

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2012 CA 1437**

**KYLE HARRIS AND CORNERSTONE RECONSTRUCTION SERVICES, LLC  
D/B/A/ PAUL DAVIS RESTORATION AND REMODELING OF GREATER  
BATON ROUGE**

**VERSUS**

**THE LOUISIANA STATE CONTRACTORS LICENSING BOARD**

**Judgment Rendered: APR 26 2013**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. C606587

Honorable Wilson E. Fields, Judge Presiding

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**BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.**

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**McCLENDON, J.**

Kyle Harris seeks review of a district court judgment that affirmed an administrative decision of the Louisiana State Licensing Board for Contractors. The Board found that Mr. Harris violated LSA-R.S. 37:2175.2(A) by agreeing to perform contracting services without being registered as required by the statute. For the following reasons, we reverse.

**FACTS AND PROCEDURAL HISTORY**

Mr. Harris is employed as an estimator for Cornerstone Reconstruction Services, LLC d/b/a Paul Davis Restoration and Remodeling of Greater Baton Rouge ("Cornerstone"). Cornerstone received a request from Safeco Insurance Company to provide an estimate for repair work for a home in Baton Rouge. Mr. Harris submitted an estimate to Safeco on behalf of "Paul Davis Restoration & Remodeling of Baton Rouge." Mr. Harris was identified as "Claim Rep." and "Estimator" on the estimate provided to Safeco. Nowhere on the estimate was Mr. Harris identified as a contractor.

Louis Rossignol, who needed to have the work performed on a home, obtained a copy of the estimate provided to Safeco. After receiving the estimate, Mr. Rossignol made an inquiry to the State Licensing Board for Contractors to ascertain whether "Kyle Harris, of Paul Davis Restoration and Remodeling of Baton Rouge[,] is a licensed contractor?" As a result of Mr. Rossignol's inquiry, the Board charged "Kyle Harris d/b/a Paul Davis Restoration & Remodeling of Baton Rouge" with violating LSA-R.S. 37:2175.2(A), discussed within, for "bidding or performing home improvement contracting services ... without possessing a Louisiana State Home Improvement Registration."

Mr. Harris and Billy Spiers, the sole member of Cornerstone, attended the scheduled administrative hearing to address the charge. At the hearing, Mr. Spiers testified that at all pertinent times, Mr. Harris was acting on behalf of Cornerstone and was providing an estimate on behalf of Cornerstone. Mr. Spiers

acknowledged that the estimate was done utilizing the business's trade name<sup>1</sup> rather than its registered name of Cornerstone Reconstruction Services, LLC.

Prior to reaching its decision, the Board noted that Cornerstone, not Mr. Harris, had previously appeared before the Board and had been assessed fines for using its trade name as opposed to its registered name on certain documents. Although a Board member made a motion, which was seconded by another Board member, to put Cornerstone on probation, the motion was withdrawn after the members learned that Cornerstone was not a party to the administrative proceeding. Following the hearing, the Board found Mr. Harris "guilty" of violating LSA-R.S. 37:2175.2(A) and assessed him with "the maximum fine" in the amount of \$3,871.08.<sup>2</sup>

Mr. Harris and Cornerstone, pursuant to LSA-R.S. 49:964 of the Louisiana Administrative Procedure Act, filed a petition for judicial review with the 19th Judicial District Court. Following a hearing, the district court affirmed the Board's decision, concluding that the Board was within its discretion in finding that "Kyle Harris, d/b/a Paul Davis Restoration and Remodeling was contracting to perform work."

Mr. Harris and Cornerstone have appealed to this court, asserting that the district court erred in affirming the Board's decision.

### **STANDARD OF REVIEW**

The Louisiana Administrative Procedure Act provides for judicial review of administrative adjudications. Louisiana Revised Statutes 49:964(G) provides that the district court may reverse or modify the decision of the administrative agency

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<sup>1</sup> We note that the name on the claim valuation was "Paul Davis Restoration & Remodeling of Baton Rouge" as opposed to Cornerstone's full franchise name of "Paul Davis Restoration and Remodeling of Greater Baton Rouge."

<sup>2</sup> The penalty for violating LSA-R.S. 37:2175.2(A) is contained in LSA-R.S. 37:2175.4, which provides, in pertinent part:

B. The subcommittee may assess an administrative penalty not to exceed one hundred dollars or twenty-five percent of the total contract price, whichever is greater, payable within thirty days of their order, for each violation of any of the provisions of this Part, committed by the home improvement contractor who is registered or who is required to be registered, plus any administrative costs incurred by the subcommittee.

on judicial review only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, or conclusions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

Pursuant to paragraph (G)(6), the district court is a fact finder that weighs the evidence and makes its own conclusions of fact by a preponderance of the evidence. **Universal Placement Int'l v. Louisiana Workforce Comm'n**, 11-1353 (La.App. 1 Cir. 7/26/12), 97 So.3d 1154, 1158, writ denied 12-1974 (La. 11/9/12) 100 So.3d 845.

### **DISCUSSION**

The Board concluded that Mr. Harris violated Louisiana Revised Statutes 37:2175.2(A). The statute provides that "[n]o person shall undertake, offer to undertake, or agree to perform home improvement contracting services unless registered with and approved by the Residential Building Contractors Subcommittee of the State Licensing Board for Contractors as a home improvement contractor."

Mr. Harris asserts, however, that he, as an employee of Cornerstone, is excepted from prosecution for a violation of LSA-R.S. 37:2175.2 by LSA-R.S. 37:2175.5(A)(5). Specifically, LSA-R.S. 37:2175.5(A)(5) exempts from the provisions of LSA-R.S. 37:2175.2(A) "[a]ny person who performs labor or services for a home improvement contractor for wages or salary and who does

not act in the capacity as a home improvement contractor." Mr. Harris asserts that all evidence makes it clear that he submitted the claim valuation within the course and scope of his employment, not as a contractor.

Conversely, the Board contends that Mr. Harris's employment status with Cornerstone is irrelevant. The Board notes that the only business name listed on the estimate prepared by Mr. Harris is "Paul Davis Restoration & Remodeling of Baton Rouge," which is not a registered home improvement contractor. The Board avers that there is nothing on the estimate, which forms the basis of the alleged violation, to indicate that Mr. Harris may have been acting on behalf of Cornerstone. As such, the Board concludes that Mr. Harris's employment relationship with another entity not a party to these proceedings is wholly irrelevant to the application of the contractor licensing law to this violation.

We disagree. Nothing in the record suggests that Mr. Harris submitted the estimate on his own behalf under the tradename, "Paul Davis Restoration & Remodeling of Baton Rouge." Rather, the documents prepared by Mr. Harris clearly indicate that Mr. Harris is a "Claim Rep." and "Estimator" for "Paul Davis Restoration & Remodeling of Baton Rouge." The only references to "Kyle Harris d/b/a Paul Davis Restoration & Remodeling of Baton Rouge" are documents prepared by and introduced into evidence by the Board itself. Accordingly, Mr. Harris is exempt from prosecution under LSA-R.S. 37:2175.5(A)(5).

Further, in essence, the Board concluded that Cornerstone's employee, Mr. Harris, should be held liable for Cornerstone's use of its tradename on documents submitted to Safeco. In an initial response to the charges levied by the Board, Gayle Spiers, a representative of Cornerstone, responded to the Board's charges in an e-mail as follows:

We are Cornerstone Reconstruction Services LLC dba Paul Davis Restoration & Remodeling of Greater Baton Rouge. Employee, Kyle Harris, wrote an estimate to repair the property ... per request of the insurance company, Safeco. We have not entered into an agreement to perform repairs.

Despite this uncontradicted response, the Board never filed charges against Cornerstone for utilizing its tradename on the documents sent to Safeco without identifying itself as the contractor.

The Board has cited no authority to support its position that an employee will be liable for his employer's failure to disclose ownership, nor can we find any. A reading of the transcript of the administrative hearing reveals that the Board penalized Mr. Harris because of his employer's alleged omissions. Clearly, Mr. Harris's substantial rights have been violated by the Board's decision, which, therefore, must be reversed. See LSA-R.S. 49:964(G).

### **CONCLUSION**

In light of the foregoing, the district court's judgment affirming the Board's decision is reversed.<sup>3</sup> We hereby vacate the penalty imposed by the Board. Costs of this appeal in the amount of \$678.50 are assessed against the Board.

**REVERSED.**

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<sup>3</sup> We note that Mr. Harris also seeks attorney's fees and costs. However, the statute allowing recovery of costs and fees applies only when the Board files the petition for judicial review. See LSA-R.S. 49:964.1 and **Jarrott v. Louisiana State Bd. of Medical Examiners**, 04-1714 (La.App. 4 Cir. 8/25/09), 19 So.3d 526, 556. Because Mr. Harris, rather than the Board, sought review, Mr. Harris is not entitled to recover his attorney's fees and costs.