

Be Careful Who You Qualify – (Contractor Discipline)

Florida Statutes § 489.119 requires that companies engaged in construction contracting within the State have a licensed individual serve as their “qualifying agent,” thus authorizing the company to perform contracting work as a business. In addition, the State of Florida has set up a Construction Industries Recovery Fund (“Recovery Fund”) which, in general terms, reimburses people that have obtained unpaid judgments against builders who have been found liable on certain types of claims.

Against that background, when nine home owners sued a builder/company that ultimately went out of business, the home owners all obtained judgments and were all reimbursed by the Recovery Fund. In response to paying out of the Recovery Fund, the State of Florida licensing board suspended the license of the builder’s qualifying agent/contractor pursuant to a statutory provision that reads:

Upon the payment of any amount from the Construction Industries Recovery Fund in settlement of a claim *in satisfaction of a judgment or restitution order against a licensee* as described in s. 489.141(1), the license of such licensee shall be automatically suspended, without further administrative action, upon the date of payment from the fund. The license of such licensee shall not be reinstated until he or she has repaid in full, plus interest, the amount paid from the fund....

Feeling that suspension of his license was not appropriate because the judgments were only against the builder/company and were not against the contractor himself, the contractor appealed. The Court, however, was not persuaded.

Florida law authorizes the discipline of a contractor (e.g., revocation or suspension of his/her license) if the company for which the contractor is the primary qualifying agent is found guilty of abandoning a construction project. It also makes qualifying agents for a company jointly and equally responsible for the supervision of all operations of the business organization, including field work and financial matters. In this case, the qualifying agent/contractor and the builder agreed that the contractor would supervise construction and receive a salary and part of the profits in return. Even though the builder told the contractor that no activity was occurring, the builder actually took deposits and started construction, ultimately going out of business. Based on these circumstances, it was determined that the company had abandoned the job and that the contractor was properly suspended as a result.

The Court, however, did not stop there, but instead added that given the “risky nature of the [construction] business, and the protection offered by the corporate structure, requiring that the judgment be against the licensee [contractor], who can only be an individual, would, in most cases, make the suspension provision meaningless.” This broad-based language seems to imply that the corporate structure may not protect

contractors' licenses in other instances where there are problems related to the company they are qualifying.

While the full scope of the Court's decision remains to be seen, contractors would be well advised to heed at least one preliminary suggestion: "Be Careful Who You Qualify!"

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