

1 David, Arizona residence. Complainant properly performed the contracted
2 work in a timely manner, and billed Respondent for payment.

- 3 3. Despite repeated demands for payment, Respondent has not paid
4 Complainant for the electrical work that was in the subject Contract.
- 5 4. Complainant filed a civil action against the Respondent arising out of the
6 same set of facts and circumstances which gave rise to this Registrar of
7 Contractors Complaint against Respondent, seeking a judgment from the
8 Pima County Justice Court in action number T20081316. Complainant
9 prevailed in that case, securing a judgment from the court in the amount of
10 \$1,885.76, plus interest at the rate of 10% *per annum*. See: Complainant's
11 Ex. 1. That order is final and was not appealed.
- 12 5. Complainant seeks an order from the Registrar in this case also for payment
13 in the same amount as that in the judgment, plus its attorney's fee.
- 14 6. Notice is taken of the Respondent's prior license record with the Arizona
15 Registrar of Contractors, which indicates that the subject license is now
16 revoked, having been revoked pursuant to Case No. S08-0070.

17 **CONCLUSIONS OF LAW**

- 18 1. This administrative hearing was held under authority of and pursuant to
19 A.R.S. § 32-1156, and A.R.S. § 41-1092.
- 20 2. Respondent is charged in the instant Citation and Complaint with possible
21 violations of A.R.S. § 32-1154.A.7, and 11.
- 22 3. The undisputed and credible evidence proved that Respondent does owe the
23 Complainant \$1,885.76 plus interest at the judgment rate, and is therefore in
24 violation of A.R.S. § 32-1154.A.11.
- 25 4. There is no evidence of any wrongful or fraudulent act in violation of A.R.S. §
26 32-1154.A.7 independent of the violation of A.R.S. § 32-1154.A.11.
- 27 5. Complainant seeks attorney's fee under A.R.S. § 32-1129.01.M which
28 provides for attorney's fees to be awarded "in any action" pursuant to that
29 section. However, "action" means, unless the context requires otherwise,
30 "any matter or proceeding in a court, civil or criminal." A.R.S. § 1-215.1. In
A.R.S. § 32-1129.01.M. the context does not require a definition other than a

1 civil or criminal court. Contrast that section with A.R.S. § 41-1007, and
2 A.R.S. § 41-1092.12. In the former statute an Administrative Law Judge may
3 award attorney's fees to a party opposing an agency if the agency's position
4 is not substantially justified and the party seeking the attorney's fee
5 substantially prevails. In this case, there is no agency position being
6 contested by Complainant. The latter statute allows an Administrative Law
7 Judge to award attorney's fees in an "action." However, that statute, being
8 within the chapter and title governing procedures in the Office of
9 Administrative Hearings, is in a materially different context requiring action to
10 include an administrative hearing in the OAH. Moreover, that state allows
11 attorney's fees to be awarded by the ALJ against an "agency" which the
12 statute defines as the Department of Environmental Quality. The ALJ does
13 not have legal authority to award an attorney's fee in this case.

14 **RECOMMENDED ORDER**

15 In view of the foregoing Findings of Fact and Conclusions of Law it is hereby
16 recommended that Respondent's Class B- License number 216387 be revoked on the
17 effective date of this Order.

18 It is further recommended that in the event the Registrar of Contractors receives
19 written proof that Respondent has paid Complainant \$1,885.76, plus interest at the
20 judgment rate, on or before the effective date of this Order (40 days after the date of
21 service appearing on the Registrar's certification the Order), then the above-provided
22 license revocation shall not occur, and Citation and Complaint T08-1029 shall be
23 closed.

24 In the event of certification of the Administrative Law Judge's Decision and Order
25 by the Director of the Office of Administrative Hearings, then the effective date of the
26 Order shall be 40 days after the date of that certification.

27 Done this day, March 16th, 2009.

28 _____
29 Grant Winston
30 Administrative Law Judge

Original transmitted by mail this
____ day of _____, 2009, to:

Registrar of Contractors
William A. Mundell, Registrar
c/o Legal Department
3838 N. Central Ave.
Phoenix, AZ 85012,

By _____

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