

BEFORE THE STATE ELECTRICAL BOARD  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-10-0269-ELE REGARDING:

THE PROPOSED DISCIPLINARY	)	Case No. 1926-2010
TREATMENT OF THE LICENSE OF	)	
LARRY LEPPEK, a Licensed Electrician	)	
Journeyman, License No. 4318.	)	
	)	

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**ORDER RECOMMENDING SUMMARY JUDGMENT  
AND REVOCATION OF LICENSE**

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**I. INTRODUCTION**

The Business Standards Division of the Department of Labor and Industry has moved for summary judgment on the basis that there is no genuine issue of material fact and that on the basis of the undisputed facts, Leppek’s license should be revoked. After considering the department’s motion, the supporting affidavits, and the licensee’s failure to respond to the motion, the motion is granted for the reasons stated below.

**II. PROCEDURAL FACTS**

1. The Business Standards Division (BSD) of the Department of Labor and Industry served the licensee with notice of its complaint and proposed board action in this matter on April 19, 2010. The licensee opposed the proposed action and the matter was transferred to the Hearings Bureau for contested case hearing.

2. On June 1, 2010, the hearing examiner held a telephone scheduling conference with counsel for the BSD and the licensee in attendance. At that time, BSD counsel and the licensee agreed to a pre-hearing and hearing schedule.

3. On July 30, 2010, the department filed a motion for summary judgment with respect to the three violations alleging fraudulent conduct.<sup>1</sup> The original motion and supporting materials contained some errors and confidential third-party information that the department corrected and removed at the hearing examiner's request. On August 3, 2010, the hearing examiner issued an order advising Leppek that he had until August 20, 2010 to respond. The order sent to Leppek was returned by the postal service. An alternative address for Leppek was obtained and on August 19, 2010, the hearing examiner extended the time for Leppek's response until August 31, 2010. As of this date, Leppek has not responded to the department's motion.

### III. SUMMARY JUDGMENT SHOULD BE GRANTED IN THIS CASE AND THE LICENSEE'S ELECTRICIAN LICENSE SHOULD BE REVOKED

#### A. *Summary Judgment Is Appropriate In Administrative Cases Where There Are No Contested Issues Of Fact*

Summary judgment is an appropriate method of dispute resolution in administrative licensing proceedings when the requisites for summary judgment are met. *Matter of Peila* (1991), 249 Mont. 272, 815 P.2d 139. Summary judgment should be granted where "the pleadings . . . and admissions on file, together with the affidavits, . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law." Rule 56(c), Mont. R. Civ. P.

The party seeking summary judgment has the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Once the moving party meets this burden, the burden then shifts to the party opposing the motion to establish otherwise by more than mere denial or speculation. *Ravalli County Bank v. Gasvoda* (1992), 253 Mont. 399, 883 P.2d 1042.

#### B. *Undisputed Facts In This Case*

1. Leppek is a licensed journeyman electrician in Montana; his license number is 4318. Affidavit of Jason Steffins, ¶ 5a (July 29, 2010).

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<sup>1</sup> The department has requested that the hearing examiner dismiss the remaining charges if summary judgment is granted with regard to the fraud charges.

2. Leppek is not the responsible electrician for any electrical contractor. See Aff. Steffins, ¶ 5b.

3. Steve Andrachick owns Quality Electrical Contracting, Inc. (“Quality Electric”), which was previously known by the name “Quality Electrical Contracting, LLC.” See Affidavit of Steve Andrachick, ¶ 2 (July 27, 2010).

4. Quality Electric was first licensed as an unlimited electrical contractor on August 16, 2006. See Aff. Steffins ¶ 7d.

5. On or about November 20, 2009, Leppek signed a “Compliance Plan Agreement” on behalf of Quality Electric, using both the name and the license number of Quality Electric. Affidavit of Lissa Peel, ¶ 5 (July 28, 2010).

6. On or about November 20, 2009 through December 9, 2009, Leppek made representations in his work as an electrician that he was the owner of and an electrician for Quality Electric. As a journeyman electrician without oversight of a master electrician, Leppek performed commercial electrical work on at least one project obtained via his fraud or misrepresentations, namely, the Fire Service Building for the Salish and Kootenai Tribes (the “Tribes”). Aff. Lissa Peel (July 28, 2010), ¶¶ 2-5, 7.

7. On or before December 9, 2009, Leppek attempted to purchase electrical supplies on Quality Electric’s business account at Platt Electric Supply, Inc. (“Platt Electric”), of Polson, Montana. See Affidavit of Tracy Schueler (August 3, 2010), ¶ 3.

8. Tracy Schueler, the Assistant Manager of Platt Electric, rejected Leppek’s attempt to purchase electrical supplies on Quality Electric’s account, informing Leppek that he was not authorized on the account. Aff. Schueler, ¶ 4.

9. Ms. Schueler offered to call Quality Electric to get authorization for Leppek’s purchases, but Leppek refused the offer and volunteered to pay with cash, instead. Aff. Schueler, ¶¶ 5-6.

10. On December 9, 2009, Leppek called Quality Electric, asking Steve Andrachick to submit a bid on a Salish Kootenai College project. Aff. Andrachick, ¶ 4.

11. Until the December 9, 2009 telephone call from Leppek, Andrachick had never heard of him. Aff. Andrachick, ¶ 5.

12. Mr. Leppek is not a responsible electrician for, nor is he otherwise associated with any licensed electrical contractor. Aff. Steffins, ¶ 5b.

C. *Discussion*

Pursuant to Uniform District Court Rule 2(b), the failure to respond to a motion within ten days shall be deemed an admission that the motion is well taken. However, summary judgment cannot be granted on that basis alone. *Cole v. Flathead County*, (1989) 236 Mont. 412, 417, 771 P.2d 97, 100.

However, the undisputed facts, supported by the affidavits filed in this matter, show that Leppek attempted to use Quality Electric's charge account at Platt Electric, signed a Compliance Plan Agreement containing fraudulent or misleading representations, and made other false statements or misrepresentations in connection with his work.

It is unprofessional conduct for a journeyman electrician to sign or issue a misleading, deceptive, false, or fraudulent representation in the conduct of the profession or occupation, or to engage in conduct that falls short of the generally accepted standards of practice. Mont. Code Ann. § 37-1-316(4), (5), and (18).

The licensee's conduct as described above does not meet generally accepted standards of professional conduct for electricians and amounts to unprofessional conduct.

The proper sanction to be imposed in this case is revocation of Leppek's license. Leppek's fraudulent use of Quality Electrical's name and license and his attempt to charge supplies on their account at Platt Electric Supply indicate a willingness to do whatever he thinks he can get away with. While there is no evidence that the work he conducted at the Fire Service Building was substandard, his conduct with respect to obtaining work and supplies indicates that he is capable of cutting corners in his work as an electrician. All these factors indicate that in order to protect the public health, safety, and welfare, Leppek's license should be revoked.

D. *Conclusions Of Law*

1. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this part:

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

. . .

(18) conduct that does not meet the generally accepted standards of practice.

2. Leppek violated Mont. Code Ann. § 37-1-316(4), (5), and (18).

3. A regulatory board may impose any sanction provided for by Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a board may revoke a licensee's license.

4. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

5. Revocation of the licensee's license is required in this case in order to ensure the protection of the public. Leppek's conduct with respect to obtaining work and supplies indicates that he is capable of cutting corners in his work as an electrician. All these factors indicate that in order to protect the public health, safety, and welfare, Leppek's license should be revoked.

#### IV. RECOMMENDED ORDER

Based on the foregoing, it is recommended that the State Electrical Board:

1. Grant the department's motion for summary judgment;
2. Enter its order finding that Larry Lepek has violated Mont. Code Ann. § 37-1-316(4), (5), and (18);
3. Revoke the journeyman electrical license of Larry Lepek, License No. 4318; and
4. Dismiss those charges alleging violations of Mont. Code Ann. § 37-1-316(2) and Admin R. Mont. 24.141.403.

DATED this 23rd day of September, 2010.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ DAVID A. SCRIMM  
DAVID A. SCRIMM  
Hearing Examiner