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OCT 20 2023

DIV LEGAL SERVICES & COMPLIANCE
DEPT SAFETY & PROFESSIONAL SERVICES



Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the matter of a Petition for an Administrative
Injunction Involving Michael Elkins, Respondent.

FINAL DECISION AND ORDER

Order **ORDER 0008930**

Division of Legal Services and Compliance Case No. 22 UNL 069

The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Safety and Professional Services.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 22nd day of December, 2023.

Aloysius Rohmeyer

Aloysius Rohmeyer
Chief Legal Counsel
Department of Safety and Professional Services



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of a Petition for an Administrative
Injunction involving Michael Elkins, Respondent

DHA Case No. SPS-23-0024
DLSC Case No. 22 UNL 069 (COM)

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat. §§ 227.47(1) and 227.53 are:

Michael Elkins
9100 Hawthorne Pointe Dr. #102
Louisville, KY 40025

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Matthew McCasland
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On May 10, 2023, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served the Respondent, Michael Elkins (Respondent), with a formal Notice of Hearing and Petition for an Administrative Injunction (Petition). The Petition alleged that Respondent engaged in the practice of a registered electrician, electrical contractor, master electrician, and journeyman electrician, without the necessary credentials in violation of Wis. Stat. §§ 101.862(1), 101.862(2), and 101.862(3).

Respondent failed to file an Answer to the Petition within 20 days from the date of service, as required by Wis. Admin. Code § SPS 3.08. At the June 19, 2023 telephone prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 3.13. In light of Respondent's failure to file an Answer to the Petition, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on June

20, 2023. Consistent with this notice, the Division filed a recommended proposed decision and order on August 18, 2023.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-24 are taken from the Division's Petition for an Administrative Injunction against Respondent filed in this matter.

1. Respondent Michael Elkins of Louisville Kentucky, was previously enrolled by the State of Wisconsin as a registered electrician, having enrollment number 1335016, first issued on November 10, 2015. This enrollment was revoked on December 8, 2021.

2. Respondent is not and has never been licensed as an electrical contractor, master electrician, and/or journeyman electrician in the state of Wisconsin.

3. On July 12, 2021, Respondent was disciplined (Order #0007467) in DLSC Case Numbers 20 COM 020 and 20 COM 026 for engaging in electrical work without the proper supervision in violation of Wis. Admin. Code § SPS 305.40(4)(d)1., for engaging in misconduct in violation of Wis. Admin. Code § SPS 305.10(1)(a)5., for engaging in incompetence in violation of Wis. Admin. Code § SPS 305.10(1)(a)3., for engaging in unlicensed electrical work in violation of Wis. Stat. § 101.862(2), for falsely representing as an electrical contractor in violation of Wis. Stat. § 101.862(1), and for violating state, federal, or local laws or regulations in violation of Wis. Admin. Code § SPS 305.10(1)(a)8. Respondent's registered electrician enrollment was suspended for six months, and Respondent was ordered to cease and desist from advertising as an electrical contractor until he obtained an electrical contractor license.

4. On October 29, 2021, Respondent was disciplined again (Order #0007659) in Case Number 20 COM 119 for engaging in electrical work without the proper supervision in violation of Wis. Admin. Code § SPS 305.40(4)(d)1., for engaging in misconduct in violation of Wis. Admin. Code § SPS 305.10(1)(a)5., for engaging in incompetence in violation of Wis. Admin. Code § SPS 205.10(1)(a)3., for engaging in unlicensed electrical work in violation of Wis. Stat. § 101.862(2), and for violating state, federal, or local laws or regulations in violation of Wis. Admin. Code § SPS 305.10(1)(a)8. Respondent's enrollment was revoked.

5. On July 21, 2022, the Department received a complaint from the city of Wauwatosa commercial electrical inspector alleging that Respondent was acting as a master electrician for a solar energy company (Sun Badger Solar, hereinafter "SBS") without possessing the proper credential. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 22 UNL 069 (COM) for investigation.

6. On July 22, 2022, the owner of SBS contacted the Department and stated that when SBS hired Respondent, he provided a document to SBS which purported to be a journeyman electrician license. The Department reviewed this document, and determined that it was not a legitimate license. The Department performed a license search and did not find Respondent possessed a journeyman electrician license.

7. On July 27, 2022, the Department emailed Respondent to inform him that the Department was aware he had performed electrical work at SBS, and that he must immediately cease and desist from engaging in electrical work until properly licensed.

8. On July 29, 2022, Respondent responded to the Department. Respondent denied that he had performed electrical work for SBS and claimed to have only performed office work.

9. On August 2, 2022, Respondent spoke to a Department investigator by phone. Respondent denied knowledge of the illegitimate journeyman electrician license. Respondent admitted that he did visit worksites to meet with inspectors and schedule inspections, and that on a few occasions he had helped put wire in.

10. On August 24, 2022, SBS emailed the Department a list of electrical projects Respondent had worked on.

11. A review of SBS's documentation found that from approximately March 7, 2022, to July 22, 2022, Respondent provided electrical supervision and/or performed electrical work on over 100 projects through his role as supervising electrician for SBS.

12. On September 2, 2022, the Department received a phone call from SBS and an SBS customer. The customer stated that Respondent had done work at their house to provide an electrical upgrade, but abandoned the project without providing a refund, and had severed communication with the customer.

13. On September 2, 2022, the customer provided a copy of a check for \$2,700 that they had paid to Respondent for the incomplete electrical work.

14. On January 13, 2023, Respondent was disciplined again and issued a \$10,000 forfeiture (Order # 0008359) as allowed by Wis. Stat. § 101.88(3) in Case Number 22 UNL 069 for engaging in electrical work without possessing the necessary credential in violation of Wis. Stat. § 101.862(2) and holding himself out as a journeyman electrician falsely assuming responsibility and supervision for electrical projects.

15. As of this writing Respondent has failed to satisfy the forfeiture.

16. Pursuant to Wis Stat. § 101.862(2), an electrical license or registration is required to perform electrical work.

17. Pursuant to Wis Stat. § 101.862(1), no person may engage in the business of installing, repairing, or maintaining electrical wiring unless the person is licensed as an electrical contractor by the department.

18. Pursuant to Wis Stat. § 101.862(3), no person who is not a master electrician may install, repair, or maintain electrical wiring unless a master electrician is at all times responsible for the person's work.

19. The conduct described above constitutes unregistered practice as a registered electrician, contrary to Wis. Stat. § 101.862(2).

20. The conduct described above constitutes unlicensed practice as an electrical contractor, contrary to Wis. Stat. § 101.862(1).

21. The conduct described above constitutes unlicensed practice as a master electrician, contrary to Wis. Stat. § 101.862(2) and (3).

22. The conduct described above constitutes unlicensed practice as a journeyman electrician, contrary to Wis. Stat. § 101.862(2).

23. None of the exemptions found in Wis. Stat. § 101.862(4) are applicable to the conduct described above.

24. Pursuant to Wis. Stat. § 440.21 via Wis. Stat. § 101.022, the Department is authorized to enforce laws requiring a credential.

Facts Related to Default

25. On May 10, 2023 the Division served the Respondent with the Petition and Notice of Hearing in this matter to his last known address, by both certified and regular mail. The Notice of Hearing advised Respondent: "If you do not provide a proper Answer within twenty (20) days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from working as a registered electrician, electrical contractor, master electrician, and/or journeyman electrician without a proper credential, or use of a related title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than \$10,000 for each offense."

26. Respondent failed to file an Answer within the 20-day answer deadline.

27. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for June 19, 2023 at 10:00 a.m. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached for the conference by no later than June 18, 2023. The Notice warned the Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

28. Respondent failed to provide a telephone number. However, Respondent did respond via email to the Division of Hearings and Appeals to provide an updated address and to request no further contact given that he no longer resides in Wisconsin. At the June 19, 2023 prehearing conference, the ALJ was able to reach the Respondent at a telephone number provided by the Division.

29. Based on Respondent's failure to file an Answer to the Petition for an Administrative Injunction, the Division moved for default pursuant to Wis. Admin. Code § SPS 3.13.

30. On June 20, 2023, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve no later than August 18, 2023, a recommended proposed decision and order.

31. The Division timely filed its recommended Proposed Decision and Order.

DISCUSSION

Jurisdictional Authority

The Department has authority to conduct investigations, hold hearings, and make findings as to whether a person has engaged in the practice of a registered electrician, electrical contractor, master electrician, and journeyman electrician without a required credential. If the Department determines that a person has acted as a registered electrician, electrical contractor, master electrician, and journeyman electrician without a credential, the Department may issue a special order enjoining the person from continuing to practice. Wis. Stat. § 440.21(1) and (2); Wis. Stat. § 101.862 (1)-(3).

Pursuant to Wis. Admin. Code § SPS 3.09, the undersigned ALJ has authority to preside over this disciplinary proceeding and issue this proposed decision and order in accordance with Wis. Stat. §§ 227.43(1m) and 227.46(1).

Default

The Division properly served the Respondent with a Notice of Hearing and Amended Petition for Administrative Injunction. Wis. Stat. § 440.11(2); Wis. Admin. Code § SPS 3.07. The Respondent did not file an Answer to either the Petition or Amended Petition as required under Wis. Admin. Code § SPS 3.08(4). "If the respondent fails to answer as required by s. SPS 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence." Wis. Admin. Code § SPS 3.13; *see also* Wis. Admin. Code § HA 1.07(3)(b) ("If a respondent fails to appear, the administrative law judge may...take the allegations in an appeal as true as may be appropriate...."). Allegations in a petition are admitted when not denied. Wis. Admin. Code § SPS 3.08(3).

In the present matter, the Respondent failed to file an answer to the Petition for Administrative Injunction within 20 days from the date of service contrary to Wis. Admin. Code § SPS 3.08(4). Thus, the Division moved for default against the Respondent pursuant to Wis. Admin. Code § SPS 3.13 and Wis. Admin. Code § HA 1.07(3)(b) and (c). The Respondent also failed to appear and participate in the prehearing telephone conference on June 19, 2023. As stated in the June 20, 2023 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Petition. Therefore, the Respondent is in default, and findings and an order may be entered based on the Petition. *See* Wis. Admin. Code § SPS 3.13; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations

Under Wis. Stat. § 101.862 proper credentials are required in order to practice as an electrical contractor, registered electrician, or master electrician. Specifically, the law provides that:

- (1) No person may engage in the business of installing, repairing, or maintaining electrical wiring unless the person is licensed as an electrical contractor by the department.
- (2) No person may install, repair, or maintain electrical wiring unless the person is licensed as an electrician by the department or unless the person is enrolled as a registered electrician by the department.
- (3) No person who is not a master electrician may install, repair, or maintain electrical wiring unless a master electrician is at all times responsible for the person's work.

Because the Respondent did not file an Answer contesting the allegations in the Petition, the allegations in the Petition are taken as true pursuant to Wis. Admin. Code §§ SPS 2.13 and HA 10.07(3)(b). See also, Wis. Admin. Code § HA 1.01(2). The unrefuted facts set forth in the Division's Petition, and further set forth in the findings of facts above, establish that the Respondent engaged in the business of installing, repairing, or maintaining electrical wiring; installed, repaired, or maintained electrical wiring without a proper credential; and installed, repaired, or maintained electrical wiring without a master electrician overseeing his work. (Petition, ¶¶ 5, 9-12) It is further undisputed that the Respondent did not hold the required credentials to engage in the practice of electrical work. (Id. ¶ 2) Moreover, the Respondent had previously been disciplined for engaging in electrical work without the proper credentials or supervision. (Id. ¶¶ 3 and 4) Therefore, I find that the Division's factual allegations in this matter are sufficient to satisfy its burden to prove the unauthorized conduct occurred.

Based upon the above, I find that the Respondent engaged in the practice of electrical wiring work without the required credentials in violation of Wis. Stat. § 101.862. Accordingly, a special order enjoining Respondent from the continued provision of electrical services without the requisite credentialing and licensure in the State of Wisconsin is therefore reasonable and warranted under Wis. Stat. §§ 101.862(1)-(3) and 440.21(2).

CONCLUSIONS OF LAW

1. the Department has the authority to issue a special order enjoining a person from engaging in the practice of an electrician, electrical contractor, master electrician, or journeyman electrician without a required credential pursuant to Wis. Stat. §§ 101.862(1) to (3) and 440.21(1) and (2).
2. The Respondent is in default due to his failure to file an answer to the Notice of Hearing and Complaint under Wis. Admin. Code § SPS 3.13.
3. Based upon the unrefuted facts alleged in the Petition, the Department established that the Respondent engaged in the business of installing, repairing, or maintaining electrical wiring without the proper credential pursuant to Wis. Stat. § 101.862.

4. An administrative injunction enjoining the Respondent from practicing as a registered electrician, master electrician, and/or journeyman electrician without a license is an appropriate sanction in this matter under Wis. Stat. § 440.21(2).
5. The Division of Hearings and Appeals has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. §§ 227.43(1m) and 227.46(1) and Wis. Admin. Code § SPS 3.09.

SPECIAL ORDER FOR ADMINISTRATIVE INJUNCTION

For the reasons set forth above, IT IS ORDERED that the Respondent, Michael Elkins, is hereby enjoined and prohibited from practicing as a registered electrician, electrical contractor, master electrician, and/or journeyman electrician in the State of Wisconsin in a capacity in which a credential is required until he is properly licensed by the Wisconsin Department of Safety and Professional Services. If the Department determines that there is probable cause to believe that the Respondent has violated any terms of this Administrative Injunction, the Department may refer the violations covered by this decision and order to any appropriate prosecutorial unit for review for possible criminal charges.

IT IS FURTHER ORDERED that the Respondent shall provide a copy of this Special Order for Administrative Injunction with any application submitted by the Respondent for a credential issued by the Department.

IT IS FURTHER ORDERED that if the Respondent violates this Special Order, the Respondent may be required to forfeit up to \$10,000 for each offense, pursuant to Wis. Stat. § 440.21(4)(a). Each day of the continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover such forfeiture.

IT IS FURTHER ORDERED that the terms of the Special Order are effective the date it is signed by the Department.

Dated at Madison, Wisconsin on September 29, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

Kristin P. Fredrick
Administrative Law Judge