Audit of Orange County Consumer Fraud Unit's Unlicensed Contractor Program

Report by the
Office of County Comptroller

Phil Diamond, CPA
County Comptroller

County Audit Division

Christopher J. Dawkins, CPA, CIA
Director

Wendy D. Kittleson, CISA, CIA
Deputy Director

Scott Dezort, CPA
Audit Supervisor

Report No. 463
April 2017

TABLE OF CONTENTS

OFFICE OF THE COMPTROLLER

ORANGE COUNTY FLORIDA

PHIL DIAMOND, CPA
County Comptroller
County Audit Division
109 East Church Street, Suite 220
Post Office Box 38
Orlando, FL 32802
Telephone: 407-836-5775
www.occompt.com

April 24, 2017

Teresa Jacobs, County Mayor
And
Board of County Commissioners

We have conducted an audit of the Orange County Consumer Fraud Unit's unlicensed contractor program. The audit scope was limited to a review of the Consumer Fraud Unit's program for investigating unlicensed contracting complaints. The period audited was March 1, 2013 through August 31, 2015. In addition, controls through June 30, 2016 were considered during the review.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Responses to our Recommendations for Improvement were received from the Administrator of the Orange County Consumer Fraud Unit and are incorporated herein.

We appreciate the cooperation of the personnel of the Orange County Consumer Fraud Unit during the course of the audit.

Phil Diamond, CPA
County Comptroller

c: Ajit Lalchandani, County Administrator
Lonnie Bell, Director, Family Services Department
Carlos Morales, Administrator, Orange County Consumer Fraud Unit

EXECUTIVE SUMMARY

Executive Summary

The Orange County Consumer Fraud Unit (Consumer Fraud) receives consumer complaints and initiates investigations into alleged unfair and deceptive business practices and attempts to resolve them. Consumer Fraud also issues civil citations to unlicensed contractors operating in unincorporated Orange County. The Orange County Code assigns Consumer Fraud to the supervision and control of the State Attorney's Office. However, the Orange County Board of County Commissioners funds the office's four employees.

The audit scope included a review of Consumer Fraud's program for investigating unlicensed contractor complaints and compliance with Article IX of the Orange County Code. The period audited was March 2013 through August 2015. In addition, controls through June 2016 were considered during the review. The audit objectives were to ensure that:

- Controls over initiating, investigating, and enforcing complaints of unlicensed contractor activity are adequate; and,

- Citations issued during the audit period complied with Section 9-325 of the Orange County Code.

In our opinion, controls over initiating, investigating, and enforcing complaints of unlicensed contractor activity are adequate. However, the controls for monitoring and collecting issued citation fines are not adequate. In addition, based on the results of our testing, citations issued during the audit period materially complied with Section 9-325 of the Orange County Code. Opportunities for improvement are discussed herein. Specifically, we noted the following:

Five of the seven citation case files reviewed did not document that a violation had occurred in unincorporated Orange County. Of those five citations, three citations were issued for advertising contracting services on the Internet. Two citations involved addresses within incorporated Orange County cities, which are outside of Consumer Fraud's jurisdictional authority. In addition, deadlines to pay applicable fines or request hearings were revised for three citations without any documented explanation.

Procedurally, unlicensed contractor investigations found by Consumer Fraud within incorporated cities are forwarded to the appropriate jurisdiction for investigation. However, some municipalities within the County may choose not to allocate the necessary resources to investigate complaints, which would result in Orange County citizens within those municipalities not being protected from unlicensed contractors. Consumer Fraud should work with the County to consider entering into inter-local agreements to authorize review of complaints and the issuance of

citations within municipalities that do not investigate complaints within their jurisdiction.

Additionally, procedures for collecting citation penalties are not adequate. Our testing of a sample of citations issued during the audit period found that less than $2,000 of the $7,100 assessed was collected. No additional follow-up to determine if a citation is paid or additional collection procedures are performed after a case is closed.

Recommendations for Improvement were developed and discussed with Consumer Fraud. Consumer Fraud concurred with all of our recommendations and steps to implement the recommendations are underway. Responses to the Recommendations for Improvement are included herein.

ACTION PLAN

AUDIT OF THE ORANGE COUNTY CONSUMER FRAUD UNIT'S UNLICENSED CONTRACTOR PROGRAM ACTION PLAN

NO.	RECOMMENDATIONS	MANAGEMENT RESPONSE			IMPLEMENTATION STATUS	
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
1.	Consumer Fraud should:					
A)	Implement procedures requiring supervisory review and approval for each citation issued. In addition, any changes to an issued citation should be adequately documented and approved by the supervisor.	✓			✓	
B)	Work with the County to consider entering into inter-local agreements to authorize review of complaints and the issuance of citations within municipalities that do not investigate complaints within their jurisdictions.	✓			✓	
2.	Consumer Fraud should:					
A)	Develop and implement citation collection procedures, including continually monitoring and follow-up of unpaid fines.	✓			✓	
B)	Retain evidence of all citation amounts reported as paid.	✓			✓	
C)	Work with the County Attorney's office to establish a lien process for unpaid citations.	✓			✓	

INTRODUCTION

Background

The Orange County Consumer Fraud Unit (Consumer Fraud) was initially created in November 1978 to implement a consumer protection program. Since the program's first two years were considered successful in protecting the interests of both consumers and reputable contractors, the Orange County Board of County Commissioners (Board) passed the "Orange County Consumer Protection Ordinance" in 1980.

Consumer Fraud receives consumer complaints and initiates investigations into alleged unfair and deceptive business practices and attempts to resolve them. Consumer Fraud also issues civil citations to unlicensed contractors operating in unincorporated Orange County. Its primary duties are mediating civil disputes, attempting to obtain restitution for consumers, and referring criminal investigations to the State Attorney, Ninth Judicial Circuit. From March 1, 2013 through August 31, 2015 Consumer Fraud investigated 225 cases of unlicensed contracting.

The Orange County Code places Consumer Fraud under the supervision and control of the State Attorney's Office. However, the Board funds the office's four employees. Consumer Fraud was previously under the oversight of Public Safety and the Office of Public Engagement & Citizen Advocacy before being placed under the Department of Family Services in 2013.

The Board amended various provisions in the building and construction regulations in March 2013 to address the rise in unlicensed contractor activity and the negative impact on consumers and reputable contractors.

Consumer Fraud's Vision Statement for the Unlicensed Contractor Program emphasizes issuing citations and participating with other agencies, whenever possible, in the enforcement of laws, rules and regulations. In addition, it provides informative programs for the public to enhance consumer awareness.

Scope, Objectives, and Methodology

The audit scope included a review of Consumer Fraud's program for investigating unlicensed contractor complaints.

INTRODUCTION

The period audited was March 1, 2013 through August 31, 2015. In addition, controls through June 30, 2016 were considered during the review. The audit objectives were to ensure the following:

- Controls over initiating, investigating, and enforcing complaints of unlicensed contractor activity are adequate; and,

- Citations issued during the audit period complied with Section 9-325 of the Orange County Code.

To achieve our objectives, we performed the following tests:

- Reviewed a sample of unlicensed contractor cases recorded in Consumer Fraud's logs and reviewed the file documents to ensure the conclusions reached were adequately documented.

- Examined a sample of citations issued to confirm that the citations were prepared in accordance with the Orange County Code.

- Reviewed the County's financial records to ascertain whether the citation fines were collected.

Overall Evaluation

In our opinion, controls over initiating, investigating, and enforcing complaints of unlicensed contractor activity are adequate. However, the controls for monitoring and collecting issued citation fines are not adequate. In addition, based on the results of our testing, citations issued during the audit period materially complied with Section 9-325 of the Orange County Code. Opportunities for improvement are discussed herein.

RECOMMENDATIONS FOR IMPROVEMENT

1. Citation Preparation Procedures Should Be Improved

Section 9-324 of the Orange County Code (County Code) forbids a person or entity from engaging, advertising, or acting in the capacity of a contractor in unincorporated Orange County without being duly certified, licensed, or registered as a contractor. Section 9-325, authorizes Consumer Fraud investigators to issue a citation to a person whenever there are reasonable and probable grounds to believe that based upon the officer's investigation a violation of section 9-324 has occurred. Section 9-326 provides that a person who has been served with a citation shall either:

1) Correct the violation and pay the civil penalty in a manner indicated on the citation; or,

2) Within ten (10) days of receipt of the citation, exclusive of weekends and legal holidays, make a request in writing for an administrative hearing to challenge the issuance of the citation. Such written request is to be filed with the Orange County Building Official.

As part of our testing, we selected a sample of 18 unlicensed contractor investigations and reviewed the resulting seven citations. We observed the following:

A) Five of the seven case files reviewed did not contain documentation that a violation had occurred in unincorporated Orange County. Three cases involved advertising for contracting services on the Internet. Therefore, the locations of any violations were not known. The other two citations involved addresses within the cities of Winter Park and Winter Garden, which are outside of the jurisdictional authority of Consumer Fraud to issue citations. Only one of the five citations issued without the proper authority had been paid at the time of the audit.

B) Dates for the individuals cited for a violation to either pay the applicable fine or request an appellant hearing were revised for three citations issued without any explanation for the changes in the file.

Code Enforcement investigators should ensure that all complaints received are adequately investigated and documented prior to citation issuance. Unlicensed contractor investigations within Orange County municipalities should be forwarded to the appropriate jurisdiction for investigation. Alternatively, Consumer Fraud could establish inter-local agreements with municipalities to conduct the investigations. Some municipalities within the County may choose not to allocate the necessary resources to investigate complaints. If so, Orange County citizens within those municipalities would not be protected from unlicensed contractors.

Consumer Fraud's procedures do not require supervisory review prior to the issuance of citations. Prior to the issuance of a citation, each file and citation should be reviewed by a supervisor to ensure the required information is on the citation and included in the file. Any changes to an approved citation should also be adequately documented. A checklist prepared by the investigator referencing where the information is documented in the file could help ensure all required documents are included.

Recommendation:

Consumer Fraud should:

A) Implement procedures requiring supervisory review and approval for each citation issued. In addition, any changes to an issued citation should be adequately documented and approved by the supervisor.

B) Work with the County to consider entering into inter-local agreements to authorize review of complaints and the issuance of citations within municipalities that do not investigate complaints within their jurisdictions.

Management's Response:

Our office concurs with the recommendations.

A) The audit recommends the implementation of supervisory reviews prior to an unlicensed construction citation being issued. Our office has developed a "Construction Case Worksheet" that the supervisor will review prior to any citation being issued. The form is also designed to identify other courses of action that the case can take (Criminal Filing, Referral, Civil Mediation etc.). For citations issued in the field, this recommendation is impractical as the investigator issues the citation based on personal observation and information obtained at the scene.

We have modified the changes in our procedures to have the investigator state the reasoning for changing the date for a citation or appeal. For the most part these were due to a change of address when we discovered that the violator had moved.

B) For the citations issued based on information obtained on the Internet, we discovered the jurisdictional challenges and limitations the ordinance has as we are limited only to "Unincorporated Orange County" which leaves all Orange County Municipalities without the enforcement of this ordinance. When our office received information and leads from the general public, we discovered that the sender could not identify the exact location as to the location of the picture or facts and therefore precluding our investigators from issuing an unlicensed construction citation or being issued in error.

Our office recently drafted in conjunction with the Division of Building Safety a "survey monkey" which was sent to all of Orange County municipalities. We are presently waiting responses from the surveys. If the results from the survey prove positive, we will bring this issue before the BCC so we can receive the authority to enforce the ordinance countywide. By making these

changes, it would enable our office to more effectively work our cases and receive information without the worries of jurisdictional boundaries. Each municipality handles the enforcement of unlicensed contracting differently.

As of the beginning of 2015 thru the end of September 2016 there were a total of 239 Construction related cases.

2. Citation Fine Collection Procedures Should Be Improved

Procedures for collecting citation penalties are not adequate. Currently procedures for issued citations require the offender to pay the fine to the County's Building Safety Division. Periodically, the investigator reviews the records of fines paid and updates the case file if the fine is paid. After approximately four months, the case file is closed regardless of collection status. We reviewed 21 (totaling $7,100) of the 42 citations issued during the audit period to assess whether the citation was served and collected. Our testing found only $2,050 of the $7,100 was collected. The following table shows the status of the uncollected citations.

Citation No.	Citation Amount Unpaid	Citation Issued	Citation Served	Case Closed
CC0001	$500	9/3/13	Yes	11/04/13
CC0002	$250	9/12/13	Yes	10/14/13
CC0015	$300	1/24/14	Yes	4/17/14
CC0016	$400	3/20/14	No	7/18/14
CC0020	$800	7/28/14	Yes	11/05/14
CC0021	$250	4/7/14	Yes	8/28/14
CC0023*	$250	8/7/14	Yes	11/12/14
CC0024*	$500	8/11/14	Yes	12/30/14
CC0026	$400	10/3/14	Not Documented	1/06/15
CC0029	$400	10/27/14	Yes	12/18/14
CC0037*	$250	10/24/14	No	2/25/15
CC0039	$250	6/15/15	Yes	9/03/15
CC0040	$250	7/30/15	Yes	10/02/15
CC0041	$250	8/5/15	Yes	1/26/16
Total	$5,050			

* - Citations issued without documentation of County jurisdiction as noted in Recommendation for Improvement No. 1) above.

Relating to this, we had the following concerns:

A) There are no written procedures for steps to be taken to monitor and collect outstanding citations. Section 9-329(a) of the County Code requires, "…Appropriate guidelines and procedures for the administration, collection, recordkeeping, reporting, and accountability of penalties assessed under this article."

B) Evidence the citation was paid is not retained in the case file. In addition, the case file for one citation notes the citation was paid, yet no record of payment can be located in either Consumer Fraud or the Building Safety Division. As such, it appears the citation was not paid; or if paid, no record of deposit exists. Documentation of all amounts recorded as paid should be kept.

C) No additional follow-up to determine a citation's payment status is performed after the case is closed. County Code Sections 9-329(b) and (c), allow further actions to be taken to collect unpaid citations[1].

Written collection procedures should be developed. These procedures should include responsibility for collection and documentation of amounts paid. In addition, Consumer Fraud should work with the County Attorney to establish additional procedures if citations are not paid timely. These procedures could include filing and executing liens and taking action in civil court.

---

[1] Sec. 9-329. - Collection and recovery of civil penalties

(b) The county may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.

(c) A certified copy of an order imposing a civil penalty may be recorded in the public records and thereafter shall constitute a lien against the real and personal property of the violator. The order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three (3) months from the filing of any such lien which remains unpaid, the county may foreclose or otherwise execute on the lien.

Recommendation:

Consumer Fraud should:

A) Develop and implement citation collection procedures, including continually monitoring and follow-up of unpaid fines.

B) Retain evidence of all citation amounts reported as paid.

C) Work with the County Attorney's office to establish a lien process for unpaid citations.

Management's Response:

Our office concurs with the recommendations. The audit recommends the development and implementation of additional citation collection procedures, including the continual monitoring and follow up of unpaid fines. As part of the development of our new database system for the OC Consumer Fraud Unit, it has been requested that key collection datelines be available so follow up collection actions can be made. We'll coordinate with the OC Building Safety Department Personnel so we can coordinate and attain copies of payments so these can be placed in their files.

A copy of these findings have been forwarded to Orange County Legal for the development of the procedures for the filings of liens. We will incorporate any additional steps to our developing new database so that the process is duly documented and that due process is followed in order not to jeopardize the established procedures. We estimate that during FY 17-18 much of our efforts will be focused on implementing the changes of the audit. We will continue to work with our existing database and improve our procedures.