IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR ST LUCIE COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 17-AP-34

CANO, INC.,

Appellant,
v.

Not final until time expires for filing motion for rehearing, and if filed, disposed of.

CITY OF PORT ST. LUCIE,

Appellee.
_____/
Decision filed November 6, 2018.

Appeal from the City of Port St. Lucie's Contractor's Licensing Board.

Ryan Kadyszewski, Palm Beach Gardens, for appellant.

Keri Norbraten, Senior Assistant City Attorney, Port St. Lucie, for appellee.

PER CURIAM.

The Appellant appeals two orders finding it in violation of the City's Code of Ordinances ("Code") and imposing a $1,000.00 fine each. The Appellant is a general contractor who was hired to repair and restore a house that had lightening and water damage. The homeowner fired the Appellant from the job before the work was completed. Two days later, the Appellant received a call from City licensing investigator Mark Griers ("Griers"), who asked the Appellant for electricians' and plumbers' invoices or contracts, but the Appellant told him the agreements with the subcontractors were based on handshakes. Griers' attention was drawn to possible problems with the jobsite by the homeowner, who had complained to the building department, and when Griers went to the home, he found that it had been stripped of the electrical, plumbing, drywall, insulation, and air conditioning. That same day, Griers wrote the Appellant two citations for violating the Code: one was for "practicing contracting unless the person is certified or registered (electrical)", and the other was for acting "in the capacity of a contractor different from the scope

of work for which a contractor is certified to perform." The Appellant requested an administrative hearing before the Contractor's Examining Board ("Board") on the two citations, and the hearing was held on October 12, 2017.

During the hearing, the Appellant testified that he had an oral contract with Fernando,[1] who was employed by Noda Electrical, for $15,000. He gave Fernando access to the property to begin work without a permit, which Fernando was supposed to pull himself. For some reason, he did not, and the Appellant had already been dismissed from the job two days prior to Griers' call, so the permit application had not been submitted.[2] The homeowner also testified that Fernando was hired as an electrician, and the homeowner saw Fernando work on the house for several weeks;[3] however, he did not have a marked truck, he only spoke Spanish, and the homeowner did not know if he was affiliated with any specific electrical contractor. The Board repeatedly asked the Appellant why he did not bring Fernando with him as proof that he did not violate section the Code; yet, neither the Appellant nor the Board has subpoena powers under the Code. *See* generally section 150.504.1-150.504.5. Abruptly, the Board called for a vote and voted unanimously to find the Appellant in violation.

Then it moved on to discussion on the second citation. Griers testified that he observed the plumbing violation also on June 14, 2017 when he went to the house to find that all of the plumbing pipes had been cut to the stubs with the disconnects taken off, but no plumbing permit had been pulled. The Appellant testified that he hired a plumber named Brett Jackson ("Jackson"), who removed "three toilets, two lavs, and a bidet." He paid him $275 for the work completed and stated that he had a cancelled check on his phone.[4] The Appellant claimed that he thought he did not need

[1] Griers even admitted that the Appellant gave him Fernando's name as the electrician, but he continued with "but without any evidence of that, that's just me blaming someone for something."

[2] The Appellant supposedly provided the Board with the permit and/or permit application that was signed and notarized on June 17, 2017, arguing that it was submitted after he was dismissed but before he knew he was receiving the citations because Griers sent the citations via certified mail, which the Appellant did not receive until July. However, it is not contained in this appellate record.

[3] It was only when nothing happened for four months and the Appellant told the homeowner that he could not get an inspection that the homeowner went to the building department to determine that a permit had not been pulled. At that time, he filled out an affidavit authorizing the building department to stop work with the Appellant.

[4] This cancelled check is not in record on appeal, and it is not clear from the transcript if the Board looked at it.

a permit for work less than one thousand dollars.[5] The Board voted and unanimously found him in violation for the second citation.

It rendered written orders upholding the citations' $1,000.00 fine each. This appeal follows, and this court has jurisdiction pursuant to Code section 150.530(d)(10) and Fla. R. App. P. 9.030(c)(1)(C).

The standard of review applied to an administrative decision is whether procedural due process was afforded, whether the essential requirements of the law were observed, and whether the findings and judgment were supported by competent substantial evidence. *Broward County v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, 843 (Fla. 2001) (quoting *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982)).

The Appellant argues that the Board's orders finding him in violation of Code sections 150.530.(a)(6) and 150.530.(a)(10) are not supported by competent substantial evidence. The Respondent correctly asserts that this court cannot reweigh or reevaluate evidence. *See Dusseau v. Metropolitan Dade County Board of County Commissioners,* 794 So.2d 1270, 1275–76 (Fla.2001). The standard of review requires this court to determine whether the Board's decision is supported by competent substantial evidence, opposing evidence notwithstanding. *Id*. at 1275. The Court offers clear guidance to circuit courts:

> The sole issue before the court on first-tier certiorari review is whether the agency's decision is lawful. The court's task vis-a-vis the third prong of *Vaillant* is simple: The court must review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the "pros and cons" of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.

Id. at 1276. In *DeGroot*, *v. Sheffield,* the Florida Supreme Court defined competent substantial evidence:

> Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant

[5] While there may be permitting problems in this case and the Board spend time discussing them, none of the Appellant's citations involved permitting issues.

> evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective 'competent' to modify the word 'substantial,' we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the 'substantial' evidence should also be 'competent.'

95 So. 2d 912, 915 (Fla. 1957) (citing *Bryan v. Landis*, 142 So. 650 (Fla. 1932)). The first citation called at the administrative hearing was for allegedly violating section 150.530.(a)(6), which states:

> It shall be unlawful for any person to engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered, certified or the holder of a certificate of competency.

The order finding the Appellant in violation adopted the allegations of fact set forth in the citation. The citation form used by Griers had fourteen choices of violations that he could have selected on it, and he placed an "X" next to the option that stated "practice contracting unless the person is certified or registered (ELECTRICAL)." It also states under the "description of work performed" section that the Appellant was found in violation of "installing new electrical system." As competent substantial evidence to uphold the Board's order finding violation, the Respondent points to these four facts in the record:

- Electrical work was performed at the home;
- The contract between the homeowner and the Appellant contained an electrical scope;
- The Appellant called Fernando directly and gave him access to the home to perform the work; and
- The homeowner witnessed Fernando performing the electrical work.

The Respondent provides no more detail or analysis to show how these four facts show that the Appellant engaged in the business of contracting without being certified or registered to do so, nor does it analyze how those facts show that the Appellant practiced contracting without the proper electrical registrations or certifications, which seems to be a separate offense. No one disputes that

electrical work was performed on the home. A copy of the contract between the homeowner and the Appellant is not present in the record, but the homeowner's lawyer told the Board at the hearing that the contract "contains an electrical scope and that's the only permit—The permits that he pulled, I don't know that there were seven or eight, but the permits that were pulled through the notice of commencement didn't include electrical. The scope did." Therefore, it appears from this statement, which is not testimony, that the Appellant did not pull an electrical permit, but the homeowner's attorney agrees that the contract contained an electrical scope. Without a copy of the contract or specific detail or analysis from the Respondent on this point, this fact is not competent substantial evidence that the Appellant violated section 150.530.(a)(6). The Respondent's next two points about Fernando having access to the home and being seen performing electrical work at the home by the homeowner are counter to the Respondent's argument that the Appellant violated the Code by practicing electrical contracting without being certified or registered to do so because they indicate that he hired a subcontractor to perform the work and did not, in fact, perform it himself. The Respondent even admits in three places in its answer brief that Fernando performed the electrical work. None of the four facts that the Respondent briefly mentions in the answer brief qualify as competent substantial evidence under *DeGroot* that the Appellant violated Code section 150.530.(a)(6), which seems to be a separate offense from "practice contracting unless the person is certified or registered (ELECTRICAL)."

Next, the Board moved on to discuss the second citation, where Griers placed an "X" next to "act in the capacity of a contractor different from the scope of work for which the contractor is certified to perform", in violation of Code section 150.530.(a)(10), which states:

> It shall be unlawful for any person to act in the capacity of a contractor different from the scope of work for which the contractor is certified to perform.

The citation provides the additional facts of "capping off all plumbing", which was adopted in the order of violation. As competent substantial evidence to uphold the Board's order finding violation, the Respondent points to these four facts in the record:

- Plumbing work was performed at the home;
- The Appellant contacted Jackson to ask him to perform the plumbing work at the home on behalf the homeowner;
- Jackson does not normally perform plumbing work in Port St. Lucie but came to Port St. Lucie to visit his family on the weekends;

- The Appellant asked Jackson if he was a licensed plumber but never verified if he was actually licensed because the job was under $1,000.

None of these facts indicate that the Appellant acted in a capacity of a contractor different from the scope of work for which he is certified to perform. These facts show that the Appellant, at best, hired a subcontractor to do the plumbing and at worst, he did not verify if Jackson was a licensed plumber; however, that is not the violation for which he was fined. Regardless, they are not competent substantial evidence that he violated Code section 150.530.(a)(10), especially when the Respondent admits in the answer brief that Jackson performed the plumbing work.

Since the Board's orders are not supported by competent substantial evidence, they are reversed.

Reversed.

BAUER, BUCHANAN, JJ., and STEELE, Acting Circuit Judge, concur.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.