

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
February 3, 2004 (9:00 a.m.)**

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

David O. Harris, Sr., Board member, presided. No other Board members were present.

Jennifer Kazzie 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. Melvin Morgan Roofing and Sheet Metal Co. Inc.
File Number 2003-01313 (Disc) | Morgan – R
Guy Crowgey – R Atty |
| 2. Johnny R. Moore
t/a Dun-Rite
File Number 2000-02332 (Disc) | Moore – R (by telephone) |
| 3. Martin K. Harrup Jr.
File Number 2003-01260 (Disc) | None |
| 4. John N. Schwaller III
t/a The Roof Doctor of Roanoke
File Number 2003-00757 (Disc) | None |
| 5. C & B Roofing Inc.
File Number 2003-00071 (Disc) | None |
| 6. Kelvin A. Peck
t/a KAP Services
File Number 2003-01063 (Disc) | Steven Turner - C |

- 7. Ralph F. Swartz
t/a R & B Painting
File Number 2003-01059 (Disc) None

- 8. Dominick E. Wells
t/a D & L Drywall
File Number 2002-02121 (Disc) None

The meeting adjourned at 1:30 p.m.

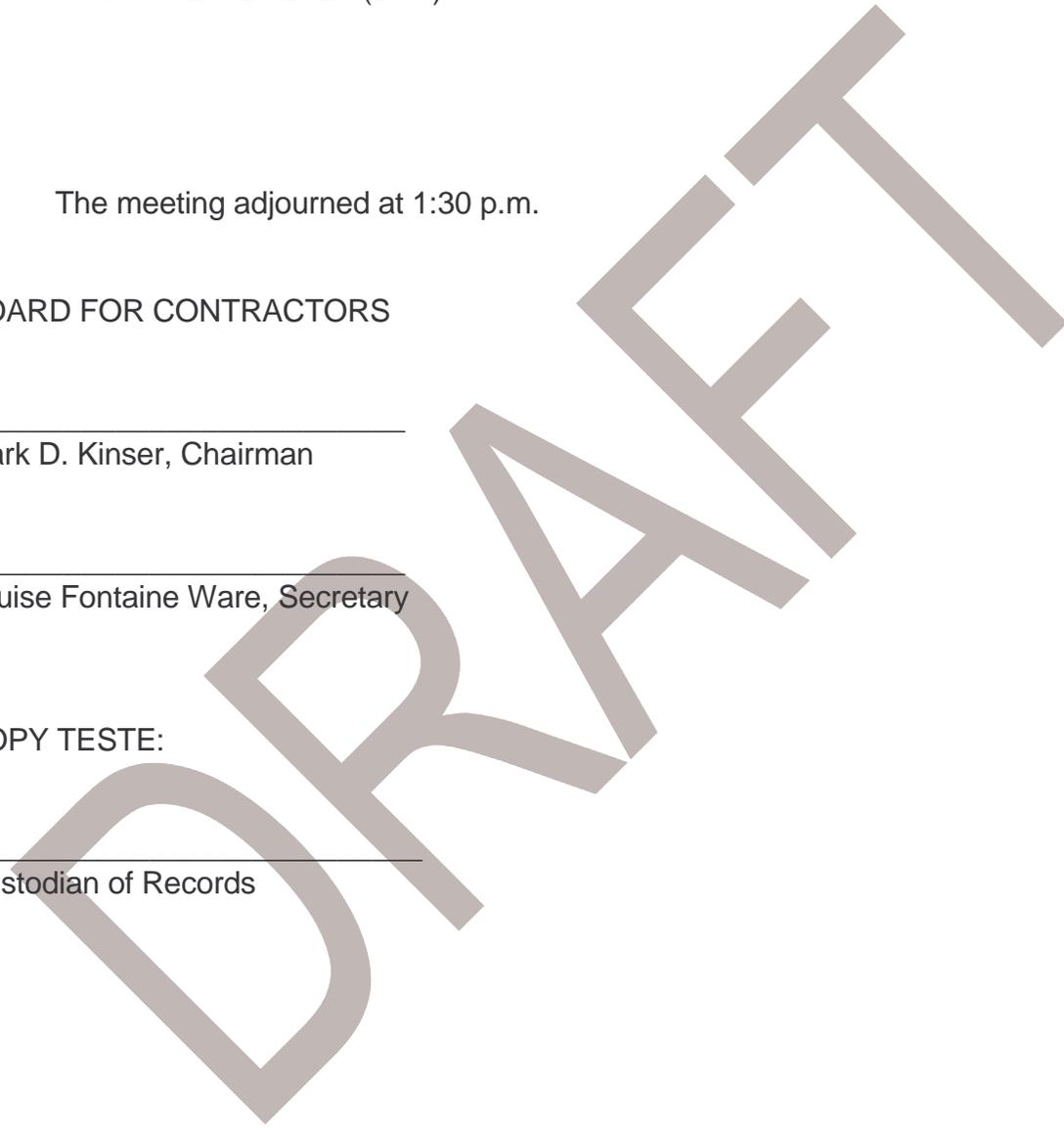
BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records



**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: MELVIN MORGAN ROOFING & SHEET METAL COMPANY
LICENSE NUMBER 2701036327**

FILE NUMBER: 2003-01313

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 19, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Melvin Morgan, President (Morgan) of Melvin Morgan Roofing & Sheet Metal Company on March 28, 2003. The following individuals participated at the conference: Barbara Chandler, Complainant; Jennifer Kazzie, Staff Member; and Mark Kinser, presiding Board Member. Melvin Morgan, did not appear at the IFF.

On February 3, 2004, the IFF was reconvened, following the Board for Contractors decision, at their meeting held on August 20, 2003, to remand this matter back to an IFF. By a letter dated October 22, 2003, Guy C. Crowgey, Melvin Morgan's attorney, was notified that the IFF would reconvene on February 3, 2004. The following individuals participated at the conference: Melvin Morgan, Respondent and Guy C. Crowgey, his Attorney; Jennifer Kazzie, Staff Member; and David Harris, presiding Board Member

Background

Melvin Morgan Roofing & Sheet Metal Company was at all times material to this matter a licensed Class A Contractor (License No. 2701036327, expiration date 3-31-04).

On November 2, 2002, the Department of Professional and Occupational Regulation received a letter of complaint from Barbara Chandler (Chandler) concerning a transaction she had entered into with Melvin T. Morgan Roofing & Sheet Metal Co Inc (Morgan).

On June 24, 2002, Chandler entered into a contract with Morgan, in the amount of \$1,683.00, to install gutters and downspouts on her home at 156 Stratford Place, Danville, Virginia.

Summation of Facts

1. Morgan installed the gutters at 156 Stratford Place, Danville, Virginia. After the gutters were installed, Chandler noticed that the gutters allowed water to run all around the

gutters, over the top and behind them onto the stoop of the home and into the carport and deck.

2. On October 2, 2002, in response to complaints from Chandler about the way the gutters were performing, Morgan gave Chandler a written estimate in the amount of \$1,253.00 to furnish labor and material to remove the gutters Morgan had installed on the front and rear of the house. Morgan would then install 1' X 8" yellow pine boards over existing fascia boards on the front and rear of the house, wrap all new fascia boards with pre-painted aluminum metal, and reinstall the gutters so they are positioned closer to the roof shingles.
3. Morgan testified that he attempted to resolve this issue by participating in mediation through the Board but Chandler refused to participate.
4. The contract used by Morgan in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) when the work is to begin and the estimated completion date, (f) disclosure of cancellation rights, and (h) the contractor's license expiration date and specialty services.
5. During the IFF, Morgan testified that he has revised his contracts. Morgan also presented a letter dated August 26, 2003, from Eric Olson, Executive Director for the Board for Contractors, that stated a review of Morgan's contracts submitted on August 19, 2003, appear to be in compliance with the Board's regulations.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(5) (Effective September 1, 2001)

Based on the record, Morgan installed the gutters under the shingles without installing new 1" x 8" yellow pine boards over existing fascia boards on house front and rear to allow proper drainage. After Chandler complained, Morgan offered to install the pine boards and reposition the gutters, however at an additional cost to Chandler. Morgan's failure to properly install the gutters is negligence and/or incompetence in the practice of contracting, in violation of the above-cited regulations. I recommend a monetary penalty of \$1,500.00 be imposed for this violation.

Count 2: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Morgan's failure, to contain in the contract the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) when the work is to begin and the estimated completion date, (f) disclosure of cancellation rights, and (h) the contractor's license expiration date and specialty services, is a violation of the above-cited regulations. I recommend a monetary penalty of \$500.00 be imposed for this violation.

By:

David Harris
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2701 036327 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: JOHNNY R. MOORE
T/A DUN-RITE
LICENSE NUMBER 2705-026399**

FILE NUMBER: 2000-02332

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 10, 2002, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Johnny R. Moore, t/a Dun-Rite (Moore) on October 16, 2002. The following individuals participated at the conference: Johnny R. Moore, Respondent; Jim Barletto, Witness; Jennifer Kazzie, Staff Member; and John N. Neff, presiding Board Member.

At the conclusion of the IFF, the record was left open to conduct additional investigation. Subsequently, the conference was scheduled to re-convene and continued several times, as evidenced in the record. On February 3, 2004, the IFF was reconvened. The following individuals participated at the reconvened conference: Johnny R. Moore, Respondent by telephone; Jennifer Kazzie, Staff Member; and David Harris, presiding Board member.

Summation of Facts

1. On or about May 29, 1999, Robin Mabie (Mabie) purchased property at 527 Marsh Duck Way, Virginia Beach, Virginia. The contract included an addendum stipulating that the seller would have two balconies replaced in accordance with specifications satisfactory to Mabie. Pyle Realty (selling firm) entered into a contract on behalf of the seller on or about June 2, 1999, with Johnny R. Moore, Sr. (Moore), t/a Dun-Rite to repair the balconies.
2. Mabie observed metal flashing, which she believed, was improperly installed on the building where the balconies were attached to the building. On or about August 26, 1999, Mabie hired Hampton Roads Termite to correct the flashing when it was discovered that the wood in the balcony areas that the balconies were nailed to by Moore was deteriorated (rotten). Hampton Roads Termite informed Mabie that the balconies “would have collapsed within the next 2-3 months”.
3. On or about March 30, 2000, Sherri Hanier, Building Official, City of Virginia Beach, told Investigator Robert Pritchard that Moore failed to obtain the required permit prior to performing the work and final inspection for the work performed.
4. The contract used by Moore in the transaction failed to contain the minimum provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsections (a) when work is to begin and 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, (h) contractor's license expiration date, class of license, and license 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.
5. Pyle Realty was contacted, concerning the termite inspection and told David Dornier, the Board's agent, that a termite inspection was performed.
6. Moore testified that he noticed dark spots on the wood and hit it with a hammer, to determine if the wood was solid, before installation of the deck.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(5) (Effective May 1, 1999)

I recommend that this count of the file be closed with a finding of no violation. Hampton Roads Termite and Pest Control performed the inspection prior to Moore constructing the deck and determined that the structure was okay. Therefore, I believe that Moore did not violate the Board's Regulation 18 VAC 50-22-260(B)(5).

Count 2: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

Moore's failure to obtain the required permit prior to performing the work, as well as a final inspection following the completion of the work performed, is misconduct in the practice of contracting, in violation of Board Regulation 18 VAC 50-22-260(B)(6). I recommend a monetary penalty of \$500.00 and remedial education be imposed for the violation of the regulation.

The Board's Basic Contractor Licensing class (remedial education) must be successfully completed by Responsible Management within six months of the effective date of entry of the final order.

Count 3: 18 VAC 50-22-260(B)(8) (Effective May 1, 1999)

Moore's failure to make use of a legible written contract that contains all provisions specified in the regulation is in violation of Board Regulation 18 VAC 50-22-260(B)(8). I recommend a monetary penalty of \$500.00 and remedial education be imposed for the violation of the regulation.

The Board's Basic Contractor Licensing class (remedial education) must be successfully completed by Responsible Management within six months of the effective date of entry of the final order.

By:

David Harris
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705-026399 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

**RE: MARTIN K. HARRUP, JR.
LICENSE NUMBER 2705 052803**

FILE NUMBER: 2003-01260

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 3, 2004 , at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Martin K. Harrup, Jr. on October 21, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and David Harris, presiding Board Member. Neither Martin K. Harrup, Jr., nor anyone on his behalf, attended the IFF.

Background

On or about November 4, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Rodney B. Johnson Sr. ("Johnson") regarding a contract entered into with Harrup Construction.

On or about January 25, 2002, Johnson entered into a contract with "Harrup Construction," in the amount of \$10,800.00, to install sub floors, log exterior walls, unfinished interior walls, a roof system, a deck, porch, windows and doors at 600 Wedgwood Drive, Whaleyville, Virginia.

On or about April 17, 2002, Johnson entered into a second contract with "Harrup Construction," in the amount of \$9,000.00, to stain the interior walls, install the interior finish trim, hang and paint the drywall, cover the floor, insulate the interior walls and underside of the floor at 600 Wedgwood Drive, Whaleyville, Virginia.

Between January 25, 2002 and October 14, 2002, Johnson paid Martin K. Harrup Jr. approximately \$18,500.00 by checks.

Summation of Facts

1. On or about November 4, 2002, the licensing records of the Board for Contractors revealed Martin K. Harrup Jr. ("Harrup"), t/a Martin K. Harrup Jr., was issued Class C Contractor's license number 2705052803 on November 1, 1999.
2. Harrup failed to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license.
3. The contracts used by Harrup in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation, 18 VAC 50-22-260(B)(9), subsections (a) when work is to begin and the estimated completion date, (c) a listing of specified materials and work to be performed, which is specifically requested by the consumer, (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, license number, expiration date, class of license, and classification or specialty services, and (i) statement providing that any modifications 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.
4. On November 4, 2002, the licensing records of the Board for Contractors revealed there was no change of name made by the Board for license number 2705052803. Harrup failed to operate in the name in which the license was issued.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(1) (Effective September 1, 2001)

Harrup's failure to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license, is a violation of Board 2001 Regulation 18 VAC 50-22-260(B)(1), to wit: § 54.1-1100 of the Code of Virginia. Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for violation of this regulation.

Count 2: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)
(2 Violations)

Harrup's failure to contain the minimum provisions in the contract is in violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend that a monetary penalty of \$250.00 be imposed for each violation of this regulation.

Count 3: 18 VAC 50-22-230(A) (Effective September 1, 2001)

Harrup's failure to operate in the name in which the license was issued, is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for a violation of this regulation.

By: _____

David Harris
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705 052803 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: JOHN W. SCHWALLER, III
T/A THE ROOF DOCTOR OF ROANOKE
LICENSE NUMBER 2705 068170**

FILE NUMBER: 2003-00757

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 3, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of

Informal Fact-Finding Conference sent by certified mail to John W. Schwaller, III, t/a The Roof Doctor of Roanoke, on October 21, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and David Harris, presiding Board Member. Neither John W. Schwaller, III, nor anyone on his behalf, attended the IFF.

Background

On September 13, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Christian J. Mangels ("Mangels") regarding a contract entered into with John W. Schwaller, III ("Schwaller"), t/a The Roof Doctor of Roanoke.

On or about August 9, 2002, Mangels entered into a contract with Schwaller, in the amount of \$1,600.00, to replace a roof at rental property at 4574 Blue Ridge Blvd, Blue Ridge, Virginia.

Summation of Facts

1. Mangels and Schwaller verbally agreed that Schwaller would install "Liberty Peel & Stick" roofing. The contract specified "install peel & stick to walls (inside) of building (roof top)."
2. On or about August 13, 2002, Schwaller removed the existing roof and installed a "Weatherwatch" leak barrier. Mangels realized that the "Liberty Peel & Stick" roof had not been installed by Schwaller, but instead, only a leak barrier.
3. Schwaller failed to comply with the terms of the contract.
4. Schwaller verbally promised to replace and redo the roof. As of November 13, 2002, Schwaller has failed to repair the roof.

5. The contract Mangels signed specified "all work will be guaranteed 5 years."
6. Between August of 2002 and November of 2002, Mangels made numerous phone calls to Schwaller regarding defects and leaks. As of November 13, 2002, Schwaller failed to honor the terms and conditions of the warranty.
7. On November 13, 2002, Mangels hired another contractor to repair the roof because Schwaller failed to repair the roof as promised.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Schwaller's intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract, is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for violation of this regulation.,

Count 2: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Schwaller's failure to repair the roof constitutes misconduct in the practice of contracting and is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed for a violation of this regulation.

Count 3: 18 VAC 50-22-260(B)(30) (Effective September 1, 2001)

Schwaller's failure to honor the terms and conditions of the warranty, is a violation of Board Regulation 18 VAC 50-22-260(B)(30). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for a violation of this regulation.

By:

David Harris
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 270568170 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: C & B ROOFING INC.
LICENSE NUMBER 2705 007179**

FILE NUMBER: 2003-00071

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 3, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to C & B Roofing on October 21, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and David Harris, presiding Board Member. Neither C & B Roofing, nor anyone on their behalf, attended the IFF.

Background

On June 4, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Elizabeth M. Harris ("Harris") regarding a contract entered into with C & B Roofing Inc. ("C&B").

On November 4, 1997, Harris entered into a contract with C&B, in the amount of \$400.00, to recoat the front porch roof with polymer coating at 3313 Mill Spring Drive, Fairfax, Virginia.

Summation of Facts

1. On November 4, 1997, C&B recoated the front porch roof at Harris' residence.
2. The contract specified "10 year warranty on labor & material."
3. Between December 2001 and February 2002, Harris notified C&B by telephone that there was a leak in the porch that C&B re-coated. William Sampson, President of C&B, told Harris that C&B was out of business and would not return to repair the leak. As of February 10, 2003, C&B failed to return to repair the leak in the porch.

Conclusion and Recommendation

Count 1: Section 5.7.B.6 (Effective March 31, 1995)

C & B's failure to return to repair the leaking roof is misconduct in the practice of contracting in violation of Section 5.7.B.6 of the Board's 1995 Regulations. Therefore, I recommend that a monetary penalty of \$2,500.00 and revocation of C & B's license be imposed for violation of this regulation.

By: _____

David Harris
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705007179 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: KELVIN A. PECK
T/A KAP SERVICES
LICENSE NUMBER 2705 069668**

FILE NUMBER: 2003-01063

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 3, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Kelvin A. Peck, t/a KAP Services (Peck) on October 22, 2003. The following individuals participated at the conference: Steven and Mable Turner, Complainants; Jennifer Kazzie, Staff Member; David O. Harris, Sr., presiding Board Member. Neither Peck, nor anyone on his behalf, appeared at the IFF.

Background

On or about May 4, 2002, Steven Turner (Turner) entered into a contract with Kelvin A. Peck (Peck), t/a KAP Services, in the amount of \$9,800.00, to enclose the carport area, extend the kitchen, living room and dining room at 5773 Andrea Drive, Norfolk, Virginia.

Summation of Facts

1. On or about May 5, 2002, Turner paid Peck \$4,900.00 by check, as a deposit.

2. On or about May 17, 2002, Peck began the remodeling work. Peck knocked down an existing load bearing wall in the living room, installed two chandeliers, laid the cement floor in the carport, and installed columns and shelves in the living room and dining room areas.
3. In a letter dated August 17, 2002, Steven and Mable Turner (the Turners) requested Peck honor the contractual agreement or return the \$4,900.00 deposit by September 1, 2002.
4. On or about September 2002, the Turners met with Peck to inquire about a completion date. Peck told the Turners that Peck would return the \$4,900.00 in a couple of weeks and remove his equipment.
5. On or about September 15, 2002, Peck and a representative with Practical Solutions of Virginia, Inc., a subcontractor, provided the Turners with an estimated cost for completion of the carport enclosure. On or about September 15, 2002, Peck left the job and failed to return to complete the work contracted, leaving the finishing work to be completed in the living room and dining room and the carport enclosure and kitchen extension to be completed.
6. On December 3, 2002, Investigator Shelby Smith-Hill, the Board's agent, inspected the Turners home at 5773 Andrea Drive, Norfolk, Virginia. The Board's agent observed that the finishing work in the living room and dining room was incomplete and that the carport enclosure and kitchen extension was incomplete.
7. As of January 29, 2003, Peck failed to respond to the Turners request and refund the money received for work not performed.
8. On or about October 16, 2002, the licensing records of the Board for Contractors revealed Peck was issued Class C Contractor's license number 2705069668.
9. Peck failed to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license.
10. Vernell A. Woods Jr. (Woods), the Acting Code Official with the Norfolk, Virginia Building Officials Office, advised that Peck failed to obtain the required permit prior to performing work, in violation of Section 107.0 of the Virginia Uniform Statewide Building Code.
11. On or about October 22, 2002, Investigator Shelby Smith-Hill, the Board's agent, made a written request to Peck at the address of record and the address on the contract of 5171 Kennebeck Avenue, Norfolk, Virginia 23513, requesting written response and supporting documentation to the complaint filed with the Board. The Board's agent requested the documentation be received by November 8, 2002. As of January 29, 2003, Peck failed to respond to the Board's agent's request. The letter was not returned to the Board's agent.

12. On or about November 20, 2002, the Board's agent made a written request to Norview Street Station Postmaster, at 112 Green Street, Norfolk, Virginia 23523, requesting an address certification for Kelvin A. Peck, t/a KAP Services. The Norview Street Postmaster confirmed that mail was delivered to 5171 Kennebeck Avenue, Norfolk, Virginia 23513.

13. On or about December 3, 2002, the Board's agent visited 5171 Kennebeck Avenue, Norfolk, Virginia 23513, to verify the address of record, to discuss the complaint, and to deliver the allegation letter with a copy of the complaint. The Board's agent knocked on the door three times but no one answered. The Board's agent placed the allegation letter and a business card in the mailbox located on the house.

14. On or about December 3, 2002, the Board's agent made a written request to Peck at the address confirmed by the Norview Street Station Postmaster of 5171 Kennebeck Avenue, Norfolk, Virginia 23513, requesting written response and supporting documentation to the complaint filed with the Board. The Board's agent requested the documentation be received by December 12, 2002. As of January 29, 2003, Peck failed to respond to the Board's agent's request. The letter was not returned to the Board's agent.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Peck's failure to complete the work contracted for is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed for violation of this regulation.

Count 2: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Peck's failure to refund the money received for work not performed, is a violation of Board Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed for a violation of this regulation.

Count 3: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Peck's failure to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for a violation of this regulation.

Count 4: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001))

Peck's failure to obtain the required permit prior to performing work, in violation of Section 107.0 of the Virginia Uniform Statewide Building Code, is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend that a monetary penalty of \$500.00 be imposed for a violation of this regulation.

Count 5: 18 VAC 50-22-260(B)(13) (Effective September 1, 2001)

Peck's failure to respond to an investigator seeking information in the investigation of a complaint filed with the board is a violation of Board Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend that a monetary penalty of \$500.00 and license revocation be imposed for a violation of this regulation.

By:

David O. Harris, Sr.
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705 069668 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: RALPH F. SWARTZ
T/A R & B PAINTING
LICENSE NUMBER 2705 064365**

FILE NUMBER: 2003-01059

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 3, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Ralph F. Swartz, t/a R & B Painting (Swartz) on October 21, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; David O. Harris, Sr., presiding Board Member. Neither Swartz, nor anyone on his behalf, appeared at the IFF.

Background

On October 5, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Roger and Gail Lataille (the Latailles) regarding a contract entered into with Ralph F. Swartz (Swartz), t/a R & B Painting.

On July 3, 2002, the Latailles entered into a contract with Swartz, in the amount of \$12,200.00, to paint and repair stucco, power wash the house and porch, and install twenty-three storm windows and screens at 18717 Lincoln Road, Lincoln, Virginia.

Summation of Facts

1. The contract used by Swartz failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (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, and (h) contractor's address, license expiration date, class of license, and specialty service.
2. On October 11, 2002, the licensing records of the Board for Contractors revealed Swartz was issued Class C Contractor's license number 2705063465 on September 18, 2001.
3. R&B failed to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Swartz's failure to make use of a legible written contract that contains all provisions specified in the regulation, is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend that a monetary penalty of \$500.00 be imposed for violation of this regulation. In addition, I recommend Swartz successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Swartz's failure to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license, is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for a violation of this regulation. In addition, I recommend Swartz successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

David O. Harris, Sr.
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705 064365 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

RE: DOMINICK E. WELLS

**T/A D & L DRYWALL
LICENSE NUMBER 2705 056010**

FILE NUMBER: 2002-02121

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 3, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Dominick E. Wells, t/a D & L Drywall (Wells) on October 22, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; David O. Harris, Sr., presiding Board Member. Neither Wells, nor anyone on his behalf, appeared at the IFF.

Background

On January 2, 2001, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Dallas Herring (Herring) regarding a contract entered into with Dominick E. Wells (Wells), t/a D & L Drywall.

On October 11, 2001, Herring entered into a contract with Wells, in the amount of \$8,900.00, for remodeling work at 108 Westview Street, Bridgewater, Virginia.

On November 16, 2001, Herring entered into a second contract with Wells, in the amount of \$2,500.00, to install a bath at 108 Westview Street, Bridgewater, Virginia.

Summation of Facts

1. The contracts used by Wells in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) an estimated completion date, (d) a "plain-language" exculpatory clause concerning events beyond the control of the contractor, (f) disclosure of the cancellation rights of the parties, (h) contractor's license number, class and specialty, and (i) a statement providing that any change to the contract shall be in writing.
2. On January 8, 2002, a review of the licensing records of the Board for Contractors revealed Wells was issued Class C Contractor's license number 2705056010 on April 28, 2000, with the home improvement contracting (HIC) specialty.
3. Wells failed to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001) (Two Violations)

Wells' failure to make use of a legible written contract that contains all the provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(9) (Two Violations). Therefore, I recommend that a monetary penalty of \$375.00 be imposed for each violation of this regulation. In addition, I recommend Wells successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(27), to wit § 54.1-1103 of the Code of Virginia (Effective September 1, 2001)

Wells' failure to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license is a violation of Board Regulation 18 VAC 50-22-260(B)(27), to wit: § 54.1-1103 of the Code of Virginia. Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for a violation of this regulation. In addition, I recommend Wells successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

David O. Harris, Sr.
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705 056010 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

DRAFT