

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF HOUSING, BUILDINGS, AND CONSTRUCTION
AGENCY CASE NO. 2015 - 0026 - HVAC
(Division Case # KY-15 - 03 - 0008 - CE)**

DEPARTMENT OF HOUSING,
BUILDINGS, AND CONSTRUCTION and
BOARD OF HEATING, VENTILATION
AND AIR CONDITIONING CONTRACTORS

COMPLAINANT

v.

AGREED FINAL ORDER

DAVID A. DISPONETT
D/B/A ONSITE HEATING & AIR

RESPONDENT

Comes now the Commonwealth of Kentucky, by and through the Commissioner of the Department of Housing, Buildings, and Construction ("DHBC") and the Chairman of the Board of Heating, Ventilation and Air Conditioning Contractors ("HVAC Board" or "Board") (collectively, the DHBC and the Board are referred to as "Department"), and hereby enters this Agreed Final Order, pursuant to KRS Chapter 198B.672, imposing a hundred and fifty dollar (\$250.00) fine on Respondent David A. Disponett, d/b/a Onsite Heating and Air ("Respondent"), as set out more fully below:

FINDINGS OF FACT

1. The DHBC and the HVAC Board regulate and license HVAC master contractors and journeyman mechanics under KRS 198B.650 through 198B.689, and enforce all statutes, regulations, and applicable code requirements related to HVAC work in the Commonwealth of Kentucky.

2. Respondent is the holder of a Kentucky Master HVAC Contractor License #HMO4945, which expires on July 31, 2015.

3. Respondent was, at all relevant times herein, an Indiana resident doing business in Kentucky and located at 3013 Blackiston Mill Road, Clarksville, IN 47129-9024.

4. On March 10, 2015, the Department investigated Respondent's HVAC work involving the installation of a new HVAC system performed at a newly-constructed residence located at 4501 N. Highway 393, LaGrange, KY 40031-7910.

5. As a result of that investigation, the Department discovered that the HVAC work required a permit, but Respondent had not applied for or obtained a permit for the HVAC work at this address. A permit was applied for and obtained 2 days later – on March 12, 2015.

6. On April 2, 2015, the Department sent a letter to Respondent informing him of the violations and the Department's intention to take administrative action against Respondent, but also offering Respondent to resolve the violation by agreement, and allowing Respondent twenty days to respond to the offer.

7. When it did not receive a response from Respondent to its correspondence about the violations, the Department filed an Administrative Complaint on July 1, 2015, served on Respondent on the same date.

8. On July 7, 2015, the Department received communications from Respondent's office with a copy of an April 23, 2015 letter from Respondent agreeing to the Department's April 2, 2015 offer, along with copy of a fine payment, the originals of which were never received by the Department.

STATUTORY AUTHORITY

9. The Department has been granted a broad range of statutory and administrative authority to address violations of the statutes, regulations, and applicable

code requirements related to HVAC work in the Commonwealth, including license revocation, restriction, and suspension, and the imposition of fines in an amount up to \$1,000.00 per violation, with each day the violation continues constituting a separate offense. KRS 198B.050(2), KRS 198B.990(1), KRS 198B.654, KRS 198B.672.

10. KRS 198B.6671(1) requires that “[n]otwithstanding KRS 198B.030 to the contrary, any person who installs an initial heating, ventilation, or air conditioning system shall apply for a permit prior to beginning the installation. No installation shall begin before the application for the permit has been filed. . . .”

11. 815 KAR 8:070, Section 2(2) requires that “[a]n HVAC installation permit shall be required for the initial heating, ventilation, or air conditioning system: (c) [f]or all existing buildings in which the first heating, ventilation, or air conditioning system is being installed;”

12. The 2013 Kentucky Residential Code, Section R105.1 states that “[a]ny owner or authorized agent who intends to [. . .] install . . . any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause such work to be done, shall first make application to the building official and obtain the required permit.

13. KRS 198B.672 gives the Board of HVAC Contractors the authority to fine a licensee for “(9) [v]iolation of any of the provisions of KRS 198B.650 to 198B.689 or any administrative regulation promulgated by the board[.]”

14. Respondent’s failure to apply for the permit before starting the work violated KRS 198B.6671(1); 815 KAR 8:070, Section 2; and the 2013 Kentucky Residential Code, Section R105.1, which require that a permit be obtained for the installation of an initial HVAC system at a residence.

CONCLUSIONS

15. Respondent has violated the laws of the Commonwealth pertaining to HVAC work by failing to obtain a permit prior to commencing the initial installation of an HVAC system.

16. Respondent consents to and acknowledges the jurisdiction of the DHBC over this matter and that this Final Agreed Order is a matter of public record and may be disseminated as such.

17. In consideration of execution of this Agreed Final Order, Respondent for himself, and for his successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, the DHBC, Office of Legal Services, and each of their members, agents, and employees in their individual capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph or Agreed Order arising out of or by reason of this investigation, this disciplinary action, this settlement, or its administration.

18. The DHBC agrees to pursue no further administrative action against the Respondent based upon the violations described herein.

19. Respondent waives his right to an administrative hearing or to otherwise appeal or set aside this Order.

ORDER

1. Respondent is hereby assessed and shall pay a FINE in the amount of two hundred and fifty dollars (\$250.00) which shall be due on the date Respondent signs

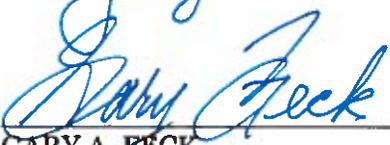
the Agreed Order and returns it to the DHBC, but in no event later than **July 22, 2015**. Said payment may be in the form of a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Housing, Buildings and Construction, Attn: Victoria K. Holmes, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky, 40601; or may be made by credit or debit card.

2. Respondent shall not engage in HVAC activity in the absence of the appropriate license and/or permit, and shall devote the time and resources reasonably necessary to ensure continual and full compliance with the Uniform State Building Code, and all statutory and regulatory requirements set forth in KRS 198B.650 to 198B.689 and 815 KAR Chapter 8; and

3. This is a **FINAL AND APPEALABLE ORDER**. This Agreed Final Order shall become effective immediately.

By signing below, the parties acknowledge they have read this ^{Agreed}~~Amended~~ Final Order, know and fully understand its contents, and that they are authorized to enter into and execute this ^{Agreed}~~Amended~~ Final Order and legally bind their respective parties.

IT IS SO ORDERED on this the 16th day of July 2015.



GARY A. FECK
Commissioner
Department of Housing, Buildings
and Construction;
Chairman, Board of Heating, Ventilation
and Air Conditioning Contractors

Agreed to:

This 16th day of July ~~2014~~ 2015



Roger Banks, Acting Director
Division of HVAC
Department of Housing, Buildings and Construction

Agreed to:

This 13 day of July 2015 [Ⓟ]
~~2014~~.

David A. Disponett
David A. Disponett

ACKNOWLEDGEMENT

STATE/Commonwealth of Kentucky)
COUNTY OF Jefferson)

On this the 13 day of July, 2015, before me Jennie L. Huffman, the undersigned, David A. Disponett, did personally appear and entered into and executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand.

My Commission Expires: May 19, 2016

Jennie L. Huffman
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Agreed Final Order* was served via U.S. mail on this the 16th day of July, 2015, to the following:

David A. Disponett
d/b/a Onsite Heating & Air
3013 Blackiston Mill Road,
Clarksville, IN 47129-9024



Victoria M. Kadreva Holmes
Assistant Counsel
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