued that any of the jobs he performed and under review in this proceeding did not require a license as a contractor. Instead, he argued that the construction jobs performed by Petitioner under his corporate name, Gregory Seghers, Inc., were legal because John Murphy, Inc.'s license covered him. With great repetition, the argument was made that Petitioner's company, Gregory Seghers, Inc., was an agent of John Murphy, Inc., and as such could act on behalf of John Murphy, Inc., under the umbrella of John Murphy, Inc.'s license. A review of Chapter 489, Florida Statutes, negates the position taken by Petitioner in the proceedings at the Board level. The prohibition against unlicensed contracting is clearly stated in Section 6-100(b)(6) of the LCC.

Florida's long-standing regulatory framework for the licensure and policing of contractors in Florida would be rendered meaningless if the position taken by the Petitioner in the proceedings at the Board level were permissible. Avoidance of the regulatory framework in Chapter 489 would be as simple as hiring a 1099 independent contractor without a license, anointing them as your "agent," and letting them work in the community with your name and license number on their truck, letterhead and advertisements. Such actions would mislead the public and result in inferior workmanship and less accountability.

C. **Whether the County's Final Order of Fine, finding Petitioner in Violation of Section 6-100(b)(6) of the LCC, was supported by competent and substantial evidence.**

The term "competent substantial evidence" means "that the evidence relied

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upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.” *DeGroot v. Scheffield*, 95 So. 2d at 916. In addition to sworn testimony of witnesses, it has been held that staff reports may constitute competent substantial evidence. *See City of Hialeah Gardens v. Miami-Dade Charter Found, Inc.*, 857 So. 2d 202, 205 (Fla 3rd DCA 2003); *Palm Beach County v. Allen Morris Co.*, 547 So. 2d 690, 694 (Fla 4th DCA 1989). The record shows substantial competent evidence to support the decision of the Board that Petitioner violated Section 6-100(b)(c) of the LCC.

D. **Whether the Final Order of Fine, finding Petitioner in Violation of Section 6-100(b)(6) of the LCC, violated the Petitioner’s First Amendment Rights.**

Commercial speech is protected under the First Amendment to the United States Constitution and restrictions on it are subject to “intermediate” scrutiny. *Amendments to Rules Regulating the Florida Bar – Advertising Rules*, 762 So. 2d 392, 396 (Fla. 1999). In *Kortum v. Sink*, 54 So. 3d 1012 (Fla. 1st DCA 2010), the court succinctly summarized the applicable test to determine whether a restriction on commercial speech violated the first amendment, stating as follows:

In *Central Hudson*, the court set forth the four-part test to determine the constitutionality of a restriction on commercial speech:

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Central Hudson, 477 U.S. at 566, 100 S.Ct.2343. The parts of the test are not entirely discreet and are to some extent interrelated. *Greater New Orleans Broadcasting Ass’n v. U.S.*, 527 U.S. 173, 184, 119 S.Ct.

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1923, 144 L.Ed.2d 161 (1999). Once it is determined that the speech concerns a lawful activity, the government bears the burden of identifying a substantial interest and justifying the challenged restriction. *Edenfield v. Fane*, 507 U.S. 761, 770, 113 S.Ct. 1792, 123 L.Ed.2d 543 (1993) (“It is well established that ‘the party seeking to uphold a restriction on commercial speech carries the burden of justifying it.’” (quoting *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 71 n. 20, 103 S.Ct. 2875, 77 L.Ed.2d 269 (1983))).

Id. at 1016.

It is not disputed “that the government may freely regulate commercial speech that concerns unlawful activity or is misleading. *Beckwith v. Department of Business and Regulation*, 667 So. 2d 450, 451 (Fla. 1st DCA 1996).

The board’s actions regarding the Petitioner’s Facebook advertisements and truck graphics which were intended to advertise his availability for contractor services for which he did not possess a license do not come within the protections of *Hudson* because the advertisements concern unlawful activity or were misleading. *Beckwith*.

- (1) Whether the Board failed to meet its burden in demonstrating that his Facebook postings were improper.

The Facebook postings were evidence of Petitioner’s violation of Section 6–100 (b)(6) of the LCC. The law prohibits someone from advertising their availability to perform services for which a license is required but which they do not possess. The Facebook postings clearly were intended to solicit business for Mr. Seghers even though he did not have a license to perform such activities. The County’s actions regarding Petitioner’s Facebook postings did not violate his rights under the First Amendment to the U.S. Constitution and its counterpart provision under the Florida Constitution.

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(2) Whether the Board failed to meet its burden to regulate the Petitioner's truck graphics.

The foregoing analysis regarding *Central Hudson* and its inapplicability to activity that is unlawful or misleading applies to the Petitioner's efforts to promote his business through truck graphics that are depicted in the photograph admitted into evidence. The County's actions regarding Petitioner's truck graphics did not violate his rights under the First Amendment to the U.S. Constitution and its counterpart provision under the Florida Constitution.

E. Whether the Board's Final Order of Fine, finding Petitioner in Violation of Section 6-100(b)(6) of the Lake County Code, violated Petitioner's Equal Protection Rights.

Petitioner did not argue that he is a member of a suspect classification for which a heightened standard of review is justified under prevailing equal protection analysis. The proceedings initiated by the Board and the ultimate actions taken by the County to enforce its ordinances were rationally related to state and local law which prohibits unlicensed individuals from performing contractor services. Specifically, the statutory and LCC provisions authorizing the actions taken by the County in this case were reasonably related to the enforcement of a legitimate government interest as set forth in part 1 of Chapter 489, Florida Statutes and Section 6-100(b)(6) of the LCC. Therefore, Petitioner's argument to the contrary must be rejected.

**IX.
CONCLUSIONS**

In view of the foregoing, the pertinent portions of the record, and applicable law, it is **ORDERED** and **ADJUDGED** as follows:

A. The record shows that the County's decisions were made after due process was accorded, were consistent with the essential requirements of law, and are supported by competent and substantial evidence.

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B. Accordingly, the Petition for Writ of Certiorari filed on May 14, 2021, is **DENIED**.

C. This Court retains jurisdiction over the parties to and the subject matter of this action for such other proceedings as are necessary and/or appropriate.

DONE and **ORDERED** in Chambers at Tavares, Lake County, Florida, this 31st day of October 2022.



LARRY METZ, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served via the Florida Courts' E-Filing Portal to Zachary J. McCormick, Esq., (Counsel for Petitioner) at zach@attorneycfl.com, info@attorneycfl.com; and David Langley, Esq., Lake County Attorney's Office, 315 W. Main Street, Tavares, FL 32778, dlangley@lakecountyfl.gov (Counsel for Lake County, Florida), this 31st day of October 2022.



Cheryl DeMarco, Judicial Assistant

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA
Case No.: 35-2021-CA-000866-AXXX-XX

Lower Tribunal: Lake County Board of Building Examiners
Case Nos.: 2020100244, 2020100245, and 2020100246

GREGORY SEGHERS,

Petitioner,

vs.

LAKE COUNTY, FLORIDA,

Respondent.

_____ /

EXHIBIT "A"
TO
ORDER ON PETITION FOR WRIT OF CERTIORARI

Sections 6-100 through 6-105 of The Lake County Code of Ordinances

Sec. 6-100. - Unlicensed individuals and firms; violations and fines.

- (a) Purpose. It shall be a violation of this section for any person to engage in the business or act in the capacity of a contractor or advertise himself, herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified pursuant to F.S. Ch. 489, or obtaining a local license pursuant to this chapter unless exempted pursuant to section 6-5.
- (b) Prohibited activities. It shall be a violation of this ordinance for any person, individual, partnership, corporation, association or other entity to:
 - (1) Falsely hold himself/herself or a business organization out as a licensee, locally licensed or locally registered contractor. First violation \$500.00; Repeat violations \$1,000.00.
 - (2) Falsely impersonate a locally licensed or locally registered contractor. First violation \$500.00; Repeat violations \$1,000.00.
 - (3) Present as his/her own the local license of another. First violation; \$500.00 Repeat violations \$1,000.00.
 - (4) Knowingly give false or forged evidence to the board or a member thereof. First violation \$500.00; Repeat

violations \$1,000.00.

- (5) Use or attempt to use a local license which has been suspended or revoked. First violation \$500.00; Repeat violations \$1,000.00.
- (6) Engage in the business or act in the capacity of a contractor or advertise himself/herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly licensed or registered. First violation \$500.00; Repeat violations \$1,000.00.
- (7) Operate a business organization engaged in contracting after sixty (60) days following the termination of it's only qualifying agent without designating another primary qualifying agent. First violation \$500.00; Repeat violations \$1,000.00.
- (8) Willfully or deliberately disregard or violate any municipal or county ordinance relating to unlicensed or unregistered contractors. First violation \$500.00; Repeat violations \$1,000.00.
- (9) Commence or perform work for which a building permit is required without such building permit being in effect. First violation \$500.00; Repeat violations \$1,000.00.

- (10) Conceal or caused to be concealed, or assist in concealing, from the primary qualifying agent, any material activities or information about the contracting firm. First violation \$500.00; Repeat violations \$1,000.00.
- (11) Exclude or facilitate the exclusion of any aspect of the contracting firm's financial or other business activities from the primary qualifying agent. First violation \$500.00; Repeat violations \$1,000.00.
- (12) Knowingly cause any part of the contracting firm's activities, financial or otherwise, to be conducted without the primary qualifying agent's supervision. First violation; \$500.00 Repeat violations \$1,000.00.
- (13) Assist or participate with any local license holder in the violation of any provision of this chapter. First violation \$500.00; Repeat violations \$1,000.00.
- (14) Violation of the provisions of a Stop Work Order. First violation \$500.00; Repeat violations \$1,000.00.

(Ord. No. 2016-04, § 2, 2-2-16)

Sec. 6-101. - Citations and notices.

- (a) A code enforcement officer may issue a citation for any violation of this article whenever based upon personal

investigation; the code enforcement officer has reasonable and probable grounds to believe that such a violation has occurred.

(b) All citations issued by a code enforcement officer shall be on a form prescribed by the board of county commissioners and at a minimum shall state:

- (1) The time and date of issuance.
- (2) The name and address of the person to whom the citation is issued.
- (3) The time and date of the violation.
- (4) A brief description of the violation and the facts constituting reasonable cause.
- (5) The name of the code enforcement officer.
- (6) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
- (7) The applicable civil penalty if the person elects not to contest the citation.

(c) All notices required by this section shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer or code enforcement officer; or by leaving the notice at the violator's usual place of residence with some person of his or her family above fifteen (15)

years of age, and informing such person of the contents of the notice, or by including a hearing date within the citation.

- (d) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer commits a misdemeanor of the second degree, punishable as provided in F.S § 775.082 or § 775.083.
- (e) Each day a willful, knowing violation continues shall constitute a separate offense under the provisions of this subsection. A citation must be issued to the alleged violator for each day an alleged violation continues to exist in order for a separate fine to be imposed.
- (f) A person cited for a violation pursuant to this section is deemed to be charged with a non-criminal infraction.
- (g) For the purpose of this subsection, a person or business organization operating on an inactive or suspended license, or operating beyond the scope of work or geographical scope of the license is not duly licensed.
- (h) Lake County may issue a stop-work order for all unlicensed work on a project upon finding probable cause to believe that construction work which requires licensing is being performed without a current valid license.

(Ord. No. 2016-04, § 2, 2-2-16)

Sec. 6-102. - Reserved.

Sec. 6-103. - Procedure after citations.

- (a) The act for which the citation is issued must cease upon receipt of the citation. The person charged with the violation shall either correct the violation and pay the civil penalty in the manner indicated on the citation or, within ten (10) days of receipt of the citation, exclusive of weekends and legal holidays, request an administrative hearing in writing before the board to appeal the issuance of the citation.
- (b) Upon receipt of a timely written request for a hearing to contest a citation, the building official shall set the matter for hearing within sixty (60) days of receipt of such request.
- (c) If the violator fails to request an administrative hearing within the time period set forth above, the violator shall be considered to have waived the right to an administrative hearing. A waiver of the right to an administrative hearing shall be deemed an admission of the violation, and penalties may be imposed accordingly.
- (d) If the alleged violator pays the applicable penalty before the date he or she is scheduled to appear before the

board, he or she shall have the option to admit the commission of the infraction or to indicate that he or she does not wish to contest the citation. If such person forfeits his/her right to appear before the board at the designated time and location, he or she shall be deemed to have waived his/her right to a hearing, and to have admitted the commission of the infraction.

- (e) Any person electing to appear before the board shall be deemed to have waived his/her right to pre-payment of the penalty.
- (f) Upon receipt of a request for hearing, the building official or designee shall serve a written notice of hearing by regular U.S. mail to the alleged violator, which shall include, but not be limited to, the following:
 - (1) Place, date and time of hearing;
 - (2) Right of alleged violator to be represented by an attorney;
 - (3) Right of alleged violator to present witnesses and evidence and conduct cross-examination, and;
 - (4) A conspicuous statement reflecting the requirements of F.S. Ch. 286, that a person deciding to appeal any decision of the board will need to ensure that a verbatim record of the proceedings is made.

- (g) If the alleged violator or designated representative shows that the citation is invalid or that the violation has been corrected prior to appearing before the board, the board may dismiss the citation unless the violation is irreparable or irreversible.
- (h) No hearing shall be scheduled on a date sooner than ten (10) days from the date of service of the citation on the alleged violator unless there is reason to believe that a violation presents a serious threat to the public health, safety and welfare. All hearings shall be administratively scheduled by the building official.

(Ord. No. 2016-04, § 2, 2-2-16)

Sec. 6-104. - Board hearings.

- (a) Each case shall be presented by the county attorney before the board. All hearings shall be open to the public. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a Florida Court. At the conclusion of the hearing, the board shall issue findings of the fact

and conclusions of law and shall issue an order consistent with this section. Said order shall be binding on all parties, and shall be recorded.

- (b) Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses on any relevant matter, as determined by the board.
- (c) Lack of state certification may be established by confirming with the Department of Business and Professional Regulation (DBPR) that the named violator does not hold a state certificate/certification. An affidavit from the building official or designee, that he or she contacted DBPR and confirmed no record of certification exists for the named violator shall be admissible into evidence and sufficient to establish the presumption that the alleged violator is not a state certified contractor. The alleged violator has the right to present evidence to overcome this presumption.
- (d) Lack of a local license may be established by confirming with the building official or designee that the named violator does not hold a local license. An affidavit of the building official or designee that he or she has reviewed the record of the Lake County Building Department and confirmed that no record of local license exists for the

alleged violator shall be admissible into evidence and sufficient to establish the presumption that the alleged violator is not a locally licensed contractor. The alleged violator has the right to present evidence to overcome this presumption.

- (e) Upon written notification that a violator had not contested the citation or paid the civil penalty within the time frame allowed on the citation, or if a violation has not been corrected within the time frame set forth on the notice of violation, the board shall enter an order ordering the violator to pay the civil penalty set forth on the citation or notice of violation.
- (f) If the board finds that a violation exists, the board may order the violator to pay a civil penalty of not less than the amount set forth on the citation, and not more than one thousand dollars (\$1,000.00) per day for each violation. In determining the amount of the penalty, the board shall consider the following factors:
 - (1) The gravity of the violation.
 - (2) Any actions taken by the violator to correct the violation.
 - (3) Any previous violations committed by the violator.
- (g) If found guilty of the violation, the violator may also be

held liable for the reasonable costs of the hearing, at the discretion of the board.

- (h) A certified copy of an order imposing a civil penalty against an unlicensed or unregistered contractor may be recorded in the public records and thereafter shall constitute a lien against any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of his state, including a levy against personal property; however, such order shall not be deemed to be a court judgment except for enforcement purposes. A civil penalty imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. After three (3) months from the filing of any such lien which remains unpaid, the board may authorize the local governing body's attorney to foreclose on the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under Section 4, Article X of the State Constitution.
- (i) The board shall, at its sole discretion, determine whether to file a complaint with the state attorney's office or utilize

the citation procedure, depending upon the severity of the violation(s).

- (j) Complaints shall be filed with the state attorney's office in those instances where severe loss has been incurred by a customer or a supplier as a direct result of the actions of the unlicensed individual or firm.

(Ord. No. 2016-04, § 2, 2-2-16)

Sec. 6-105. - Appeal procedure.

An aggrieved party, including the local governing body, may appeal a final administrative order of the board to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the board. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

(Ord. No. 2016-04, § 2, 2-2-16)