

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Sally Marmion-Rendon,

COMPLAINANT

v.

Elite Rooter Phoenix Inc.
DBA: Elite Rooter
License No. ROC 316232,

RESPONDENT

No. 2023A-11137-CHC-ROC

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: March 11, 2024

APPEARANCES: Complainant Sally Marmion-Rendon appeared and was represented by Brenda Lee. Armando Salazar, Jr., Manager, appeared on behalf of Respondent Elite Rooter Phoenix Inc., doing business as Elite Rooter.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

EXHIBITS ADMITTED INTO EVIDENCE: Administrative Notice was taken of the Hearing Packet submitted by the Registrar of Contractors.

FINDINGS OF FACT

1. Elite Rooter Phoenix Inc., doing business as Elite Rooter (Respondent) is the holder of License No. 316232 issued by the Arizona Registrar of Contractors (Registrar).

2. In or about August 2023, Sally Marmion-Rendon (Complainant) entered into a contract with Respondent for the replacement of two wax rings. No signed copy of the original contract was submitted by either party.

3. When Respondent attempted to replace the wax ring, it was noted that the pipes leading to the toilet had deteriorated and it was necessary to replace the sewer all the way to the main line. Respondent advised Complainant that the additional work would cost Complainant \$12,000.00. Again no signed copy of the contract was submitted from either party.

Office of Administrative Hearings
1740 West Adams Street, Lower Level
Phoenix, Arizona 85007
(602) 542-9826

1 4. Respondent did not obtain a permit as required for the replacement of the
2 sewer line.

3 5. Respondent removed concrete from Complainant's bathroom and caused
4 some damage to the post-tension cable. Respondent covered the damage with concrete.
5 However, because the concrete poured was not level with the existing concrete,
6 Respondent could not reinstall the toilets, so the project remained uncompleted.

7 6. Respondent was not licensed to perform the concrete work.

8 7. On or about September 22, 2023, the Registrar received a Complaint against
9 Respondent from Complainant alleging poor work with respect to the project.

10 8. The Registrar assigned the complaint to Investigator Gregory Johndrow.
11 After a jobsite inspection, Investigator Johndrow issued a written directive to Respondent
12 that provided as follows:

13 After investigation, the Registrar determined that you failed to meet the
14 requirements of A.R.S. § 32-1154(A), and now issues this Directive
15 requiring you to take appropriate corrective action. Failure to comply with
16 this Directive constitutes a violation of A.R.S. § 32-1154(A)(22) and may
17 result in the issuance of a citation, discipline of your license, and a civil
18 penalty pursuant to A.R.S. § 32-1154(E) of up to \$500.00. **You must notify
19 the Registrar's assigned Investigator of your compliance with this
20 Directive prior to 5:00 p.m. on December 13, 2023.**

21 RESTRICTIONS

- 22 • You may not perform or hire other contractors to perform work that is
23 outside the scope of your license.
- 24 • If your license is currently suspended for administrative reasons, or is
25 inactive, expired, or cancelled, you may not perform any corrective work nor
26 contract in any manner, which includes hiring other contractors to perform
27 work, until the suspension of your license(s) has been lifted or your
28 license(s) has been reactivated.

29 DIRECTIVE REQUIREMENTS

30 You are directed to remedy the following violations by the appropriate means:

The Respondent is to ensure that any and all required building permits are obtained from the Local Building Authorities prior to making corrections listed in this Directive.

If the local jurisdiction finds corrective issues relating to the respondent's work, the respondent will be required to correct those issues by appropriate

REGISTRAR OF CONTRACTORS
OF
THE STATE OF ARIZONA

Sally Marmion-Rendon,

COMPLAINANT,

v.

Elite Rooter Phoenix Inc,
DBA Elite Rooter,
License No. ROC 316232,

RESPONDENT.

Case No. 2023-11137

Docket No. 2023A-11137-CHC-ROC

**FINAL ADMINISTRATIVE
DECISION AND ORDER**

Under A.R.S. § 41-1092.08(B), the Registrar may review and accept, modify, or reject an administrative law judge's written decision. If the Registrar modifies or rejects that decision, then the Registrar must provide written justification setting forth the reasons for the modification or rejection of each finding of fact or conclusion of law.

REGISTRAR'S ACCEPTANCE

In this case, a hearing was held, and the administrative law judge issued a written decision. *See Administrative Law Judge Decision*, attached. The Registrar reviewed that decision and accepts it.

CONCLUSION AND ORDER

Because the Registrar has accepted the administrative law judge's decision, that decision is the final administrative decision in this case and becomes effective on **June 2, 2024**. The terms of the order, such as suspension, revocation or dismissal, etc., will take place the next business day.

FINAL NOTE

On page four, paragraph 15, lines 16.5, replace "Complainant" with "Respondent."

REGISTRAR OF CONTRACTORS
1700 W. Washington St. – Ste. 105 – Phoenix, AZ 85007-2812
Telephone (602) 542-1525 Toll Free (877) 692-9762

1 of 2

11. The Registrar issued a Citation against Respondent, charging possible violations of A.R.S. § 32-1154(A)(2)(b); A.R.S. § 32-1154(A)(3), namely A.A.C. R4-9-108(A) and (B); A.R.S. § 32-1154(A)(12), namely A.R.S. § 32-1158; A.R.S. § 32-1154(A)(16); and A.R.S. § 32-1154(A)(22).

12. Respondent filed a timely answer to the Citation.

13. On or about January 30, 2024, the Registrar issued a Notice of Hearing charging possible violations of A.R.S. § 32-1154(A)(2)(b) and A.R.S. § 32-1154(A)(3), namely A.A.C. R4-9-108(A) and (B).¹

14. Investigator Johndrow testified that Respondent removed two sections of the post-tension slab and failed to obtain any engineering plan. Investigator Johndrow stated that he observed damage to the sheathing of the post-tension cable and if the cables were damaged, Complainant faces the risk of collapse or serious damage. Investigator Johndrow also noted that Respondent's act of pouring concrete to cover the damage it caused should be taken into account.

15. Complainant stated that Respondent began doing extra work on the project without telling her what they were doing. Complainant maintained that she did not have a signed contract with Complainant. Complainant testified that she had been displaced from her home since August 12, 2023, due to Respondent's actions.

16. Mr. Salazar testified that the damage to the post-tension cable was only to the sheathing, not the cable itself and, therefore, no additional measures were necessary to address the issue. Mr. Salazar admitted that the work required a permit and that Respondent failed to obtain that permit prior to the performing the work. Mr. Salazar testified to Respondent's multiple attempts to contact Complainant to address the written directive, but Complainant failed to respond to any communications.

17. Administrative notice is taken of Respondent's prior License record on April 1, 2024. Such prior License record reflects that Respondent's License No. 316232 was first issued on November 2, 2017, and was revoked on March 15, 2024.² Such prior

¹ No explanation was provided as to why the other alleged violations in the Citation were not included in the Notice of Hearing.

² The Registrar's website indicated Respondent's license was revoked as a result of discipline in case number 2023-05754. However, the Office of Administrative Hearings' records indicate that, in that case, a suspension of ten days was recommended by the Administrative Law Judge, Respondent accepted that

License record also reflects that there were no other open complaints and two prior complaints resulting in discipline against Respondent's license.

CONCLUSIONS OF LAW

1. This matter lies within the Registrar's jurisdiction. See A.R.S. § 32-1101 et seq.

2. Complainant bears the burden of proof to establish Respondent's statutory violations by a preponderance of the evidence. See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and A.A.C. R2-19-119(B)(1); see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952). "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

3. The evidence established that Respondent failed to obtain the necessary permit prior to performing its work on this project. As such, Respondent did not complete the project in accordance with the applicable building code in a manner that was prejudicial to Complainant. Therefore, Complainant established that Respondent departed from or disregarded applicable building code in violation of A.R.S. § 32-1154(A)(2)(b).³

4. The evidence established that Respondent's work was not in conformity with the Registrar's standards. Therefore, Complainant established that Respondent did not complete the project in a workmanlike manner in violation of A.R.S. § 32-1154(A)(3), namely A.A.C. R4-9-108(A) and (B).⁴

RECOMMENDED ORDER

Based on the foregoing, it is recommended that on the effective date of the Order, the Registrar shall suspend Respondent's License No. 316232 for a period of ten days.

recommendation, and the recommended decision was certified pursuant to A.R.S. § 41-1092.08(I) on January 3, 2024.

³ A.R.S. § 32-1154(A)(2) includes among the grounds for suspension, revocation, or other disciplinary action against a contractor's license:

Departure from or disregard of:

.....
(b) A building code of this state or any political subdivision of this state in any material respect that is prejudicial to another.

⁴ A.R.S. § 32-1154(A)(3) includes among the grounds for suspension, revocation, or other disciplinary action against a contractor's license, "[v]iolation of any rule adopted by the registrar." A.A.C. R4-9-108 requires that "[a] contractor shall perform all work in a professional and workmanlike manner" and that "[a] contractor shall perform all work in accordance with any applicable building codes and professional industry standards."

Pursuant to A.R.S. § 41-1092.08(I), the licensee may accept the Administrative Law Judge Decision by advising the Office of Administrative Hearings in writing not more than ten (10) days after receiving the decision. If the licensee accepts the Administrative Law Judge Decision, the decision shall be certified as the final decision by the Office of Administrative Hearings.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be forty (40) days from the date of that certification.

Done this day, April 1, 2024.

/s/ Tammy L. Eigenheer
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile to:

Tom Cole, Director
Registrar of Contractors

Gregory Johndrow
gregory.johndrow@roc.az.gov

Elite Rooter Phoenix Inc.
DBA: Elite Rooter
armando@eliterootermgt.com

Brenda J. Lee Esq.
Lee & Travers PLC
leeandtravers8@outlook.com

By: OAH Staff

means. The respondent is required to submit a copy of the approved inspection results to the ROC Investigator.

Complaint Item 1: "Both toilets were removed – No permits – no engineer. They cut into post tension slab..."

(Complainant's description of the poor uncompleted work in the hall and master bathrooms of the residence.)

Investigator's Observations: Verified. The respondent has made modifications to the drain lines for the toilets in both bathrooms of this residence. The sections of completed work does not meet industry standards and the toilets in both bathrooms have not been installed, and cannot be installed, due to the current conditions. A review of the City of Tucson building department website revealed no permits have been obtained for this project.

The respondent removed and replaced two sections of the post tension slab in this residence. A location was observed in each bathroom. The respondent damaged and compromised a least one location of the post tension sheathing and tendon. There is no evidence showing the respondent obtained a required engineered plan outlining the corrections for the damage caused to the sheathing and tendon or for the proper doweling and replacement of the concrete. The finished concrete elevation replaced by the respondent has a depression exceeding one inch around the new toilet flange, this measurement was taken from the existing slab elevation.

Governing Rule: A.R.S. § 32-1154(A)(2)(b): Departure from or disregard of: (b) A building code...

A.R.S. § 32-1154 (A)(3) - R4-9-108(a): Violation of any rule adopted by the registrar; Namely R 4-9-108(a) A contractor shall perform work in a professional and workmanlike manner.

A.R.S. § 32-1154 (A)(3)(b): Violation of any rule adopted by the registrar; Namely R 4-9-108(b): A contractor shall perform work in accordance with any applicable building codes and professional industry standards...

9. Following the issuance of the written directive, Respondent made multiple attempts to contact Complainant regarding the written directive. Complainant did not respond to any of the communications from Respondent. Complainant stated at hearing that she did not respond because she had no intention of allowing Respondent to perform any additional work on the project.

10. After the deadline in the directive expired, Investigator Johndrow was notified no corrective work had been performed.