

MAINE PLUMBERS' EXAMINING BOARD

SCOTT RYAN

) DECISION

RE: 2009-PLU-5451

) 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 19, 2009 for the purpose of determining whether grounds exist for the Board to take disciplinary action against Scott Ryan's Journeyman 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, and Richard St. John. Carrie Carney, Ass't. Attorney General, presented the State's case. Scott Ryan was present and not represented by legal counsel. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing after determining that there were no conflicts of interest regarding Board members. The Board then took administrative notice of its statutes and Rules. Following the opening statements by the State, the admission into the record of State's exhibits 1-5, the 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 AND CONCLUSIONS OF LAW

Scott Ryan, Steep Falls, Maine, 33 years of age, was first issued a Maine journeyman plumber's license on September 3, 2004, the current edition of which expires on September 30, 2010. On March 3, 2009, the licensee was retained for \$250 to install a new lavatory and replace an existing water closet at the Nadeau residence in Porter, Maine.

The homeowner subsequently complained to the Board's senior plumbing inspector, Dana Tuttle, that there was a water leak and other problems related to the licensee's installation. Mr.

Tuttle performed an inspection of the work on March 9, 2009 and found the following violations, which the Board also found by a vote of 3-0.

1. 10 M.R.S. § 8003(5-A)(A)(5) by violating a Board rule, specifically Board Rule Chapter 2 § (2)(E).

2. Board Rule chapter 2 § 2(E) for violating the State of Maine Internal Plumbing Code as follows:

- a. failing to obtain a permit from the local plumbing inspector to install the lavatory, its trap and its water supply lines, in violation of Chapter 1 § 4(A)(1) and (2);
- b. failing to rigidly secure to the floor the water closet, a floor mounted fixture, in violation of § 408.3;
- c. failing to adequately secure to the wall the lavatory, a wall-hung fixture, in violation of § 408.4;
- d. failing to make the joint between the lavatory and the wall watertight, in violation of § 408.2;
- e. failing to make the joint between the water closet and the floor watertight, in violation of § 408.2;
- f. installing an "S" trap in the lavatory, in violation of § 1004.0; and
- g. installing a water supply line in the lavatory that leaks, in violation of § 310.0.

3. 10 M.R.S. § 8003(5-A)(A)(5), violation of a Board rule, specifically Chapter 2-2-A, and 10 M.R.S. § 8003(5-A)(A)(1), fraud and deceit in connection with services rendered as a plumber, by contracting and installing plumbing without having a master plumber's license and without being under the employment and direction of a master plumber as required by 32 M.R.S. § 3301(3).

4. 10 M.R.S. § 8003(5-A)(A)(6), engaging in any activity requiring a license under the governing law of an office, board or commission that is beyond the scope of acts authorized by the license held, by contracting and installing plumbing as a journeyman plumber without being under employment and direction of a master plumber as required by 32 M.R.S. § 3301(3).

Shortly thereafter, Mr. Tuttle spoke with the licensee and advised him to refund the Nadeau's their money and to obtain a master plumber's license. Scott Ryan eventually returned \$50 to the homeowner but told Dana Tuttle that he hadn't made any money on the installation and didn't comment on the lack of a plumbing permit to perform the work.

At this hearing, Scott Ryan testified that he performed the work in a competent manner and was constantly observed performing such by the owner's adult son. He further stated that there were no problems related to his efforts when he left the residence and basically denied any responsibility for most of the violations. He apparently was unaware that the work required a plumbing permit.

Scott Ryan's testimony further revealed that he has little to no understanding of which plumbing related work requires a master plumber's license. He basically stated that if a homeowner pulls the plumbing permit, a journeyman can perform the work without a master's supervision. He did not realize that the work he performed at the Nadeau residence required a plumbing permit or was outside of the scope of his license. Moreover, he did not know that caulking is necessary around the base of a toilet and lavatory.

Although Scott Ryan is not licensed by the Maine Oil and Solid Fuel Board, he advertised his profession as "All Purpose Plumbing, Heating, and More." He stated that he "just does a little service work" and has no employees. The Board stated its concern that this advertising is misleading to the public and that heating related work may lead to plumbing related work. The ad further demonstrates that licensee Ryan has little regard for licensing laws or regulatory codes.

III.

SANCTIONS

The Board voted 3-0 to assess the following sanctions as a result of the above 8 violations.

1. Scott Ryan shall pay a **fine of \$1500** for committing fraud due to misleading the public by advertising plumbing and heating. He shall pay **an additional fine of \$250** for his failure to secure

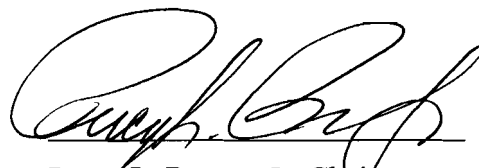
a plumbing permit and perform the work that he agreed to complete. The Board assessed a **further fine of \$150** for each of the remaining 6 violations for a **total of \$2,650**. The fines are in accordance with past Board sanctions for similar violations. Payment shall be made by check or money order, 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. Payment in full shall be made by December 14, 2009.

2. Scott Ryan shall receive a **REPRIMAND** for these violations.

3. Scott shall pay the **COSTS of this hearing which total \$338.75**. (Copying costs-10 copies x 9 pp. @ \$.25=\$22.50)(Hearing officer-1 hour and 30 mins. at hearing and 1.15 hours to write decision @ \$115 = \$316.25) Payment shall be made by check or money order, made payable to the Maine 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. Payment in full shall be made by December 14, 2009. The costs are ordered in keeping with the Board's practice of assessing the costs to those licensees who violate Board statutes and Rules as opposed to those who do not. In the event that this matter is appealed by Mr. Ryan, he shall be responsible for the additional costs associated with the preparation and transcription of this record.

SO ORDERED.

Dated: October 7, 2009



Percy L. Brown, Jr. Chairman

Maine Plumbers' Examining Board

IV.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. 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.