



STATE OF ALABAMA
**BOARD OF HEATING, AIR CONDITIONING
AND REFRIGERATION CONTRACTORS**

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(334) 242-5550



Kay Ivey
GOVERNOR

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Jeffrey M. Becraft
EXECUTIVE DIRECTOR

MARTY L GILLEY
GILLEY'S HEATING & COOLING, LLC
613 GLOVER AVENUE
ENTERPRISE, AL 36330

PERSONAL SERVICE OF SUMMONS

It is hereby ORDERED that personal service be attempted by an Investigator of the Board of Heating, Air Conditioning, and Refrigeration Contractors in addition to service by certified mail.

DONE and ORDERED this 17th day of November 2022.

Jeffrey Becraft
Executive Director

SERVICE MADE BY HAND-DELIVERY AS FOLLOWS:

Date of Delivery: _____

Person Accepting Delivery: _____

Address at Which Delivery Made: _____

Investigator



Kay Ivey
GOVERNOR

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Jeffrey M. Becraft
EXECUTIVE DIRECTOR

November 17, 2022

PERSONAL SERVICE

MARTY L GILLEY
GILLEY'S HEATING & COOLING, LLC
613 GLOVER AVENUE
ENTERPRISE, AL 36330

RE: In the Matter of Complaints of the Board against MARTY L GILLEY, Certification No. 93209,
Complaint File: CC-2020-122

Dear Mr. Gilley:

Please find enclosed a fully executed copy of the Order of the Board disposing of the above-referenced disciplinary action. At the Board meeting held on November 16, 2022, the Board voted to ratify the terms of the Recommendation of the Administrative Law Judge.

You may file a notice of appeal, pursuant to §41-2-20, Code of Alabama (1975), to the Circuit Court within 30 days of the date of this order. Should you have any questions in this matter, please contact me at (334) 242-5550 or toll-free at (866) 855-1912.

Sincerely,


Jeffrey M. Becraft
Executive Director

Enclosure

**BEFORE THE STATE OF ALABAMA
BOARD OF HEATING, AIR CONDITIONING AND REFRIGERATION CONTRACTORS**

IN THE MATTER OF COMPLAINT OF THE BOARD AGAINST:

MARTY L GILLEY
GILLEY'S HEATING & COOLING, LLC
613 GLOVER AVENUE
ENTERPRISE, AL 36330

Certification Number 93209

Complaint File: CC-2020-122

ORDER

This cause comes before the State of Alabama Board of Heating, Air Conditioning and Refrigeration Contractors ("the Board"), pursuant to the attached Hearing Officer's Recommendation and the entire administrative record. For good cause shown, it is hereby ORDERED:

THAT the attached Hearing Officer's Recommendation is hereby adopted in its entirety, as if fully set out herein;

THAT the Respondent Marty Gilley, is guilty of violating Section 34-31-21, *Code of Alabama 1975*;


THAT Marty Gilley will attend a mandatory class administered by the Board on January 10, 2023, and pay an administrative fine of \$5375.00 on the day of the class; if he fails to appear on January 10, 2023, a fine of \$10,750.00 will be incurred with a sixty (60) day suspension of license;

THAT this action has been taken and this Order issued by the Board, effective November 16, 2022; and

THAT a copy of this Order shall be served upon the Respondent Marty Gilley by certified mail, return receipt requested and/or personal service.

Board members voting in favor of said action at the November 16, 2022, meeting were Susan Bolt, Dr. Heshmat Aglan, Misty Forbus, Brett Hall, Joel Owen, Barrett Richard, Brett Warren and Wilbur Webb. Eddie Harper, Albert Davis, and Tim Jordan abstained.

DONE this 17th day of November 2022.


Jeffrey M. Becraft, Executive Director

**BEFORE THE STATE OF ALABAMA
BOARD OF HEATING, AIR CONDITIONING
AND REFRIGERATION CONTRACTORS**

**ALABAMA BOARD OF HEATING,)
AIR CONDITIONING AND)
REFRIGERATION CONTRACTORS,)**

Complainant,)

v.)

**Complaint File No. CC-2020-122
BC-2021-042**

**MARTY L. GILLEY,)
GILLEY'S HEATING &)
AIR, LLC)**

Respondents.)

**ORDER ON FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Procedural Posture

The Complainant, the Alabama Board of Heating, Air Conditioning and Refrigeration Contractors (hereinafter "Board"), is a State of Alabama governmental agency charged with the responsibility and authority to carry out the purposes of ALA. CODE § 34-31-18, *et seq.* (1975).

The Respondent, Marty L. Gilley (hereinafter "Gilley"), is licensed by the Board as Alabama Contractor Number 93209. Gilley is subject to the jurisdiction of the Board.

On or about October 22, 2020, the Board received a complaint against Gilley and Gilley’s Heating & Air, LLC from Aaron Shelley (hereinafter “Shelley”) who lives at 703 Sonny Mixon Road, Slocumb, Alabama 36375. The complaint detailed a number of problems in the provision, installation, and modification of new heating and air conditioning systems.¹

The Board sent a 20-day letter to Gilley on December 3, 2020, advising him of Shelley’s Consumer Complaint.²

On January 8, 2021, Waylon Spivey (hereinafter “Spivey”), an investigator for the Board, inspected the work done by Gilley on the Shelley house. On January 21, 2021, the Board notified Gilley by certified mail of a number of life safety standards and minimum standards violations observed by Spivey during his inspection.³ On September 2, 2021, Spivey submitted his HACR Board Investigation Report on the inspection of the Shelley house.⁴

On September 21, 2022, the undersigned hearing officer, on behalf of the Board, held an administrative hearing for the purpose of hearing the Board’s evidence and allowing Gilley to present such evidence and any response that he had

¹ Board Exhibit 1.

² Board Exhibit 2.

³ Board Exhibit 54.

⁴ Board Exhibit 3.

concerning the complaint. Ellen Leonard, Esq. and Andy Crowder, Esq., represented the Board. Gary Bradshaw, Esq., represented Gilley. The Board offered 55 exhibits, which were admitted into the record.

Findings of Fact

Having reviewed the documentary evidence, having heard the witnesses' testimony, having observed the witnesses' demeanor and assessed their credibility, the undersigned finds the preponderance of the evidence establishes that Gilley provided, installed, modified, and/or repaired a 1 ½ - Ton system and a 5 - Ton system for Shelley with numerous violations as outlined below.

Pursuant to the HACR Board Investigation Report completed by Spivey, the installation had the following violations pursuant to the Board's rules:

1 ½ Ton System:

1. The power cable that serves the disconnect for the outdoor unit is not protected from abrasion, at a point it enters the back of the disconnect, in violation of the 2015 International Residential Code E3907.6.
2. The disconnect that serves the outdoor unit is not securely fastened in place, in violation of the 2015 International Residential Code E3404.8.

3. The 30-amp circuit breaker that serves the disconnect for the outdoor unit is not readily accessible, in violation of the 2014 NFPA 70 Article 404.8(A).
4. The 30-amp circuit breaker that serves the disconnect for the air handler is not readily accessible, in violation of the 2014 NFPA 70 Article 404.8(A).
5. The 30-amp circuit breaker that serves the outdoor unit is oversized, in violation of the 2015 International Residential Code M1401.1.
6. The refrigerant access ports located outdoors is not fitted with locking type tamper-resistant caps, in violation of the 2015 International Residential Code M1411.8.
7. The outdoor unit is not supported at least 3" above grade on a concrete slab or other approved material, in violation of the 2015 International Residential Code M1305.1.4.1.
8. The refrigerant tubing at a point exits the outside wall is not sleeved, in violation of the 2015 International Residential Code P2603.3.
9. The refrigerant piping that serves the outdoor unit is in direct contact with concrete or masonry at a point it exits the outside

wall, in violation of the 2015 International Residential Code P2603.3.

10. The supports for the air handler located inside the auxiliary drain pan are not water resistant, in violation of the 2015 International Residential Code M1411.3.4.
11. The condensate drain line does not maintain the required slope, in violation of the 2015 International Residential Code M1411.3.
12. The flexible supply air ducts are not properly radiused in at least one location and crimped against a rafter, in violation of the 2015 International Residential Code M1601.1.1 Section 2.
13. The flexible return air duct is not properly radiused and crimped against rafters in at least 2 locations, in violation of the 2015 International Residential Code M1601.1.1 Section 2.
14. The flexible supply air ducts are not sealed with UL approved tape or mastic in at least one location, in violation of the 2015 International Residential Code M1601.4.1.
15. The refrigerant tubing insulation for the 1 ½ Ton is incomplete at the air handler, in violation of the 2015 International Residential Code M1411.6.

16. The heater kit installed is not labeled on the air handler, in violation of the 2015 International Residential Code M1401.1.

5-Ton System

17. The grounding conductor for the power cable that serves the disconnect box in the attic has been altered/damaged in the outdoor panel box, in violation of the 2014 NFPA 70.
18. The power cable that serves the disconnect in the attic is not protected from abrasion inside the outdoor panel box at a point where the screw that holds the front in place has cut into the cable insulation, in violation of the 2015 International Residential Code E3907.6.
19. The passageway that serves the air handler is not a continuous solid flooring, in violation of the 2015 International Residential Code M1305.1.3.
20. The passageway that serves the air handler is not unobstructed, in violation of the 2015 International Residential Code M1305.1.3.
21. The air handler does not have the required 30" service space, in violation of the 2015 International Residential Code M1305.1.3.

22. The air handler is installed beyond the maximum 20 feet from the access opening, in violation of the 2015 International Residential Code M1305.1.3.
23. There is not a luminaire controlled by a switch or a receptacle outlet installed at or near the air handler, in violation of the 2015 International Residential Code M1305.1.3.1.
24. There is not a 125-volt receptacle outlet installed within 25 feet of the outdoor unit, in violation of the 2015 International Residential Code E3901.12.
25. The refrigerant access ports located outdoors is not fitted with locking type tamper-resistant caps, in violation of the 2015 International Residential Code M1411.8.
26. The refrigerant piping that serves the outdoor unit is in direct contact with concrete or masonry at a point it exits the outside wall, in violation of the 2015 International Residential Code P2603.3.
27. The refrigerant tubing at a point it exits the outside wall is not sleeved, in violation of the 2015 International Residential Code P2603.4.

28. The outdoor unit is not supported at least 3" above grade on a concrete slab or other approved material, in violation of the 2015 International Residential Code M1305.1.4.1.
29. The supports for the air handler inside the overflow pan are not water resistant, in violation of the 2015 International Residential Code M1411.3.4.
30. The refrigerant tubing insulation is incomplete at the air handler, in violation of the 2015 International Residential Code M1411.6.
31. A least one of the 14" flexible return air ducts are not supported per the manufacturer's specifications, in violation of the 2015 International Residential Code M1601.1.1 Section 2.
32. The 14" flexible return air duct does not appear to be spliced per the manufacturer's specifications in at least 2 locations, in violation of the 2015 International Residential Code M1601.1.1 Section 2.
33. The rubber grommets that seal the air handler at a point the refrigerant tubing enters the air handler is not installed, in violation of the 2015 International Residential Code N1103.3.2.

34. The condensate drain line for the auxiliary drain pan does not maintain the required slope, in violation of the 2015 International Residential Code 1411.3.
35. At least one of the flexible air supply ducts is not sealed with a UL listed and labeled tape or mastic, and also does not have the required plastic band installed, in violation of the 2015 International Residential Code M1601.1.1 Section 2.
36. Multiple flexible supply air ducts are crimped against rafters and not properly radiused, in violation of the 2015 International Residential Code M1601.1.1 Section 2.
37. The flexible supply air ducts are not supported per the manufacturer's specifications in multiple locations, in violation of the 2015 International Residential Code M1601.1.1 Section 2.
38. The copper tubing that serves the air handler is not supported, in violation of the 2015 International Residential Code P2605.1.
39. The air handler is not sealed on the service panel for the coil, in violation of the 2015 International Residential Code N1103.3.2.
40. The heater kit installed is not labeled on the air handler, in violation of the 2015 International Residential Code M1401.1.

Spivey testified during the hearing and detailed his findings. Spivey referenced multiple pictures that showed the violations he found.⁵ Spivey testified that while licensed electricians were supposed to wire the units, it was still the responsibility of the Board's licensee to make sure the electrical work complies with the manufacturer's installation instructions. Spivey testified the units were placed on an approved concrete slab, but they were not 3" above grade. Spivey acknowledged he did not measure the difference between the unit and the grade he just stood next to it and observed it. He acknowledged that a landscaper could have come in after the installation of the units and changed the distance. Spivey also testified he did not measure the slope of the condensate drain line. Spivey testified it was level based upon his eyesight. Spivey also discussed the presence of spray foam insulation on the duct work which indicated it was sprayed in after the installation of the units. Spivey saw the spray foam on the ducts and boots. Spivey was asked about violation #32 where he indicated the 14" flexible return air duct "does not appear" to be spliced. Spivey testified he felt for the metal sleeve but does not definitively know if one was present or not.

Gilley testified on his own behalf. This was a new construction. Gilley completed his work and left the job site around April 28, 2020. Construction was

⁵ Compare testimony of Spivey with Board Exhibits 4 through 53.

completed after Gilley finished the installation of the units. Gilley was not aware of any issues until July 2021. Gilley admitted to charges numbered 5, 13, 23, 25 and 40. Gilley believed the electrician should be responsible for the violations pertaining to the circuit breakers and power cables. Gilley also argued that he properly installed the units at least 3” above grade, but the landscaping was done after his work was finished and they must have raised the surrounding ground to less than 3” during their work. Gilley also pointed out he properly secured the 14” flexible return air ducts, but when the spray foam workers came in after the units were installed, their spray foam probably broke the straps on those ducts and the strap securing the copper tubing (Violations #31 and #38).⁶ Gilley acknowledged some mistakes were made but did not believe the violations should result in a suspension of his license. Gilley testified he was instructed by his attorney not to return to Shelley’s house because there was pending litigation. No evidence of prior discipline was contained in the record.

Administrative Regulation 440-X-3-.09 states:

(1) The person in responsible charge must direct the projects involving the installation or service and repair of heating, air conditioning or refrigeration systems under Alabama law. The person in responsible charge must be a full-time employee, owner, partner, or corporate officer of the partnership, corporation, business trust, or other legal entity. This person in responsible charge must possess the requisite skill, knowledge, and experience and have the responsibility

⁶ See Board Exhibits 42, 43, 46, 47, 48, and 51.

to supervise, direct, manage, and control the installation, service, or repair activities of the business entity with which he is affiliated. The Board shall examine the technical and personal qualifications of the person in responsible charge and may investigate and/or examine that person's qualifications.

...

(3) The certified contractor is responsible for all electrical and gas piping work related to HVAC equipment performed on residential property or HVAC and/or refrigeration equipment on commercial property, and is considered by the Board as the person in responsible charge for such work should the work fail to meet the minimum standards under these rules.

Conclusions of Law

An administrative agency must act within its constitutional or statutory powers, supporting its decision with substantial evidence. "Substantial evidence has been defined as such 'relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' and it must be 'more than a scintilla and must do more than create a suspicion of the existence of a fact to be established.'" Alabama Alcoholic Beverage Control Bd. V. Tyson, 500 So.2d 1124, 1125 (Ala.Civ.App. 1986). The undersigned finds there is substantial evidence to prove that Gilley, more probably than not, is guilty of committing 12 life safety violations (Violation #'s 1, 2, 3, 4, 5, 17, 18, 19, 20, 21, 22, and 23) and 19 minimum standard violations (Violation # 6, 8, 9, 10, 13, 14, 15, 16, 24, 25, 26, 27, 29, 30, 33, 35, 36, 39, and 40).⁷ These charges were outlined in the Administrative Complaint and supported

⁷ As numbered in Board Exhibit 55.

by the testimony of Spivey and photographs taken during Spivey's investigation. The remaining violations are not supported by substantial evidence (Violation #'s 7, 11, 12, 28, 31, 32, 34, 37 and 38). The standards are set forth in the Board's Administrative Rules and Regulations. Based upon his multiple rule violations, Gilley is subject to discipline by the Board pursuant to ALA. CODE § 34-31-32(b) (1975).

Recommendation

The purpose of the Board is outlined in Ala. Code §34-31-19, "...to certify qualified contractors on a state-wide basis in order to **protect the public...**" The penalties for violations are outlined in Ala. Code §34-31-32(b) and Administrative Rules and Regulations §440-X-6-.08. The Administrative rules state, in pertinent part:

(1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition, the Board may take one or more of the following actions:

...

(c) Find the respondent guilty of any or all the violations alleged in the administrative complaint. If the Board finds the Respondent guilty of one or more of the violations alleged in the administrative complaint, the Board may take one or more of the following disciplinary actions against the respondent:

1. Reprimand the Respondent.

2. Require additional continuing education hours.
3. Suspend the respondent's certification.
4. Revoke the respondent's certification.
5. Levy a fine not to exceed \$2,000.00 per violation.

...

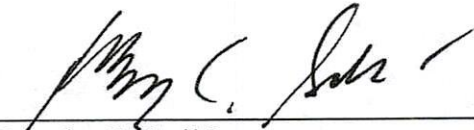
Counsel for the Board recommended a \$500.00 administrative fine for each life safety violation, a \$250.00 administrative fine for each minimum standard violation, participating in a continuing education class, and a 60-day suspension of Gilley's certification.⁸ Gilley expressed a willingness to pay an administrative fine but asked that the suspension not be implemented.

The undersigned has carefully considered all the evidence in this case. The undersigned recommends a total administrative fine of \$10,750.00 (\$500 for each of his 12 life safety violations and \$250 for each of his 19 minimum standard violations); required attendance at a continuing education class taught by the Board's designee to cover his violations, which would lower his administrative fine to \$5,375.00; and a 60-day suspension of his certification IF he fails to pay the

⁸ Counsel for the Board also indicated the administrative fine could be halved by the Board upon completion of the class.

administrative fine and attend the required class within a timeframe established by the Board in their Final Order.⁹

Done, this 8th day of November 2022.



Randy C. Sallé
Administrative Law Judge
State Personnel Department
64 North Union Street
Montgomery, Alabama 36130
Phone: (334) 242-8353
Fax: (334) 353-9901

⁹ Gilley has been in business for 30 years and has had no prior discipline. While the number of violations is concerning, the reason he did not go back to the homeowner's house to try to fix the issues was due to pending litigation and advice from his attorney, not an unwillingness to fix his violations.

VIA EMAIL AND FIRST-CLASS MAIL

cc: Jeffrey M. Becraft, Executive Director
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VIA CERTIFIED AND FIRST-CLASS MAIL

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