In the Matter of:	) Case No.: PMUL-2013-0018 ) DIA No: 13PMB014	
Christopher K. Miller,	) FINDINGS OF FACT, ) CONCLUSIONS OF LAW,	
Respondent.	) DECISION and ORDER	

This matter concerns a Notice of Hearing and Notice of Intent to Impose Civil Penalty filed against respondent Christopher Miller on July 16, 2013. The case was set for hearing before the Iowa Plumbing and Mechanical Systems Board (the Board) on November 20, 2013. A quorum of the Board was present. Jeffrey Farrell, an administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board. Assistant Attorney General September Lau represented the public interest. Respondent represented himself.

#### THE RECORD

The State's exhibits 1-7 were admitted. The State called Daniel Hostetler as a witness. Mr. Miller testified on his own behalf.

### FINDINGS OF FACT

On January 23, 2013, the Board received a complaint alleging that Christopher Miller advertised plumbing, heating, and cooling services on Craigslist without holding a license. The complainant provided a copy of the advertisement. The advertisement starts off with a statement:

[1]ooking for some side work in Plumbing, heating & cooling repairs. I have been doing repairs of this nature for about 17 years now and knowledgeable (sic) in many areas.

The advertisement also contained a reference to Mr. Miller as a "Plumbing Journ" (sic). The Board interpreted the abbreviation "Journ" to be short for "journeyman." Mr. Miller is not licensed as a journeyman plumber, nor is he licensed with the Board in any respect. (Exhibits 4-5; Hostetler testimony).

The Board assigned the complaint to Dan Hostetler to conduct an investigation. Mr. Hostetler interviewed Mr. Miller on March 7, 2013. Mr. Miller stated that he has never attempted to obtain a plumbing license. He performs light plumbing, such as fixing

leaking pipes, as part of his duties as a maintenance employee for a rental property owner. He refused to identify his employer, but stated he had worked full-time in rental property maintenance for 17 years. (Exhibit 4; Hostetler testimony).

Mr. Miller acknowledged to Mr. Hosteler that he posting the advertisement, but was not clear when questioned about the "Journ" language. At first, he stated that he meant "journeyman equivalent." Later in the interview, Mr. Miller suggested that the advertisement might have been altered. The Board did not find his claim of alteration to be credible under the record presented. Mr. Miller told Mr. Hostetler that he would ask Craigslist to take down the advertisement that day. Mr. Hostetler checked Craigslist later in the day, and the advertisement had been removed as promised by Mr. Miller. (Exhibits 4-5; Hostetler testimony).

Mr. Miller testified that he did not know about the license requirement for the type of work he advertised. He confirmed that he has done plumbing work as part of maintenance jobs for 16 years. He confessed that he should have used a term "journeyman equivalent" when describing his license status. He was trying to earn some additional money, and hopes the Board will be understanding. (Miller testimony).

# **CONCLUSIONS OF LAW**

The Board was created for the purpose to regulate the practice of plumbing, HVAC, refrigeration and hydronics (referenced as "the four trades"). The board regulates the practice, in part, through the licensing of contractors and professionals within each of the four trades. The Board is authorized to deny an application for license if failing to meet the minimum standards, or it may suspend or revoke a license for grounds set forth in the statute.

The statute provides that a person shall not operate as a contractor or install or repair in any of the four trades without obtaining a license from the Board.<sup>2</sup> Any announcement to the public of the intent to provide a service in one of the four trades, or the use of a sign, card, circular, device, vehicle, or advertisement as a provider of such services, is considered *prima facie* evidence of engaging in the practice of a contractor or a plumber or a mechanical professional.<sup>3</sup>

The State produced sufficient evidence to show that Mr. Miller engaged in the practice of plumbing by virtue of his advertisement. "Plumbing" is defined by the statute to include all potable water building supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, and all building drains, including their respective joints and

<sup>&</sup>lt;sup>1</sup> Iowa Code section 105.22.

<sup>&</sup>lt;sup>2</sup> Iowa Code section 105.11(1), (2).

<sup>&</sup>lt;sup>3</sup> Iowa Code section 105.29.

connections, devices, receptors and appurtenances within the property lines of the premises.<sup>4</sup> Mr. Miller specifically advertised doing plumbing repairs without limitation. He admitted in his interview that his work consisted of fixing leaking pipes and similar problems. The Craigslist ad is *prima facie* evidence of engaging in the practice of plumbing, and Mr. Miller's statements during his interview with Mr. Hostetler confirm the *prima facie* case.

As stated in the findings of fact, the Board did not find some of Mr. Miller's statements to be credible. The Board does not believe the advertisement was altered. The Board likewise does not believe that Mr. Miller did not know about licensing requirements. Mr. Miller may not have understood all the nuances of the licensing requirements, but the Board would be surprised that he did not know about licensing in general considering his 16 to 17 years of work in the general area. Mr. Miller was not open in providing details about his employer, and changed stories when discussing the "Journ" reference, so the Board's suspicion about his knowledge of the licensing requirements is supported by his failure to be completely upfront during the investigation.

The Board does not dispute Mr. Miller's desire to earn more money by working side jobs. The Board only expects that individuals who wish to work in the trades comply with the licensing requirements imposed by law. Mr. Miller can apply for a license at any time, and work in accordance with the limitations of any license he is granted.

#### **SANCTION**

Besides the penalties listed above, the Board has the power to impose a civil penalty not to exceed \$5,000.00 per offense for any violation of the statute. Mr. Miller is unlicensed, so there is no action it can take against his license. A civil penalty is the only reasonable sanction. The Board determined that a \$750.00 civil penalty is appropriate to serve as a sanction for the violation and otherwise meet the regulatory objectives in this case. Any further violations may result in a more significant penalty.

# **DECISION AND ORDER**

The Iowa Plumbing and Mechanical Systems Board hereby finds that Christopher Miller has committed a violation of Iowa Code section 105.10 for practicing without a license. The Board issues a <u>civil penalty</u> of \$750.00 against Mr. Miller. He shall make payment to the Board's office at the following address: Lucas State Office Building, 321 East 12<sup>th</sup> Street, Des Moines, Iowa 50319. Payment shall be made in 30 days from the date of this order. Any failure to pay the sanction or any outstanding fees may be the subject of enforcement action by the Board.

<sup>&</sup>lt;sup>4</sup> Iowa Code section 105.2(15).

<sup>&</sup>lt;sup>5</sup> Iowa Code section 105.27(1).

Mr. Miller shall also pay the amount of \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board may bill respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall make payment of the hearing fees within 30 days of the date of this order. Any other fees shall be paid within 30 days of the date of that billing.

Mr. Miller shall immediately <u>cease and desist</u> in any conduct that falls within the practice of one of the four trades regulated by the Board. Any future violations of the statute may subject Mr. Billings to additional action before the Board, as well as other legal action.

Dated this / g day of Mach, 20/4.

Ronald Masters, Chair

Iowa Plumbing and Mechanical Systems Board

cc: September Lau, Assistant Attorney General Respondent

### **Notice**

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.