

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
February 11, 2004 (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.

James A. Hollar, 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. <u>Custom Care Remodeling</u>
File Number 2002-03548 (RF) | James Maitland - C
Joanne Maitland - C |
| 2. Daniels Heating & Cooling
File Number 2003-01998 (K RF) | None |
| 3. Richard Tuttle t/a Tuttle and Son Construction
File Number 2003-02112 (K RF) | Marsha Cole - C
B. E. Bondurant – C Atty
William Cole - W |
| 4. Richard Tuttle t/a Tuttle and Son Construction
File Number 2002-02056 (K Disc) | Marsha Cole - C
B. E. Bondurant – C Atty
William Cole - W |
| 5. David Garcia t/a David G Carpentry
File Number 2003-02136 (K RF) | K. Bashir - C |
| 6. Timothy J. Simon
t/a TJ's Connection | Kathleen Bogatyr – C
Peter Bogatyr - C |

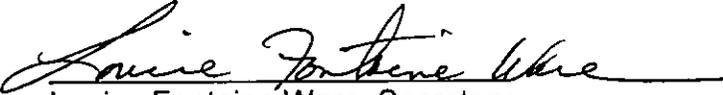
File Number 2003-01956 (K RF)

The meeting adjourned at 3:30 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**

**IN RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION
RECOVERY ACT CLAIM OF JAMES H. & JOANNE L. MAITLAND
(CLAIMANTS) AND CUSTOM CARE REMODELING, INC. T/A CUSTOM
CARE REMODELING, INC. (REGULANT)
LICENSE NUMBER 2705-050939**

FILE NUMBER: 2002-03548

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 11, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Mr. and Mrs. James Maitland, c/o Mr. John B. Connor, and Jeffrey Apperson, President, Custom Care Remodeling, Inc. on November 18, 2003. The following individuals participated at the conference: James and Joanne Maitland, Claimants; Jeffrey Buckley, Staff Member; Douglas Schroder, Staff

Member; and James A. Hollar, Presiding Board Member. No one from Custom Care Remodeling, Inc. appeared at the IFF in person or by counsel.

Background

On **October 4, 2001**, in the United States Bankruptcy Court, District of Maryland, Custom Care Remodeling, Inc., filed a Chapter 7 Petition.

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **June 5, 2002**.

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

Custom Care Remodeling, Inc., filed for bankruptcy protection, therefore judgment was not obtained.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant. The license number is printed on the contract.

The Board issued Class A License Number 2705050939 to Custom Care Remodeling, Inc., t/a Custom Care Remodeling, Inc., on **July 9, 1999**. The license expired on July 31, 2001. The claimants entered into two written contracts with Custom Care Remodeling. The first contract was entered into on **October 25, 2000** and the second contract was entered into on **February 10, 2001** for the claimants' residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The claim was received on **June 5, 2002**. Judgment was not obtained, as the regulant filed for bankruptcy protection.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into two written contracts with Custom Care Remodeling. The first contract entered into was for architectural designs and other related costs. The second contract was for the expansion project on the claimants' residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant filed for bankruptcy protection.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

Judgment was not obtained.

In the Affidavit of Facts dated **May 31, 2002**, the claimant asserts two checks were given to the regulant. The first contract was for the cost involved with the preparations prior to construction for architectural designs, meetings and stamped engineered drawings in order to obtain the permits for construction. A check in the amount of \$5,000.00 was paid to the regulant. The second contract was for the home expansion project. A second check was paid to the regulant in the amount of \$18,000.00. The project was never completed and the funds were not returned to the claimants.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "Yes."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The payment of the claim is based upon the fact that the Regulant was paid \$5,000.00 on the first contract, and the Regulant was paid \$18,000.00 on the second contract for the expansion project, however, the project was never completed and the funds were not returned to the Claimants. These actions fall within the definition of improper and dishonest conduct, per Code of Virginia Section 54.1-1118.

By:

James A. Hollar
Presiding IFF Board Member
Board for Contractors

Date: _____

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

IN RE: **IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION
RECOVERY ACT CLAIM OF CAMMY CROCKETT (CLAIMANT) AND
REECE DANIELS T/A DANIEL'S HEATING & COOLING (REGULANT)
LICENSE NUMBER 2705-034817**

FILE NUMBER: 2003-01998

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 11, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Cammy Crockett, and Reece Daniels, t/a Daniels Heating & Cooling, on December 16, 2003. The following individuals participated at the conference: Jeffrey Buckley, Staff Member; Douglas Schroder, Staff Member; James A. Hollar, presiding Board Member. Neither Crockett, nor anyone on her behalf, appeared at the IFF. In addition, neither Daniels, nor anyone on his behalf, appeared at the IFF.

Background

On **August 2, 2002**, in the Buchanan County General District Court, Cammy Crockett obtained a **Judgment** against Daniels Heating and Cooling, **in the amount of \$3,600.00, plus interest and \$43.00 costs.**

The **claim** in the amount of **\$3,643.00** was received by the Department of Professional and Occupational Regulation on **January 24, 2003.**

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "To install heat pumps, which were not installed" the basis for the suit. The block designated "Other" has been marked.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant **did** contract with the regulant.

The Board issued Class A License Number 2705034817 to Reece Daniels t/a Daniel's Heating & Cooling, on **July 12, 1996.** The license was permanently

revoked on **January 28, 2002**. The claimant entered into a written contract with Daniels Heating & Cooling on **April 9, 2001** for the installation of heat pumps, ductwork, wiring, revisions to the breaker box and other related materials. (note: the address listed on the proposal is not the physical address of the residence).

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **August 2, 2002**. The claim was received on **January 24, 2003**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Daniels Heating & Cooling for the installation of heat pumps, ductwork, wiring, revisions to the breaker box and other related materials.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant no longer resides in Virginia.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "To install heat pumps, which were not installed" the basis for the suit. The block designated "Other" has been marked.

In the Affidavit of Facts dated **November 15, 2002**, the claimant asserts the regulant received \$3,600.00 down payment toward the installation of the heat pumps. The balance of the contract in the amount of \$2,000.00 would be paid upon completion of the project. The regulant started the project the following week. After the regulant did not return to finish the installation of the heat pumps the claimant made several attempts to contact the regulant. The regulant returned and completed a small amount of work. The regulant has never completed the project or returned the claimant's money.

10. **CODE OF VIRGINIA SECTION 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **CODE OF VIRGINIA SECTION 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record, it is recommended that the claim be approved for payment in the amount of \$3,643.00, including judgment for \$3,600.00, and costs of \$43.00. The Buchanan County General District Court granted Judgment based on the contractor's failure to install heat pumps. These actions fall within the definition of improper and dishonest conduct, per Code of Virginia Section 54.1-1118.

By:

James A. Hollar
Presiding IFF Board Member
Board for Contractors
Date: _____

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

**IN RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION
RECOVERY ACT CLAIM OF MARSHA COLE (CLAIMANT) AND
RICHARD L. TUTTLE, T/A TUTTLE AND SON CONSTRUCTION
(REGULANT)
LICENSE NUMBER 2705-060666

FILE NUMBER: 2003-02112**

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 11, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Marsha Cole, c/o B. Elliott Bondurant, and Richard Lawrence Tuttle, t/a Tuttle and Son Construction, on December 23, 2003. The following individuals participated at the conference: Marsha Cole,

Claimant; B. Elliott Bondurant, Esquire, Attorney for Claimant; William Cole, Witness; Jeffrey Buckley, Staff Member; Douglas Schroder, Staff Member; James A. Hollar, presiding Board Member. Neither Tuttle, nor anyone on his behalf, appeared at the IFF.

Background

On **March 21, 2002**, in the General District Court for the County of King William, Marsha Cole obtained a **Judgment** against Richard L. Tuttle, **in the amount of \$8,651.71**.

The **claim** in the amount of **\$8,651.71** was received by the Department of Professional and Occupational Regulation on **November 20, 2002**.

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "improper construction and failure to perform work contracted." The block designated "Other" has been marked.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class C License Number 2705 060666 to Richard Lawrence Tuttle, t/a Tuttle and Son Construction, on **January 25, 2001**. The license expired on **January 31, 2003**. The claimant entered into a written contract with Richard Lawrence Tuttle, t/a Tuttle and Son Construction on **May 20, 2001** for work to be perform at her West Point, Virginia residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **March 21, 2002**. The claim was received on **November 20, 2002**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Richard L. Tuttle, t/a Tuttle and Son Construction for work to be perform at her West Point, Virginia residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites the basis for the judgment as "improper construction and failure to perform work contracted." The block designated "Other" has been marked.

In the Affidavit of Facts dated October 15, 2002, the claimant asserts she signed a contract with Richard L. Tuttle for renovation work to her residence. Cole states in all she has paid Tuttle the sum of \$17,359.00. The work was to be completed by June 30, 2001, however, to date the work has not been completed.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record, it is recommended that the claim be approved for payment in the amount of \$8,651.71. The King William County General District Court granted Judgment based on the contractor's failure to complete work. These actions fall within the definition of improper and dishonest conduct, per Code of Virginia Section 54.1-1118.

By:

James A. Hollar
Presiding IFF Board Member
Board for Contractors
Date: _____

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

BOARD FOR CONTRACTORS

**RE: RICHARD L. TUTTLE
T/A TUTTLE AND SON CONSTRUCTION
LICENSE NUMBER 2705 060666**

FILE NUMBER: 2002-02056

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 11, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Richard L. Tuttle, t/a Tuttle and Son Construction on December 30, 2003. The following individuals participated at the conference: Marsha Cole, Complainant; B. Elliott Bondurant, Esquire, Attorney for Complainant; William Cole, Witness; Jeffrey Buckley, Staff Member; Douglas Schroder, Staff Member; and James A. Hollar, presiding Board Member.

Background

On November 19, 2001, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Marsha Cole (Cole) regarding a contract entered into with Richard Lawrence Tuttle (Tuttle), t/a Tuttle and Son Construction.

On May 20, 2001, Cole received a proposal from Tuttle, in the amount of \$14,859.00, for labor and materials to perform home improvement work, including frame 12ft x 18ft addition, replace six windows, asphalt shingle roof, lay foundations for front and rear of house at 517 7th Street, West Point, Virginia.

On May 20, 2001, Cole entered into a contract with Tuttle, in the amount of \$5,000.00, to remove the existing siding, remove and replace six windows, remove eighteen (18) feet of exterior wall and brick foundation, jack and brace rear addition, dig and pour footings, and lay front and rear foundation at 517 7th Street, West Point, Virginia.

On May 20, 2001, Cole entered into a second contract with Tuttle, in the amount of \$2,359.00, to re-roof the existing front roof and new addition at 517 7th Street, West Point, Virginia.

On July 10, 2001, Tuttle obtained building permit number 70077-2001 for work to be performed at 517 7th Street, West Point, Virginia. The permit indicated the job value was \$15,000.00.

Summation of Facts

1. On March 14, 2002, a review of the licensing records of the Board for Contractors revealed Tuttle was issued Class C Contractor's license number 2705060666 on January 25, 2001.
2. Tuttle failed to obtain a Class B license to perform work in excess of the \$7,500.00 limit of a Class C license.

3. The contracts used by Tuttle in the transaction failed to contain the minimum provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsection (f) disclosure of the cancellation rights of the parties.
4. Cole and Tuttle entered into a verbal agreement to replace the siding on the house. On August 27, 2001, Cole paid Tuttle \$2,000.00 by check as a payment for this additional work. In a letter dated September 21, 2001, Tuttle stated that the siding proposal was in the amount of \$3,600.00.
5. On September 23, 2001, Tuttle left the job without completing the following work:
 - Installation of shingles on the roof.
 - Fill in around the foundation.
 - One foundation vent missing.
 - Installation of siding on house per verbal contract.
 - Installation of windows and vents shown on drawings.
6. In the end of September 2001, Cole attempted to contact Tuttle by telephone. Tuttle failed to respond to Cole. On October 10, 2001, Tuttle returned to the Cole's property and told Cole that Tuttle was through.
7. On October 28, 2001, Cole hired another contractor to complete the work.
8. On June 28, 2001, Cole paid Tuttle \$2,800.00 by check. On July 9, 2001, Cole paid Tuttle \$5,000.00 by check. On July 23, 2001, Cole paid Tuttle \$2,200.00 by check. On August 2, 2001, Cole paid Tuttle \$3,000.00 by check. On August 9, 2001, Cole paid Tuttle \$2,500.00 by check. As of August 9, 2001, Cole paid Tuttle a total of \$15,500.00 towards the two contracts.
9. On March 21, 2002, in the King William General District Court, Cole was awarded a \$8,651.71 judgment against Tuttle for improper construction and failure to perform contracted work.
10. On January 9, 2002, Investigator E. Nathan Matthews, the Board's agent, made a written request to Tuttle at the address of record of P. O. Box 1383, West Point, Virginia 23181, requesting a written response and supporting documentation to the complaint filed with the Board. The Board's agent requested the response and documentation be received by January 22, 2001 (sic).
11. On February 13, 2002, the Board's agent made a written request, via certified mail, to Tuttle at the address of record of P. O. Box 1383, West Point, Virginia 23181, requesting that Tuttle contact the Board's agent to schedule an interview to discuss the complaint filed with the Board. On February 20, 2002, Tuttle signed for the certified letter.

12. On April 2, 2002, Ann Tuttle, wife of Tuttle, advised the Board's agent that on or about March 4, 2002, Tuttle left the area to an unknown location and that she has very limited contact with Tuttle.

13. As of April 18, 2002, Tuttle failed to respond to the complaint or contact the Board's agent to schedule an interview.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(1) (Effective May 1, 1999), to wit: § 54.1-1103 of the Code of Virginia

Tuttle's failure to obtain a Class B license to enter into a contract 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)(1). Therefore, I recommend license revocation be imposed for a violation of this regulation. In addition, I recommend Tuttle 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)(8) (Effective May 1, 1999)

Tuttle's failure to make use of a legible written contract containing the minimum provisions required by the Board's 1999 Regulations is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend that a monetary penalty of \$350.00 be imposed for a violation of this regulation. In addition, I recommend Tuttle successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 3: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

Tuttle's failure to obtain a written change order, signed by all parties, for a modification to the existing contract is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for a violation of this regulation. In addition, I recommend Tuttle successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 4: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Tuttle's unjustified failure to complete work contracted for is a violation of Board Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for a violation of this regulation. In addition, I recommend Tuttle successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 5: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Tuttle's failure to return funds paid for work which was not completed is a violation of Board Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for a violation of this regulation. In addition, I recommend Tuttle successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 6: 18 VAC 50-22-260((B)(28) (Effective September 1, 2001)

Tuttle's failure to satisfy the judgment awarded by the King William General District Court is a violation of Board Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend that a monetary penalty of \$2,248.00 and license revocation be imposed for a violation of this regulation. In addition, I recommend Tuttle successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 7: 18 VAC 50-22-260(B)(13) (Effective September 1, 2001)

Tuttle's failure to respond to an investigator seeking information in the investigation of a complaint is a violation of Board Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend that a monetary penalty of \$1,314.00 and license revocation be imposed for a violation of this regulation. In addition, I recommend Tuttle successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

James A. Hollar
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 060666 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

IN RE: **IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION
RECOVERY ACT CLAIM OF KIRAN BASHIR (CLAIMANT) AND DAVID
GARCIA, T/A DAVID G CARPENTRY (REGULANT)**
LICENSE NUMBER 2705-035375

FILE NUMBER: 2003-02136

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 11, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Kiran Bashir c/o Tyler Shands, and David Garcia, t/a David G. Carpentry, on December 23, 2003. The following individuals participated at the conference: Kiran Bashir, Claimant; Jeffrey Buckley, Staff Member; Douglas Schroder, Staff Member; and James A. Hollar, presiding Board Member. Neither Garcia, nor anyone on his behalf, appeared at the IFF.

Background

On **December 9, 2002**, in the General District Court for the County of Henrico, Kiran Bashir obtained a **Judgment** against David Garcia, d/b/a David G. Carpentry, **in the amount of \$4,085.00, plus interest and \$36.00 costs.**

The **claim** in the amount of **\$4,217.00** was received by the Department of Professional and Occupational Regulation on **February 7, 2003**, for \$4,085.00 plus \$132.00 court costs.

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "Breach of contract, damages, refusal to return deposit." The block designated "Contract" has been marked.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class C License Number 2705 035375 to David Garcia, t/a David G. Carpentry, on **November 5, 1997**. The license expires on **November 30, 2005**, however it was permanently revoked in November 2003. The claimant entered into a written contract with David G. Carpentry on **September 5, 2002** for renovation work to be performed at his Glen Allen, Virginia residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **December 9, 2002**. The claim was received on **February 7, 2003**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with David Garcia, t/a David G. Carpentry for renovation work to be perform at his Glen Allen, Virginia residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites the basis for the judgment as "Breach of contract, damages, refusal to return deposit." The block designated "Contract" has been marked. In the Affidavit of Facts dated September 12, 2002, the claimant asserts that contractor received good faith deposit of \$3,200.00 and that the contractor left the jobsite on September 11, 2002, leaving exposed siding, brickmolding and sharp flashing uncovered in the yard.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record, it is recommended that the claim be approved for payment in the amount of \$4,217.00, including judgment for \$4,085.00, and costs in the amount of \$132.00. The Henrico General District Court granted Judgment based on the contractor's refusal to

return the deposit. The Regulant did not complete the work. These actions fall within the definition of improper and dishonest conduct, per Code of Virginia Section 54.1-1118.

By:

James A. Hollar
Presiding IFF Board Member
Board for Contractors
Date: _____

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

**IN RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION
RECOVERY ACT CLAIM OF KATHLEEN L. BOGATYR (CLAIMANT) AND
TIMOTHY J. SIMON T/A T J'S CONSTRUCTION (REGULANT)
LICENSE NUMBER 2705-033832**

FILE NUMBER: 2003-01956

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on February 11, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Kathleen Bogatyr, and Timothy J. Simon t/a TJ's Construction, on December 23, 2003. The following individuals participated at the conference: Kathleen Bogatyr, Claimant; Peter Bogatyr, Witness; Jeffrey Buckley, Staff Member; Douglas Schroder, Staff Member; and James A. Hollar, presiding Board Member. Neither Simon, nor anyone on his behalf, appeared at the IFF.

Background

On **February 14, 2002**, in Fairfax County General District Court, Kathleen L. Bogatyr obtained a **Judgment** against Timothy J. Simon, d/b/a T J's Connection, **in the amount of \$1,000.00, plus interest and \$30.00 costs.**

On **March 20, 2002**, in the United States Bankruptcy Court, Eastern District of Virginia, Timothy J. Simon, filed a Chapter 7 Petition.

The **claim** in the amount of **\$1,030.00** was received by the Department of Professional and Occupational Regulation on **January 22, 2003.**

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Case Disposition does not recite the basis of the award.

The Proof of Claim filed with the United States Bankruptcy Court has the blocks designated "services performed" and "other" (court judgment) marked as the basis for the claim.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

According to a statement provided by the claimant dated **January 27, 2003** the claimant **did** contract with the regulant. (note: A copy of the contract could not be provided by the claimant.) The Board issued Class C License Number 2705033832 to Timothy J. Simon t/a T J's Connection, on **April 30, 1996**. The license will expire on **April 30, 2004**. The claimant entered into a contract in **May, 2000** with Mr. Simon for the repainting of a deck at the claimant's previous residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The claim was received on **January 22, 2003**. Judgment was obtained on **February 14, 2002**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into contract with Mr. Simon for the repainting of a deck at the claimant's previous residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or ending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant filed for bankruptcy protection.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

In the Affidavit of Facts dated **January 18, 2003**, the claimant asserts that the claimant entered into a contract with Timothy J. Simon d/b/a T J's Connection to repaint a deck at the claimant's previous residence. The work performed was unacceptable and the incorrect materials were used. The regulant refused to return the claimant's calls and did not correct the discrepancies in the work. The claimant incurred additional expenses of \$1,400.00 in hiring another contractor to correct the work performed by the regulant.

10. CODE OF VIRGINIA SECTION 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "Yes." The claimant filed a Proof of Claim.

11. CODE OF VIRGINIA SECTION 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record, it is recommended that the claim be approved for payment in the amount of \$1,030.00, including judgment for \$1,000.00, and costs of \$30.00. The Fairfax County General District Court granted Judgment based on the contractor's refusal to return and repair work. These actions fall within the definition of improper and dishonest conduct, per Code of Virginia Section 54.1-1118.

By:

James A. Hollar
Presiding IFF Board Member
Board for Contractors

Date: _____

STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT

TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government

1. Name: James A. Hollar
2. Title: Board Member
3. Agency: Virginia Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on February 11, 2004
5. Nature of Personal Interest Affected by Transaction: ELECT, PLG
HUAC, GAS FITTING

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

ACCA, RMPV, PHCC, CMIT INC.

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

James A. Hollar
Signature

2-11-04
Date