

MAINE PLUMBERS' EXAMINING BOARD

RICHARD KEEN) DECISION-
RE: 2008-PLU-4672 and 2008-PLU-4673) 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 Richard Keen'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, and Richard St. John. Carrie Carney, Ass't. Attorney General, presented the State's case. Richard Keen was not present and not represented by legal counsel. He was served with the Notice of Hearing by certified mail on July 29, 2009 and by first class mail on or about that date. 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 1-30, the testimony of the witnesses, and the State's closing argument, 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

Richard Keen was first issued a Maine master plumber's license on February 10, 1997, the current edition of which expires on February 28, 2011. He was retained by Persis Williams and Barbara Sorlien on September 25, 2007 to install plumbing in their new manufactured home located in Blue Hill, Maine for an estimated \$13,265. The plumbing was to be installed in a timely manner in order that the home would be heated at least to 50 degrees during the winter months and the women intended to move into the home during the month of May 2008.

In the fall of 2007, the owners became concerned that the plumbing was not being performed in a timely manner. They lived in New York State, and Ms. Williams attempted on at least 10 occasions to contact the licensee by phone. Richard Keen responded to 4 or 5 of those calls and stated that there remained “plenty of time” to complete the work. He eventually forwarded a letter which stated that the work would be completed by mid-February 2008. Ms. Sorlien also made at least 33 phone calls to Richard Keen regarding the tardiness of his work, but Keen only responded on one occasion.

Since the work was not completed, Ms. Sorlien eventually contacted the local code enforcement officer, Judith Jenkins, on March 11, 2008, after the owners had paid the licensee \$9,200.50. The enforcement officer noted that the necessary plumbing permit had not been obtained by Keen and that there were several plumbing code violations at the home. Ms. Jenkins then contacted Bruce Greeley, state plumbing inspector, who inspected the home on March 17, 2008. At that time, he noted the following violations which were also found by the Board by a vote of 3-0.

1. Violation of 10 M.R.S. § 8003(5-A)(A)(5), and Chapter 2 § 2(E) of the Board’s Rules relating to violations of the State of Maine Internal Plumbing Code:
 - a. Failing to obtain an internal plumbing permit for the plumbing installation under the cement floor of the basement or any plumbing installed within the building, in violation of Chapter 1, § 4-A-1;
 - b. Failing to have the plumbing concealed below the concrete floor inspected by the Local Plumbing Inspector, in violation of Chapter 1, § 9;
 - c. Failing to test, in the presence of the Local Plumbing Inspector, the plumbing concealed below the concrete floor, in violation of Chapter 7, § 712.1;
 - d. Using a sanitary tee to connect the vertical drainage piping of the water closet to the horizontal drainage piping, in violation of Chapter 3, § 311.9;

- e. Using a prohibited solvent cement joint to connect the Acrylonitrile-Butadiene-Styrene (ABS) plastic drain, waste, and vent piping to the plumber-supplied PVC, in violation of Chapter 3, § 316.1.6;
 - f. Failing to provide a sleeve to protect all piping through concrete and masonry walls, specifically the water supply pipe from the well to the pressure tank, in violation of Chapter 3, § 313.10.1; and
 - g. Failing to provide a sleeve to protect all piping through concrete and masonry walls, specifically three (3) PVC stacks, in violation of Chapter 3, § 313.10.1.
2. Violation of 10 M.R.S. § 8003(5-A)(A)(5), Board Rule Chapter 2 § 2(E) relating to the State of Maine Internal Plumbing Code by failing to have the work inspected by the Local Plumbing Inspector in violation of Chapter 1, § 9.

Mr. Greeley then contacted Richard Keen who subsequently phoned enforcement officer Jenkins and told her, regarding the plumbing violations, that “Lady, this is none of your goddamn business.” As a result of Richard Keen’s failure to complete the job, the owners hired another plumber who found it necessary to rip out all the plumbing, replace it, and finish the job for an additional \$9,000.

Richard Keen obtained an after-the-fact plumbing permit in April 2008. Richard Keen also stated that he had mistakenly attempted to contact the previous local plumbing inspector to inspect the plumbing for the subject home. Despite this statement, the record in this matter reveals that Richard Keen had requested and received a plumbing permit from the current local plumbing inspector for an installation shortly prior to September 2007, so he most likely knew the identity of the current plumbing inspector but most likely did not bother to contact that individual.

III.

SANCTIONS

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

1. Richard Keen shall pay a **fine of \$250 for each of the above 8 violations for a total of \$2,000.** This fine is 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. Richard Keen shall receive a **REPRIMAND** for these violations.
 3. Richard Keen shall pay the **COSTS of this hearing which total \$495.** (Copying costs-10 copies x 37 pp. @ \$.25=\$92.50)(Hearing officer-2 hours at hearing and 1.30 hours to write decision @ \$115 = \$402.50) 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. Mr. Keen shall also pay any transcription costs which are incurred as a result of any appeal by him of this Decision and Order.
- 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.