

BEFORE THE STATE ELECTRICAL BOARD
STATE OF MONTANA

Docket No. CC-05-0105-ELE
Hearings Bureau Case No. 1444-2005

IN THE MATTER OF THE PROPOSED)
DISCIPLINARY ACTION AGAINST THE)
LICENSE OF MICHAEL RUSSELL,)
Licensed Master Electrician,)
License No. M1168.)

**PROPOSED
FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Montana Department of Labor and Industry Business Standards Division (BSD) filed a complaint against the electrician’s license of Michael Russell (licensee) alleging violations of Mont. Code Ann. § 37-1-316(2) (permitting, aiding or abetting another person to violate or circumvent state licensing requirements), Mont. Code Ann. § 37-1-316(16) (permitting another to engage in unlicensed electrical work), Mont. Code Ann. § 37-1-316(18) (failing to comport with generally accepted standards of practice), and Admin. R. Mont. 24.141.403(5) (permitting an unlicensed or improperly permitted person to perform electrical work). Hearing Examiner Gregory L. Hanchett held a contested case hearing in this matter on May 23, 2005. Lorraine Schneider, agency legal counsel, appeared on behalf of the Department of Labor and Industry. The licensee appeared on his own behalf.

Prior to the hearing, the licensee admitted that he had committed each of the above mentioned violations as alleged in the complaint. The matter proceeded to hearing solely on the question of the appropriate sanction to be imposed for the violations. Department Exhibit 6 was admitted into evidence by stipulation of the parties. George Edwards, program specialist for the State Electrical Board, testified under oath on behalf of the BSD. The licensee spoke on his own behalf. Based on the evidence adduced at the hearing, the following findings of fact, conclusions of law, and recommended order are made.

II. FINDINGS OF FACT

1. The licensee is a licensed master electrician in Montana, holding license number M1168. The licensee is also the responsible electrician for Aero Electric, the electrical company which he owns.

2. Matt Russell, the licensee's son, has at all times pertinent to this case worked for the licensee. Matt has never been a licensed electrician in Montana. Up until September 25, 2003, Matt was permitted to work because he was enrolled in a valid apprenticeship program which permitted him to work because he was supervised on site by the licensee who is a properly licensed master electrician.

3. Sometime prior to September 25, 2003, Matt completed the apprenticeship program. By letter dated September 25, 2003, the State Electrical Board advised Matt that because he had completed the apprenticeship program, he could no longer work unless he obtained a temporary work permit until such time as he could take the appropriate state examination.

4. Despite being advised of this requirement, Matt did not obtain his temporary work permit. In addition, he also had trouble successfully completing the state test which prevented him from becoming licensed. Nonetheless, the licensee permitted Matt to continue to work on the licensee's projects even though Matt was neither licensed nor properly permitted to work on electrical projects in Montana.

5. On August 19, 2004, two electrical board investigators visited one of the licensee's job sites located in Whitefish, Montana. Matt was there by himself engaging in electrical work. The licensee was not at the job site nor was any other responsible licensed electrician there. In fact, the licensee was out of state at the time. Because the licensee was not on the job site, the investigators issued Matt a citation for engaging in unlicensed electrical work.

6. Matt was working on the licensee's project sites while not properly licensed or permitted to do so for nearly one year before the August 19, 2004 incident.

7. The licensee's license has never been sanctioned during his 29 years as a licensed electrician in Montana.

III. CONCLUSIONS OF LAW

1. Admin. R. Mont. 24.141.402(2) provides that the responsible electrician for a licensed electrical contractor shall be responsible for assuring that all apprentices under his general supervision comply with the requirements of 24.141.402(2).

2. Admin. R. Mont. 24.141.403(5) provides that the responsible electrician of a licensed electrical contractor shall not allow any person to perform

electrical work unless properly licensed or working with a valid temporary practice permit.

3. Mont. Code Ann. § 37-1-312(1) provides that upon a determination that the licensee has committed a violation, the Board may issue an order providing for, among other things, payment of a fine not to exceed \$1,000.00 per occurrence and probation for the licensee's license.

4. Mont. Code Ann. § 37-1-312(2) provides that in determining which sanctions are appropriate, the Board must first consider sanctions that are necessary to protect the public and only after that determination has been made may the Board then consider and implement requirements designed to rehabilitate the licensee.

5. The licensee argues in this matter that no sanction should be imposed because he was unaware that Matt was not properly licensed at the time of the August 14, 2004 incident. However, Admin. R. Mont. 24.141.402(2) is very clear in the requirement it places upon those licensed electricians who employ apprentices. A licensed electrician who employs an apprentice, *not the apprentice*, is responsible to ensure the apprentice meets the requirements for working. Thus, the licensee's lack of awareness as to whether Matt was properly permitted to perform work, in the absence of any suggestion that the Board engaged in some type of active concealment of Matt's unlicensed, unpermitted status to work, simply cannot be construed as a basis for mitigation in this matter. To hold otherwise would be to ignore the fact that the administrative rules place the onus on the licensee to ensure that an employee is either properly licensed, properly permitted or enrolled in an apprenticeship program.

6. The fact that the licensee took no active steps to ensure that Matt continued to be eligible to work, despite the passage of nearly one year between the time Matt finished his apprenticeship and the time of the August 19, 2004 incident, suggests that the licensee turned a "blind eye" to the situation. This conduct, though perhaps not willful, is nevertheless inimical to the two paramount policies behind Admin. R. Mont. 24.141.402(5) and Admin. R. Mont. 24.141.403(5): the protection of the public and the requirement that electricians employing apprentices be responsible for ensuring that the apprentice is either enrolled in an apprentice program or obtains a proper permit to work. In light of these policies, and the facts of the instant case, imposition of a fine and placing the licensee's license on probation for a period of one year is necessary to ensure that he undertakes his duty to ensure apprentice and employee compliance with licensing and permitting requirements in an active manner.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the Montana State Electrical Board place the licensee on probation for a period of 12 months from the date of the entry of the final order in this matter with the terms that the licensee: (1) obey all provisions of Title 37, Chapters 1 and 68, and Title 24, Chapter 141 of the Administrative Rules of Montana, and (2) that the licensee be ordered to pay a fine of \$500.00 to the State Electrical Board no later than 30 days after the entry of the final order in this matter. The hearing examiner further recommends that in the event the licensee fails to pay the fine in the manner as described above, that his license be suspended until such time as the fine is paid in full.

DATED this 3rd day of June, 2005.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.