

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
May 25, 2005 (1:30 p.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Robert Kirby, Board member, presided. No other Board members were present.

Jeffrey Buckley appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

- | | |
|---|---|
| 1. Bonnie M. Freeman
t/a Roadrunners Contracting
File Number 2004-00774 (Disc) | Bonnie Freeman – R
Wesley Freeman – R
Reza Bihamta – C |
| 2. Bonnie M. Freeman
t/a Roadrunners Contracting
File Number 2005-02879 (Disc) | Bonnie Freeman – R
Wesley Freeman – R
Wayne Gibbons – C |
| 3. Bob Gross
t/a Bob's Home Repair & Remodeling
File Number 2005-00946 (Disc)
(No Decision Made) | Bob Gross – R
Ronald Komornik – C
Ann Gross – W |

The meeting adjourned at 5:00 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

DRAFT

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Bonnie M. Freeman, t/a Roadrunners Contracting

File Number: 2004-00774
License Number: 2705058937

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On April 25, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Bonnie M. Freeman, t/a Roadrunners Contracting ("Roadrunners Contracting"), to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On May 25, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Bonnie Freeman ("B. Freeman") and Wesley Freeman ("W. Freeman"), on behalf of Roadrunners Contracting, Respondent; Reza Bihamta ("Bihamta"), Complainant; Jeffrey Buckley, Staff Member; and Robert Kirby, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Amended Report of Findings:

The Report of Findings incorrectly indicates Freeman was issued a Class C contractor's license. Freeman actually holds a Class A contractor's license.

Count 1: Board Regulation (Effective January 1, 2003) (TWO COUNTS)

Based on the record, Roadrunners Contracting provided Bihamta with two invoices for work performed at the subject property. The first invoice, in the amount of \$571.00, was for a filter cloth and dozer to grade driveway and spread stone and the second invoice, in the amount of \$7,837.00, was for rough plumbing and installation of fixtures and accessories. Freeman acknowledged entering into the contracts.

During the IFF, W. Freeman stated that the first invoice was for materials and equipment rental only and the second invoice was only partially accepted by Bihamta. Although the

work provided may have only consisted of materials and equipment, under the regulations a contract would be required and none was provided.

Roadrunners Contracting's failure to use legible written contracts for work performed is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$125.00 for each violation be imposed, for a total monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003) (TWO COUNTS)

The contracts used in the transaction failed to contain six of the provisions required by the Board's regulation.

During the IFF, W. Freeman admitted the contracts did not include the provisions and that ignorance is no excuse for not including the provisions.

Roadrunners Contracting's failure to include subsections a., d., e., f., h., and i. in the contracts is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$150.00 and remedial education for each violation be imposed, for a total monetary penalty of \$300.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

Based on the record, Roadrunners Contracting was to build 8' x 4' garage walls and furnish all materials and labor to frame residence as per plans. During the construction, several changes were made resulting in an additional cost of \$6,482.00.

During the IFF, W. Freeman admitted he was "remiss" in not obtaining change orders and he has "seen the error of his ways."

In my opinion, if Roadrunners Contracting had generated written change orders, the issues raised would not have escalated to the presence of this board.

Roadrunners Contracting's failure to obtain written change orders, signed by both parties, is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

Based on the record, the last day Roadrunners Contracting performed work at the subject property was on or about June 24, 2003. On July 22, 2003, Bihamta provided Roadrunners Contracting with a list of deficiencies. Roadrunners Contracting did provide a response to the list. However, subsequent to the presentation of a list of deficiencies on July 22, 2003, Bihamta filed a criminal complaint against W. Freeman on August 23, 2003, for moneys paid for work not performed. The record is clear that this complaint has no basis. The complaint was dismissed by a judge in Stafford County. It is understandable why a contractor would not return to complete work for a client who had taken such extreme action against him.

Therefore, I recommend Count 4 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.15.

Count 5: Board Regulation (Effective January 1, 2003)

Based on the record, Frost Foundations filed a Memorandum of Mechanic's Lien on July 25, 2003, against the subject property for pouring footers and walls and waterproofing at a cost of \$5,548.04. Freeman admitted Frost Foundations, who Roadrunners Contracting subcontracted to pour the foundation at the subject property, was paid \$17,000.00 but was not paid in full because Bihamta changed the size of the garage and the amount claimed by Frost Foundations changed.

Based on testimony during the IFF, Frost Foundations poured the concrete, including the additional concrete for the increased size of the garage. Frost Foundations billed Roadrunners Contracting for the additional concrete; however, Roadrunners Contracting did not pay Frost Foundations in full because of a dispute with the quality of the work. W. Freeman stated he did not become aware of the lien filed by Frost Foundations until after the complaint was filed by Bihamta.

During the IFF, Bihamta stated he settled the lien filed by Frost Foundations.

In my opinion, Bihamta's actions of satisfying the lien without first notifying Roadrunners Contracting absolved the contractor the responsibility of ensuring compliance by Frost Foundations.

Therefore, I recommend Count 5 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.16.

By: _____
Robert Kirby
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

DRAFT

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

AMENDED
REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: April 5, 2005 (revised April 20, 2005, amended May 18, 2005)

FILE NUMBER: 2004-00774
RESPONDENT: Bonnie M. Freeman, t/a Roadrunners Contracting
LICENSE NUMBER: 2705058937
EXPIRATION: October 31, 2006

SUBMITTED BY: Doneen A. Whitaker
APPROVED BY: Linda J. Boswell

COMMENTS:

Sole proprietor license is held by Bonnie M. Freeman trading as Roadrunners Contracting. The work was performed by Wesley S. Freeman, designated employee and qualified individual for this license. Both Bonnie M. Freeman and Wesley Freeman were interviewed and provided response information pertaining to this complaint. Bonnie M. Freeman identified Wesley S. Freeman as her husband.

On March 8, 2004, the County of Stafford issued a Stop Work Order for violation of Section 120.0 of the Uniform Statewide Building Code ("USBC"). (Exh. C-14) The "Stop Work" order was issued approximately 9 months after the last date respondent performed work at the site, after complainant had engaged other contractors.

Bonnie M. Freeman, t/a Roadrunners Contracting ("Roadrunners Contracting"), was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705058937).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On August 12, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Reza Bihamta ("Bihamta") regarding Roadrunners Contracting. (Exh. C-1)

On September 13, 2002, Bihamta obtained building permit number 223571 for the construction of single family dwelling at Parcel 28 18 A, 895 Stefaniga Road, Stafford, Virginia. (Exh. R-14)

On February 13, 2003, Roadrunners Contracting entered into a written contract, in the amount of \$27,228.00, to construct a foundation for a house and garage at Lot 18/28 A, Stafford, Virginia 22554. (Exh. C-2)

On February 13, 2003, Bihamta paid Roadrunners Contracting \$5,000.00 by check for footers. (Exh. C-7) On March 8, 2003, Bihamta paid Roadrunners Contracting \$1,639.09 by check for the stone, filter cloth, and dozer. On March 14, 2003, Bihamta paid Roadrunners Contracting \$3,082.80 by check. (Exh. C-7 and R-20) On March 19, 2003, Bihamta paid Roadrunners Contracting \$5,000.00 by check for footers. (Exh. C-7)

On March 28, 2003, Roadrunners Contracting entered into a written contract, in the amount of \$69,675.00, with Bihamta to frame a house and garage at the subject property. (Exh. C-3 and R-13)

On March 29, 2003, Bihamta paid Roadrunners Contracting \$30,000.00 by check for framing. On March 29, 2003, Bihamta paid Roadrunners Contracting \$10,000.00 by check for foundation walls. On May 12, 2003, Bihamta paid Mr. Freeman \$2,300.00 by check for ground works plumbing. On May 12, 2003, Bihamta paid Mr. Freeman \$1,610.00 by check for backfill. On May 15, 2003, Bihamta paid Roadrunners Contracting \$9,918.00 by check for framing. On May 23, 2003, Bihamta paid Roadrunners Contracting \$3,000.00 by check. On June 5, 2003, Bihamta paid Roadrunners Contracting \$1,100.00 by check for the foundation. On June 6, 2003, Bihamta paid Roadrunners Contracting \$9,300.00 by check for framing. On June 10, 2003, Bihamta paid Mr. Freeman \$972.00 by check for a backhoe. On June 14, 2003, Bihamta paid the framing subcontractor of Roadrunners Contracting \$4,200.00 by check for framing. On June 15, 2003, Bihamta paid Mr. Freeman \$2,500.00 by check. On June 18, 2003, Bihamta paid Roadrunners Contracting \$5,000.00 by check for framing. (Exh. C-7)

On June 18, 2003, Roadrunners Contracting provided Bihamta with an invoice for framing and concrete work performed at the subject property. (Exh. C-6)

1. Board Regulation (Effective January 1, 2003) (TWO COUNTS)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

On March 8, 2003, Roadrunners Contracting provided Bihamta with an invoice, in the amount of \$571.00, for a filter cloth and dozer to grade driveway and spread stone at the subject property. (Exh. C-4 and R-4)

On March 26, 2003, Roadrunners Contracting provided Bihamta with an invoice, in the amount of \$7,837.00, for rough plumbing and installation of fixtures and accessories at the subject property. (Exh. C-5)

On November 18, 2003, Bonnie Freeman ("B. Freeman") and Wesley Freeman ("W. Freeman"), on behalf of Roadrunners Contracting, acknowledged entering into a contract on March 8, 2003, with Bihamta to supply a filter cloth and dozer to grade a portion of the driveway and spread stone to serve as access to the structure for construction purposes. B. Freeman and W. Freeman also acknowledged entering into a contract on March 26, 2003, with Bihamta for rough plumbing at the subject property. (Exh. I-7)

Roadrunners Contracting rented a dozer and spread the stone. Roadrunners Contracting supplied the filter cloth, but W. Freeman and Bihamta agreed it was not necessary because the stone spread to the center of the house sufficed. The filter cloth was stored on site. Roadrunners Contracting charged Bihamta \$300.00 for the dozer rental. (Exh. I-7)

Roadrunners Contracting failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed.

2. Board Regulation (Effective January 1, 2003) (TWO COUNTS)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The February 13, 2003 and March 28, 2003 contracts used by Roadrunners Contracting in the transaction failed to contain subsections: a., d., e., f., h., and i. (Exh.C-2 and C-3)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

The February 13, 2003 contract specified "8' x 4' garage walls." (Exh.C-2)

The March 28, 2003 contract specified, "Furnish all materials and labor to frame residence as per plans. (Note: Any changes or alterations may result in additional cost.)" (Exh.C-3)

During the construction, several changes were made, including, but not limited to, changing the size of the garage, adding a bathroom and laundry room to the garage, adding window openings in the basement, adding a fourth dormer, adding a door for walk-out balcony above the porch, and changing the size of an interior door. (Exh. R-12 and I-7) The changes resulted in an additional cost of \$6,482.00. (Exh. R-12)

Roadrunners Contracting failed to obtain written change orders, signed by both parties, for a modification to the existing contract.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

On July 22, 2003, Bihamta sent Roadrunners Contracting a letter requesting Roadrunners Contracting provide within five (5) days a written schedule to complete the work. (Exh. C-8)

The last day Roadrunners Contracting performed work at the subject property was on or about June 24, 2003, or approximately eight months prior to the Stop Work Order being issued. (Exh. I-3, I-5, and I-6)

In a written response, Roadrunners Contracting responded to the list of items outlined in the July 22, 2003, letter and indicated the status of some of the items. (Exh. R-3)

As of March 21, 2005, Roadrunners Contracting has not returned to complete any additional work at the subject property. (Exh. I-4)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

Roadrunners Contracting verbally subcontracted Frost Foundations to pour the foundation at the subject property. (Exh. I-7)

On July 25, 2003, Frost Foundations filed a Memorandum of Mechanic's Lien against the subject property for pouring footers and walls and waterproofing at a cost of \$5,548.04. (Exh. C-12)

On November 18, 2003, B. Freeman and W. Freeman, on behalf of Roadrunners Contracting, admitted Frost Foundations, who poured the foundation at the subject property, was not paid in full. Roadrunners Contracting paid Frost Foundations a total of \$17,000.00 after the foundation walls were poured. Since Bihamta changed the size of the garage, the amount claimed by Frost changed. (Exh. I-7)

Bihamta paid Frost Foundations. (Exh. I-4)

DRAFT

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Bonnie M Freeman, t/a Roadrunners Contracting
Spotsylvania, VA 22553

File Number 2005-02879
License Number 2705058937

CONSENT ORDER

Respondent Bonnie M Freeman, t/a Roadrunners Contracting ("Bonnie M Freeman") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's 2003 Regulations provides:

18 VAC 50-22-200. Remedial education, revocation or suspension; fines.

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On May 6, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Bonnie M. Freeman, t/a Roadrunners Contracting ("Roadrunners Contracting"), to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On May 25, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Bonnie Freeman ("B. Freeman") and Wesley Freeman ("W. Freeman"), on behalf of Roadrunners Contracting, Respondent;

Wayne Gibbons (“Gibbons”), Complainant; Jeffrey Buckley, Staff Member; and Robert Kirby, Presiding Board Member.

In regards to Count 1, W. Freeman stated most of Roadrunners Contracting’s work has been commercial or for homeowner’s associations, who prepared the contracts for his signature. W. Freeman admitted he should have been aware of the requirements for the contract.

In regards to Count 2, W. Freeman stated a permit is not required in Spotsylvania County for building a non-habitable structure in an agricultural zone. W. Freeman later found out that Gibbon’s property was zoned resort commercial and not agricultural. W. Freeman admitted he should have checked the type of zoning for the subject property. In addition, Gibbons stated in October 2004 that he did not see a permit and raised this issue with Roadrunners Contracting. Gibbons further stated, as a result of Roadrunners Contracting failure to obtain the permit prior to performing work, there was a five (5) month delay in the project.

In regards to Count 3, W. Freeman stated he was not aware that Flemming was not a licensed contractor. W. Freeman further stated he does not typically check subcontractor’s licenses because most of the ones he deals with on a regular basis are licensed. W. Freeman does not work with Flemming anymore.

In regards to Count 4 and Count 5, based on the testimony during the IFF, Flemming ceased work on the siding work in November 2004 and another contractor was hired by Roadrunners Contracting in March 2005 to complete the siding work. Gibbons confirmed that Roadrunners Contracting failed to complete framing, garage doors, insulation, and wallboard and he had to hire a second contractor to complete the work.

The Amended Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

The Board and Bonnie M Freeman, as evidenced by the signatures affixed below, enter into this Consent Order. Bonnie M Freeman knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Bonnie M Freeman acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Amended Report of Findings. Bonnie M Freeman consents to the following term(s):

Count 1	18 VAC 50-22-260.B.9	\$100.00
Count 2	18 VAC 50-22-260.B.6	\$50.00
Count 3	18 VAC 50-22-260.B.29	\$250.00
Count 4	18 VAC 50-22-260.B.14	\$0.00
Count 5	18 VAC 50-22-260.B.15	\$0.00
Count 6	18 VAC 50-22-260.B.11	\$100.00
Count 7	18 VAC 50-22-260.B.12	\$100.00

	TOTAL MONETARY PENALTIES	\$600.00

In addition, for violation of Count 4 and Count 5, Bonnie M Freeman agrees to complete a 10' x 12' deck and install two (2) garage door openers at the subject property and provide the Board with proof of completion by July 19, 2005.

In addition, for violation of all Counts, Bonnie M Freeman agrees to have a member of Responsible Management successfully complete remedial education by attending the Board's Basic Contracting License class and passing the examination within six (6) months of the effective date of this order.

Bonnie M Freeman also agrees to pay \$350.00 in Board costs.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically noted above. Bonnie M Freeman acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Bonnie M Freeman will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Bonnie M Freeman acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Bonnie M Freeman's license until such time as there is compliance with all terms of this Order. Bonnie M Freeman understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Bonnie M Freeman
t/a Roadrunners Contracting

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2005.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

EOO

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

AMENDED
REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: April 20, 2005 (revised May 6, 2005 and amended May 25, 2005)

FILE NUMBER: 2005-02879
RESPONDENT: Bonnie M. Freeman, t/a Roadrunners Contracting
LICENSE NUMBER: 2705058937
EXPIRATION: October 31, 2006

SUBMITTED BY: Kim B. Buckner
APPROVED BY: Janet Creamer

COMMENTS:

Companion to File No. 2004-00774

Bonnie M. Freeman, t/a Roadrunners Contracting ("Roadrunners Contracting"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705058937).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On January 18, 2005, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Wayne Gibbons ("Gibbons") regarding Roadrunners Contracting. (Exh. C-1)

On May 23, 2004, Roadrunners Contracting entered into a written contract, in the amount of \$33,670.00, with Gibbons to build a detached garage at 3944 Lewistown Road, Bumpass, Virginia 23024. (Exh. C-2)

On May 31, 2004, Gibbons paid Roadrunners Contracting \$5,050.00 by check. (Exh. C-3)

Roadrunners Contracting and Gibbons also agreed to and signed an addendum, in the amount of \$1,807.65, for an engineered floor system to carry extra loads upstairs at the subject property. (Exh. C-2)

On June 1, 2004, Roadrunners Contracting and Gibbons agreed to and signed a revised pricing and payment schedule for the garage at the subject property. (Exh. C-2)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Roadrunners Contracting in the transaction failed to contain subsections: a., d., e., f., and h. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

The contract specified, "Contractor to furnish all permits except plumbing." The contract also specified, "Schedule all inspections, remove all construction debris." (Exh. C-2)

Prior to November 29, 2004, Roadrunners Contracting framed the structure and partially covered the structure with siding. (Exh. C-1 and I-1)

On November 29, 2004, Roadrunners Contracting submitted a permit application for the work to be performed at the subject property. (Exh. C-5)

In a written response received March 4, 2005, W.S. Freeman ("W. Freeman") of Roadrunners Contracting stated, "I did not apply for a permit because I was informed by several other contractings that a permit for a non-habitable structure was not required on agriculturally zoned property. This was a mistaken assumption on my part. As it turns out, the property was zoned residential/commercial upon the construction of Lake Anna. I accept responsibility for this error." (Exh. R-1)

In March 2005, Spotsylvania County approved Gibbons's rezoning and issued the building permit. (Exh. I-3) In late March 2005, Freeman picked up the permit. (Exh. I-4)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

FACTS:

In a written response received March 4, 2005, W. Freeman stated, "I sub-contracted the siding to a Mr. Tom Flemming. Our agreement was payment in full upon completion." W. Freeman also stated, "To date I have paid Mr. Flemming \$1,440.00 for the \$1,800.00 job." (Exh. R-1)

There is no licensing record for either Tom Flemming or Thomas Flemming as a licensed contractor in Virginia. (Exh. I-7)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

The contract specified, "Substantial completion in 90 days from start." (Exh. C-2)

In November 2004, Roadrunners Contracting stopped work on the siding. (Exh. C-1)

Between November 2004 and January 15, 2005, Gibbons made repeated phone calls to Roadrunners Contracting regarding completion of the siding. (Exh. C-1)

Prior to March 8, 2005, Roadrunners Contracting delivered a load of treated lumber to the subject property. (Exh. I-2)

On March 16, 2005, W. Freeman admitted the siding work was incomplete because of the subcontractor. W. Freeman stated he has hired a new subcontractor to complete the siding work. (Exh. I-7)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

In addition to the facts outlined in Count 4:

In a written response received March 4, 2005, W. Freeman stated, "Mr. Gibbons should have the rezoning by mid March. I can complete the project within 2 weeks." W. Freeman also stated, "The project will be completed to their ultimate satisfaction." (Exh. R-1)

Prior to March 8, 2005, Roadrunners Contracting told Gibbons that it would begin working again on March 10, 2005, and complete the work to Gibbons' satisfaction within two weeks. (Exh. I-2)

As of March 31, 2005, Roadrunners Contracting failed to complete insulation, wallboard, and electrical hook-up. (Exh. I-4)

Prior to April 20, 2005, Gibbons hired another contractor to complete the insulation, wallboard, and electrical hook-up. (Exh. I-5)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.

FACTS:

On March 14, 2005, Investigator Kim Buckner, the Board's agent, verbally requested Bonnie Freeman ("B. Freeman") of Roadrunners Contracting provide documents relevant to the complaint from Gibbons and copies of building permits issued for the project. B. Freeman agreed to send the requested documents, via facsimile, within the next day or two. (Exh. I-6)

On March 16, 2005, W. Freeman stated he does not have a signed copy of the contract because he only keeps computer copies of the contracts and his hard drive "burned up." (Exh. I-7)

7. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

FACTS:

In addition to the facts outlined in Count 6:

As of April 25, 2005, Freeman refused or failed, upon request, to produce to the Board's agent documents for which Freeman is required to maintain records.

DRAFT