

MAINE PLUMBERS' EXAMINING BOARD

Charles P. Smith)
RE: Complaint #2006-PLU-2942) DECISION

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 3403-A. (2), *et seq.*, 5 M.R.S.A. Sec. 9051, *et seq.*, and 10 M.R.S.A. Sec. 8001, *et seq.*, the Plumbers' Examining Board (Board) met in public session at the Board's offices located in Gardiner, Maine on February 21, 2007 for the purpose of holding an adjudicatory hearing to determine whether grounds exist for the Board to take disciplinary action against Charles P. Smith's Maine Master Plumber's License. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Board Chairman Percy L. Brown, Jr., Lawrence Kent, (Public member), Lawrence Dempsey, Richard St. John, and Don Smith. Andrew Black, Ass't. Attorney General, presented the State's case. Charles Smith was not present and not represented by legal counsel. He was, however, served with the Notice of Hearing by certified mail on January 24, 2007 and by first class mail on or about the same day. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing after determining that there were no conflicts of interest. Following the State's opening statement, the admission into the record of State's exhibits 1-20, testimony, and the State's closing argument, the Board deliberated and made the following conclusions of law and findings of fact by a preponderance of the credible evidence regarding the allegations in the Notice of hearing.

II. FINDINGS OF FACT

Haven Quint and his wife, residents of Fryeburg, Maine, in January 2006 contracted through contractor John Neal with Charles P. Smith, d/b/a/ C.P.S. Plumbing and Heating and Construction, Madison, New Hampshire, to install the plumbing in their new home located in Fryeburg, Maine. Smith was first licensed as a master plumber in Maine on December 16, 1997. His current license expires on December 31, 2007.

At the outset, Charles Smith informed the homeowners that he would obtain the plumbing permit and the licensee was paid a down payment of \$4,450 for the plumbing installation. He was also paid \$5,147.50 as a down payment to install the heating system¹ but, unknown to the Quints, was not licensed to perform that work in the State of Maine. The licensee began the plumbing work in March 2006 which was allegedly completed together with the heating system by May 2006. Mr. Quint did not observe the licensee test the plumbing installation at that time or thereafter and it is presumed that no test of that system was ever performed by the licensee.

The Quints moved into their new home at the end of April or beginning of May 2006, unaware that they needed an occupancy permit from the town. Shortly thereafter, problems occurred related to the plumbing and heating systems. For example, both the upstairs and downstairs toilets leaked at their bases which caused the surrounding tile to discolor. Additionally, gurgling sounds were apparent when the toilets were flushed and, when the upstairs toilet was flushed, water would blow out of the downstairs toilet bowl. In response, Smith told Haven Quint that he would correct the problem or pay for its repair which he failed to do.

In order to address the problem, the Smiths hired another plumbing contractor who discovered a piece of the "punchout" in the pipe, all of which he could not remove. Although the toilets currently work, they still gurgle due apparently to improper venting. An additional problem became apparent when the Quints used their bathtubs. Water leaked out of the respective overflows and caused substantial damage to some ceilings, walls, and floors. To make the situation worse, a heating system pipe was improperly installed and caused substantial flooding in the basement.

Sometime during July 2006, the homeowners filed a complaint with the Board alleging that the plumbing work had not been satisfactorily completed. In response, Dana Tuttle, the Board's Senior Plumbing Inspector, inspected the home on July 27, 2006 with the local plumbing inspector who had informed the homeowners that they needed a plumbing permit. Smith obtained the permit on August 2, 2006 but the local plumbing inspector refused to sign it since most of the plumbing installation had been covered by walls and ceilings. To receive the permit, the plumbing needed to be inspected before it was covered up.²

¹ The Quints have paid the licensee approximately \$13,500 for both systems as of the date of this hearing.

² The local plumbing inspector also served as Fryeburg's code enforcement officer and, as such, would not authorize an occupancy permit due to the faulty plumbing and lack of a signed plumbing permit. As a result, the Quint's are of the opinion that they cannot sell their home.

Dana Tuttle, who holds a Master Plumbers license, found several violations of the Maine Internal Plumbing Code and met with the licensee approximately one week later to discuss his findings. At that time, the licensee was rude and denied that there were any violations for which he was responsible at the Quint's home. According to Dana Tuttle, and as found by a 5-0 vote of the Board, Charles Smith violated the Maine Plumbing Code as demonstrated by the following Code violations:

1. By failing to obtain an internal plumbing permit for the installation of the plumbing system in violation of chapter 1 § 4;
2. By failing to ensure that an inspection of the internal plumbing system was performed by the LPI at the rough in stages of this project in violation of chapter 1 §§ 9 & 10;
3. By installing a 1 ½" drain line instead of a 2" drain line for the bathtub in violation of chapter 7 § 703.2 & Tables 7-3 and 7-5;
4. By failing to provide a vent for the drain line to the bathtub in violation of chapter 10 § 1002.2 & Table 10-1;
5. By installing a water closet too great a distance from the vent piping in violation of chapter 10 § 1002.2 & Table 10-1;
6. By installing the horizontal drainage piping to the washing machine with an improper grade in violation of chapter 7 § 708.0;
7. By running a 1 ½" horizontal vent piping in the basement for a length in excess of 20 feet in violation of chapter 7 § 703.2 & Table 7-5;
8. By installing the trap for the washing machine discharge drain higher than 18 inches above the floor in violation of chapter 8 § 804.1;
9. By installing the drain line to the kitchen sink with an inadequate grade in violation of chapter 7 § 708.0;
10. By installing a regular 90 degree elbow on the drain line with the waste going vertical to horizontal in violation of chapter 7 § 706.4;
11. By failing to identify the waterlines as potable or nonpotable in violation of chapter 6 § 601.2;
12. By failing to install piping connectors in accordance with the manufacturer's (Rahau's) installation instructions in violation of chapter 3 § 310.4, specifically by failing to connect Pex tubing to fittings with a brass ring;
13. By failing to make watertight the joint between a toilet and the floor with which it comes in contact in violation of chapter 4 § 408.2; and

14. By failing to properly and adequately test the plumbing systems to ensure an absence of leaks in violation of chapter 7 § 712.1.

15. By installing a gas-fired wall hung boiler at the Quint residence without being licensed by the Propane and Natural Gas Board in violation of 32 M.R.S.A. § 14807(3-A) which constitutes a violation of Board Rule chapter 2 § 2(A). The improper installation resulted in a cease work order by the State's natural gas and propane inspector until the problems were repaired.

III. CONCLUSIONS OF LAW AND SANCTIONS

WHEREFORE, the Board, taking into account the above findings of fact and utilizing its training and experience, by a vote of 5-0 concludes that Charles L. Smith violated the above listed provisions of the Maine Internal Plumbing Code and Board statutes and Rules. As a result, the Board, by a vote of 5-0, hereby Orders that:

1. Charles L. Smith's master plumber's license is hereby **immediately REVOKED effective February 21, 2007.**

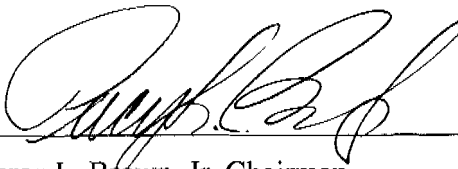
2. Charles L. Smith shall pay a fine by May 21, 2007 of \$500³ for each of the above violations # 1-14 and a \$1,500 fine for the violation in paragraph 15. The **total amount of the fines is \$8,500.** The fines shall be paid by a certified check or money order made payable to the Treasurer, State of Maine and mailed to Cathy Neumann, Complaint Coordinator, Department of Professional and Financial Regulation, Office of Licensing and Registration, 35 State House Station, Augusta, Maine 04333-0035. The \$500 fines reflect the seriousness of the violations, the denial by the licensee that such violations existed, the lack of veracity when dealing with the homeowner as demonstrated by his leading the Quints to believe that he had obtained a plumbing permit, and the shoddy workmanship associated with the plumbing installation. The issuance of a \$1,500 fine is standard Board practice for operating outside the scope of a plumbing license. In that regard, Charles L. Smith held himself out to be licensed in Maine to install the heating system when he was not. His installation of the heating system may well have caused personal injury in addition to the flooding had it not been subsequently repaired.

³ The statutory maximum for each violation is \$1500.

3. Charles L. Smith shall **pay the Board's costs totaling \$695** related to payment for the services of the hearing officer (3 hours at hearing and 2 hours to write the decision @ \$115 per hour=\$575 and copying costs of 480 pp. @ \$.25=\$120). Payment shall be by certified check or money order **made payable to "Maine Plumbers' Examining Board"** and remitted to Cathy Neumann, Complaint Officer, 35 State House Station, Augusta, Maine 04333-0035 by March 13, 2007. Payment of costs is ordered in keeping with past Board practices. The licensee requested this hearing and then failed to appear. Additionally, those licensees who violate Board statutes and Rules should be responsible for hearing costs as opposed to those licensees who obey such laws.

SO ORDERED.

Dated: March 14, 2007



Percy L. Brown, Jr. Chairman
Maine Plumbers' Examining Board

IV.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Maine District Court within 30 days of receipt of this Order.

The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Plumbers' Examining Board, all parties to the agency proceedings, and the Attorney General.