

MAINE PLUMBERS' EXAMINING BOARD

GEORGE PHELPS  
RE: 2008-PLU-4372

) DECISION-  
) DISCIPLINARY ACTION

**I. PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S. Sec. 3403-A. (2), *et seq.*, 5 M.R.S. Sec. 9051, *et seq.* and 10 M.R.S. Sec. 8001, *et seq.*, the Plumbers' Examining Board (Board) met in public session at the Board's offices located in Gardiner, Maine at 9:00 a.m. on August 20, 2008. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds exist for the Board to take disciplinary action against George Phelps's 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., public member Lawrence W. Kent, Donald Smith, Richard St. John, and Larry Dempsey. Carrie Carney, Ass't. Attorney General presented the State's case. George Phelps was present and represented by Stephen C. Packard. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing after determining that there were no conflicts of interest. The Board then took administrative notice of its statutes and Rules. Following the opening statements by the parties, the admission into the record of State's exhibits 1-25 and Respondent's exhibits 1-13, testimony of the witnesses, and the parties' closing arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the respondent's license.

**II. FINDINGS OF FACT**

George Phelps was first issued a Maine Master plumber's license on September 22, 1993, the current edition of which expires on November 30, 2009. Mr. Phelps was hired by Ann Harrington on May 1, 2006 to perform plumbing in her house which she purchased by repossession

on April 28, 2006. The quoted price for the work amounted to \$8,280 which was primarily for repair of the first floor bathroom and the installation of a basement bathroom and kitchen.

The work began shortly after the effective date of the contract but Mr. Phelps had neglected to obtain a plumbing permit for the work which was substantially completed three weeks later. The plumbing crew temporarily ceased work as they needed carpentry work to be completed. Of significance was the fact that a vent exiting outdoors from the downstairs toilet needed to be installed. However, it was extremely difficult to access the attic to install the vent and the owner did not want the roof disturbed. There does not appear to be any other reasonable solution to the problem.

In September 2007, a leak was discovered in the basement which caused considerable damage. The leak was not apparent to the naked eye as it was determined to stem from a hidden faulty pipe leading from the outside source to the holding tank in the basement. The leak would only occur when the pump was operating under extreme pressure, after which the leak would stop. This discovery took place some one and one-half years after George Phelps had last worked on the Harrington house. Although Ms. Harrington blamed Mr. Phelps for the leak and ensuing damage, various individuals could not place the blame on Mr. Phelps, but rather attributed it to either workmanship or material failure in the past or present. Mr. Phelps responded to Ms. Harrington's complaints by hiring an independent plumber to correct deficiencies, including those for which he was not responsible. His family run business has been in operation since the late 1800's. Mr. Phelps expended approximately \$12,000 in this endeavor. The sole remaining repairs are to install a shut-off valve in the first floor bathroom, and the roof vent.

The local plumbing inspector has held that position for approximately 13 years. During that time, he could not recall another instance when George Phelps neglected to obtain a plumbing permit. He further testified that he had not received any other complaints regarding the licensee.

### **III. CONCLUSIONS OF LAW**

The Board voted 5-0 that George Phelps violated the following provisions of Board statutes and Rules. These have also been admitted to by the licensee with some qualifications.

1. 10 M.R.S. § 8003(5-A)(A)(5) for violating a Board Rule, specifically 02-395 ch. 2 § (2)(E);

2. Board Rule 02-395 ch. 2 § (2)(E) for the following violations of the Maine State Internal Plumbing Code:
- a. Failing to apply for and obtain a plumbing permit from the local plumbing inspector of the town of Newport prior to commencing the work in violation of Chapter 1 §§ 4 and 6;
  - b. Failing to have work inspected by the local plumbing inspector in violation of Chapter 1 § 9;
  - c. Failing to test installed plumbing in the presence of the Administrative Authority, namely the local plumbing inspector, in violation of Chapter 7 § 712.1;
  - d. Installing a drum trap as a fixture trap in the combination bathtub/shower located in the basement without permission of the local plumbing inspector in violation of Chapter 10 § 1004.0;
  - e. Failing to install vent piping for the kitchen sink, bathtub and macerating pump system, all located in the basement, that is free of drops and sags in violation of Chapter 9 § 905.1;
  - f. Installing a vent pipe in the lavatory located in the basement that is below the weir of the trap in violation of Chapter 9 § 905.5;
  - g. Installing a shower, specifically the three piece shower in the upstairs, that has a finished interior of less than one thousand twenty four square inches and cannot encompass a thirty inch circle with two seats as protrusions, as the shower stall measures forty eight inches exterior thirty nine inches interior with two non-moveable seats, in violation of Chapter 4 § 412.7;

Several other alleged violations were dismissed since either they pre-existed the work performed by George Phelps or no violation was found.

IV.

SANCTIONS

The Board, by a vote of 5-0, ordered the following sanctions as a result of the above findings and conclusions.

1. George Phelps shall pay a **fine of \$1,750** for the 7 violations which amount to \$250 per violation. Payment shall be made within 90 days of the date of this Decision and Order by 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.

This fine is in accordance with past Board sanctions for similar violations and less than the maximum fine of \$1,500 per violation.

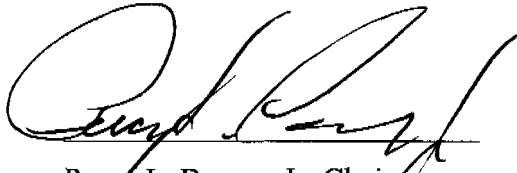
2. George Phelps shall pay the costs of this hearing which total \$1,255. (Hearing officer-hearing-7 hours and 15 mins. and 2 hours and 15 mins. to draft decision = 9 hours and 30 mins. @ \$115=\$1,092.50) + (copying costs-10 copies of 65 pp.=650 pp. @ \$.25=\$162.50). Payment shall be made within 90 days of the date of this Decision and Order by check or money order, made payable to the Plumbers' Examining Board 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 costs are in accordance with past Board sanctions for similar violations and are also ordered since those licensees who violate Board statutes and Rules should pay for these costs rather than those licensees who are not in violation.

3. George Phelps shall receive a **REPRIMAND** for these violations.

**SO ORDERED.**

Dated: October 22, 2008



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

V.

**APPEAL RIGHTS**

Pursuant to the provisions of 5 M.R.S.A. Sec. 11001.1 and 11002, any person who is aggrieved by this Decision and Order must file a Petition for Review within 30 days of the date of receipt of this Order with the Superior Court for the county where: One or more of the petitioners reside or have their principal place of business; the agency has its principal office; or the activity or property which is the subject of the proceeding is located.

The Petition for Review shall specify the person(s) 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, which may be in the alternative. 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.