

**Minutes of Meeting  
BOARD FOR CONTRACTORS  
INFORMAL FACT-FINDING CONFERENCES  
May 18, 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.

Mark D. Kinser, 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	C = Complainant/Claimant
Lic = Licensing Application	A = Applicant
RF = Recovery Fund Claim	R = Respondent/Regulant
Trades = Tradesmen Application	W = Witness
	Atty = Attorney

Participants

- |                                                                                                  |                                                         |
|--------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| 1. R & R Construction and Development Inc.<br>File Number 2004-00641 (Disc)                      | None                                                    |
| 2. Dunbar Industries Inc.<br>t/a Commonwealth Heating & Cooling<br>File Number 2003-01714 (Disc) | Delton Dunbar – R                                       |
| 3. Rose Wieland<br>t/a Beachside Contractors<br>File Number 2003-02186 (Disc)                    | Richard Lippert -- C<br>Sally Lippert -- C              |
| 4. Clayborne Restorations Inc.<br>File Number 2004-02723 (Disc)<br><b>No decision was made.</b>  | Vance Clayborne – R<br>Dale Cox – C<br>Victoria Cox – C |
| 5. Latham Fueling Systems Inc.<br>File Number 2004-01178 (Disc)<br><b>No IFF held.</b>           | N/A                                                     |
| 6. Michael P. Donohue<br>t/a Donohue Paving<br>File Number 2003-03457 (Disc)                     | Leslie Scalzott - C                                     |

7. Stephen S. Utley  
t/a Mechanicsville Disposal Service  
File Number 2003-00304 (Disc)

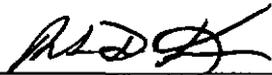
Utley – R  
William Thurston – R Atty  
Dwayne Roadcap – C  
Charles Madison - W

8. Stephen S. Utley  
t/a Mechanicsville Disposal Service  
File Number 2003-02656 (Disc)

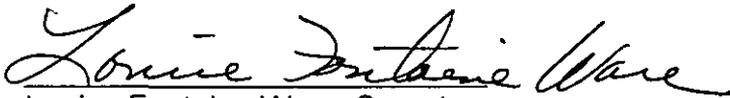
Utley – R  
William Thurston – R Atty  
Dwayne Roadcap – C  
Charles Madison - W

The meeting adjourned at 3:00 p.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Louise Fontaine Ware, Secretary

COPY TESTE:

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Custodian of Records

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

**RE: R & R CONSTRUCTION & DEVELOPMENT, INC.  
LICENSE NUMBER: 2705 069074**

**FILE NUMBER: 2004-00641**

### **Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on May 18, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Richard Martin of R & R Construction & Development, Inc., on March 31, 2004. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Mark D. Kinser, presiding Board Member. No one on behalf of R & R Construction & Development, Inc. appeared at the IFF.

### **Background**

On August 1, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Willie Gray, Jr. and Sharon Gray (the Grays) regarding work performed by R & R Construction & Development Inc. (R & R).

On April 3, 2002, the Grays entered into a contract with R & R Construction, in the amount of \$45,850.00, to install a new privacy fence, remove one interior kitchen wall, extend the living room, install a new dividing wall, extend the kitchen area, install new formica countertop, install stainless steel sink, install new lower cabinets and upper cabinets, install vinyl floor cover, build and install room addition, convert existing tub/shower to handicapped accessible, tile shower area, install new toilet, install sink and cabinet, install ceramic tile floor, and repair damaged hall ceiling area at 1543 Wool Avenue, Portsmouth, Virginia. The contract indicated "VA Lic. #27051244."

In June 2002, the Grays paid Julian Ziglar, a sales representative for R & R, \$10,000.00 by check. On June 20, 2002, Gray paid R & R \$20,567.00 by check.

On December 12, 2002, R & R Construction obtained building permit BLD2002-01646 for the work to be performed at the subject property.

In December 2002, R & R commenced work.

On February 19, 2003, the Grays paid Richard Martin \$8,500.00 by check. On February 19, 2003, R & R gave the Grays a receipt for the \$8,500.00 cashiers check. The receipt indicated an outstanding balance of \$6,783.00. On June 9, 2003, the Grays paid Richard Martin \$3,500.00 by check. On July 7, 2003, the Grays paid Richard Martin \$2,100.00 by check.

On August 1, 2003, a review of the licensing records for the Board for Contractors revealed R & R was issued Class B Contractor's license number 2705069074 on June 12, 2002. The

records further revealed R. Martin as the Designated Employee, Qualified Individual and Responsible Management for license number 2705069074.

In a written response dated September 3, 2003, R & R admitted to entering into the contract with the Grays and performing work at the subject property.

On February 20, 2004, a review of the licensing records for the Board for Contractors revealed Richard O. Martin was issued Class B Contractor's license number 2705051244 on July 29, 1999. The records further revealed the license expired on July 31, 2003.

### **Summation of Facts**

1. R & R failed to operate in the name in which the license was issued.
2. The contract used by R & R in the transaction failed to contain: (a) when the work is to begin and the estimated completion date, (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 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.
3. R & R hired Vernon Avant (Avant) to perform work at the subject property. In March or April 2003, Avant installed and primed drywall in the interior of the room addition at the subject property. Avant also installed vinyl siding on the exterior of the room addition at the subject property. R & R has not paid Avant the \$6,000.00 for the work performed.
4. On February 9, 2004, a review of the licensing records for the Board for Contractors revealed Avant is not a licensed contractor.
5. R & R contracted an unlicensed subcontractor in the delivery of contracting services.
6. The contract specified "Install new privacy fence approximately 6' x 150' (stockade style)".
7. R & R installed approximately a 20' fence. R & R verbally agreed to build a rear/side porch in lieu of installing the remaining approximately 130' of the 6' stockade style fencing.
8. In a written response dated September 3, 2003, R & R stated that the rear porch was a verbal change order.
9. R & R failed to make use of written change order, signed by all parties, for a modification to the original contract.

10. On August 25, 2003, a final inspection was conducted and rejected for the following reasons:

- Install foundation vents;
- Install R-19 insulation under floor;
- Improper chimney flashing;
- Install side porch; and;
- Paint exterior.

11. On October 30, 2003, Lamar Brown (Brown), Building Official for City of Portsmouth, advised Investigator Valerie Matney, the Board's agent, that the final inspection at the subject property was rejected for the following building code violations:

- CABO 1995, Section 409.1 (ventilation);
- CABO 1995, Section 703.B flashing (chimney); and
- for the not completing the side porch.

12. On February 24, 2004, Larry Dennis (Dennis), Building Inspector for City of Portsmouth, confirmed that the lack of the side porch was a violation of CABO 1996, Sections 312, 314, and 315.

13. In a written response dated September 3, 2002, R & R stated "I will no longer do any work for these people as they have told me they have no money."

14. R & R failed to return to complete the following items:

- Back porch has not been built;
- Bathroom door is not installed properly;
- Prime and paint exposed wood in exterior soffit area of room addition;
- Install an electrical cover over outlet in bathroom;
- Repair ceiling drywall joint, dents in drywall and sparking outlet in first bedroom;
- Repair dents in ceiling drywall in second bedroom;
- Repair broken siding on front of house;
- Cover vent hole in living room ceiling; and
- Repair drywall hole cut in wall.

15. On October 30, 2003, R & R admitted the side/rear porch steps were not completed and that the electrical pole could not be removed until the side/rear porch steps were completed.

16. On October 30, 2003, R & R told the Board's agent that R & R would not return to the subject property because R & R was tired of dealing with the Grays. R & R also stated that the Grays owed R & R \$11,000.00 and that R & R would not finish the work if R & R was not going to be paid.

### **Conclusion and Recommendation**

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

R & R's failure to operate under the name in which the license is issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

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

R & R's failure to make use of a written contract which contains the minimum provisions specified in the Board's Regulations 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.

Count 3: 18 VAC 50-22-260(B)(29) (Effective September 1, 2001)

R & R's action of contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services is a violation of Board Regulation 18 VAC 50-22-260(B)(29). Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

R & R's failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, for modifications to an already existing contract is a violation of Board Regulation 18 VAC 50-22-260(B)(31). Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed.

Count 5: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

R & R's actions of performing work which contains building code violations 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 \$2,500.00 be imposed along with revocation of R & R's license.

Count 6: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

R & R's 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 \$2,500.00 be imposed along with revocation of R & R's license.

By: \_\_\_\_\_  
Mark Kinser  
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 069074 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

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

**BOARD FOR CONTRACTORS**

**RE: DUNBAR INDUSTRIES, INC.  
T/A COMMONWEALTH HGT & COOLING  
LICENSE NUMBER: 2705 059659**

**FILE NUMBER: 2003-01714**

### **Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on May 18, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Delton Dunbar of Dunbar Industries, t/a Commonwealth Hgt & Cooling, on April 8, 2004. The following individuals participated at the conference: Delton Dunbar, on behalf of Dunbar Industries, Inc., Respondent; Jennifer Kazzie, Staff Member; and Mark D. Kinser, presiding Board Member.

### **Background**

On December 16, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received information from M. Wayne Brown (Brown), Chief

Investigator of the Criminal Investigation Section, regarding Dunbar Industries Inc. (Dunbar), t/a Commonwealth Hgt & Cooling.

On September 26, 2002, Timothy Gibson (Gibson) entered into a written contract with Dunbar, in the amount of \$6,850.00, to remove and replace the oil furnace, install new ducts, filter, digital thermostat, refrigerant line set, and pad for condenser, and make electrical connection to the existing electrical panel at 4145 Rundel Lane, Virginia Beach, Virginia.

### **Summation of Facts**

1. On April 22, 1999, the Board for Contractors entered Final Opinion and Order No. 99-306 against Commonwealth Heating & Cooling, Inc.'s license. The Board imposed the sanction of revocation of Commonwealth Heating & Cooling, Inc.'s Class B license number 2705022421 and fines totaling \$3,000.00.
2. On December 16, 2002, a review of the licensing records of the Board for Contractors revealed Delton L. Dunbar (Dunbar), individual certificate number 2706020087, was the Responsible Management for license number 2705022421.
3. On January 15, 2003, a review of the licensing records of the Board for Contractors revealed Dunbar was issued Class B Contractor's license number 2705059659 on April 22, 2002. The records further revealed D. Dunbar, individual certificate number 2706020087, was the Designated Employee, Qualified Individual, and Responsible Management for license number 2705059659.
4. The contract used by Dunbar in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights of the parties, and (h) contractor's license number, expiration date, class of license, and classifications or specialty services.
5. On January 15, 2003, Investigator Shelby Smith-Hill, the Board's agent, made a written request to Dunbar at the address of record of 341 Cleveland Place, Unit 108, Virginia Beach, Virginia 23462, requesting a written response and supporting documents to the complaint file with the Board. The Board's agent requested a written response be received by January 29, 2003.
6. On February 4, 2003, the Board's agent received a written response from Dunbar by facsimile.
7. On February 28, 2003, the Board's agent made a second written request to Dunbar at the address of record of 341 Cleveland Place, Unit 108, Virginia Beach, Virginia 23462, requesting a written response and supporting documents to the complaint file with the Board. The Board's agent requested a written response be received by March 11, 2003.

8. Dunbar refused or failed to respond to the Board's agent and provide complete information during the investigation of a complaint filed with the Board.

9. During the IFF, Dunbar testified that he has made the appropriate corrections to the contract so that it now contains the minimum provisions specified in the Board's Regulations. However, upon review of the updated contract at the IFF, it was determined that the updated contract failed to contain the license expiration date and the class of license. Dunbar testified that he will make the appropriate changes.

10. During the IFF, Dunbar testified that he did respond to the Board's agent's January 15, 2003, request with a letter dated January 29, 2003, sent by facsimile. He further stated that he believed that this letter was sufficient to serve as a response to the February 28, 2003 request by the Board's agent.

### **Conclusion and Recommendation**

Count 1: Code of Virginia § 54.1-1110 (Dunbar's actions of acting as Designated Employee, Qualified Individual and Responsible Management for Commonwealth Hgt & Cooling after having acted as Responsible Management for Commonwealth Heating & Cooling, which had its license revoked by the Board.)

Based upon the record and the information revealed by the licensing records, Dunbar followed the proper licensing requirements, paid all outstanding fines and was granted a new license subsequent to the revocation license number 2705 022421. Therefore, I recommend that this count of the file be closed with a finding of no violation.

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

Dunbar's failure to make use of a written contract which contains the minimum provisions specified in the Board's Regulations is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Dunbar has made multiple changes in an effort to bring his contract into compliance. However, there appear to be outstanding issues regarding the provisions specified in the Board's Regulations. Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(13) (Effective January 1, 2003)

Dunbar'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). The letter of response from Dunbar dated January 29, 2003, failed to include the information the investigator was seeking in the letters dated January 15, 2003, and February 28, 2003. Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

By:

\_\_\_\_\_  
Mark Kinser  
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 059659 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

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

**BOARD FOR CONTRACTORS**

**RE: ROSE M. WIELAND  
T/A BEACHSIDE CONTRACTORS  
LICENSE NUMBER: 2705 066001**

**FILE NUMBER: 2003-02186**

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on May 18, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Rose M. Wieland, t/a Beachside Contractors, on March 29, 2004. The following individuals participated at the conference: Richard and Sally Lippert, Complainants; Jennifer Kazzie, Staff Member; and Mark D. Kinser, presiding Board Member. Neither Rose M. Wieland, nor anyone on behalf of Beachside Contractors, appeared at the IFF.

## **Background**

On February 12, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Richard and Sally Lippert (the Lipperts) regarding a contract entered into with Rose M. Wieland (Wieland), t/a Beachside Contractors.

On November 12, 2002, the Lipperts entered into a written contract with Wieland, in the amount of \$15,275.01, to remodel the master bathroom and guest bathroom and to install a new kitchen floor at 4461 Jeanne Street, Virginia Beach, Virginia.

On November 12, 2002, Wieland commenced work.

Between November 14, 2002 and December 19, 2002, the Lipperts paid Wieland a total of \$9,726.69 by five checks. The Lipperts purchased materials from Lowe's, Home Depot, and Sears at a total cost of \$6,959.32. The Lipperts also paid: Jonathan Scott, a subcontractor, \$350.00 at the direction of Wieland; \$500.00 for a dumpster; and Comet Plumbing \$7.51. The Lipperts paid a total of \$17,543.52 for materials and labor.

On March 3, 2004, a review of the licensing records of the Board for Contractors revealed Wieland was issued Class C Contractor's license number 2705066001 on November 2, 2001, with the roofing contracting (ROC), painting and wall covering contracting (PTC), commercial improvement contracting (CIC), and home improvement contracting (HIC) specialty services.

## **Summation of Facts**

1. The contract used by Wieland in the transaction failed to contain subsections: (f) disclosure of cancellation rights, (h) contractor's 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.
2. Wieland failed to obtain a Class B license in order to perform work in excess of the \$7,500 limit of a Class C license.
3. The contract specified Wieland "shall provide all of the materials, supplies, equipment, services, and labor necessary for the complete performance of the work at 4461 Jeanne St. Virginia Beach 23462."
4. On November 12, 2002, the Lipperts and Wieland verbally agreed that the Lipperts would pay for the materials used by Wieland in an effort to expedite the commencement of the job.

5. Wieland failed to use a written change order, signed by all parties, for modifications to the materials and cost of the original contract.

6. On November 24, 2002, the Lipperts entered into a verbal agreement with Wieland, in the amount of \$1,319.48, to install two new windows (one in the master bathroom and one in the guest bathroom), wiring for bath fans in the master bathroom and the guest bathroom, and a pocket door in the entrance of the master bathroom.

7. On November 24, 2002, Wieland presented a written change order to the Lipperts. The written change order was not signed by either the Lipperts or Wieland.

8. Wieland verbally agreed to perform the following changes and/or additions to the original contract:

<b>Change or Addition</b>	<b>Cost</b>
(2) 36 ½ x 38 1/8 windows	\$538.18
(2) 36 ½ x 38 1/8 removed and installed	\$145.00
(8) shut off valves installed, (2) sinks, (1) shower, and (1) tub	\$200.00
In new 2 x 4 x 8 framing around window in bathrooms	\$145.00
Installed (4) electrical lights	\$140.00
Moved (2) outlets already installed and replaced	\$50.00
Reframe back wall for stand up shower due to moisture rot and termite damage	\$185.00
Stabilize left wall for pocket door	\$165.00
Installed (2) air vents	\$120.00
Installed (2) dimmer switches after other switches were installed	\$70.00
Enclosed edging around tub with 2 x 4s	\$30.00
Installed strip lighting under (4) cabinets	\$100.00
Removed and replaced new marble molding	\$30.00
Installed closet 1'3" x 7' x 1'3"	\$265.00
Closet door	\$65.00
Cut shelves in linen closet and installed	\$35.00
Painted closet and door after was done with and stained all case molding and foot molding	\$185.00
<b>TOTAL</b>	<b>\$2,468.18</b>

9. On January 30, 2003, Wieland also performed the following additional work:

- Install marble slab on the threshold of the guest bathroom; and
- Install two rheostat dimmer switches, one in the guest bathroom and one in the master bathroom.

10. Wieland failed to use a written change order, signed by all parties, for modifications of materials, costs, and scope of the work to be performed.

11. On November 14, 2002, Wieland performed the following plumbing work in the master bathroom:

- a. Install new copper piping in the walls after Wieland removed approximately 4 feet of copper piping from the walls to accommodate the new location of the shower stall;
- b. Install new copper plumbing piping for a length of 1 foot in the walls to accommodate an extension of the existing plumbing line for the placement of a new vanity with faucets;
- c. Install new plumbing cut-off valve; and
- d. Install new shower head.

12. On November 24, 2002, Wieland performed the following plumbing work in the guest bathroom:

- Remove and install new water lines for sink and toilet; and
- Install new cut off valve.

13. Wieland performed plumbing work without the plumbing contractors (PLB) classification.

14. On November 24, 2002, Wieland performed the following electrical work in the master bathroom:

- Install new wiring for four new outlets and two switches;
- Install wiring for new lights; and
- Install wiring for bathroom exhaust fan.

15. On December 14, 2002, Wieland performed the following electrical work in the guest bathroom:

- Install new wiring for the ceiling light, vanity light, and exhaust fan; and
- Install two switches and two outlets.

16. Wieland performed electrical work without the electrical contractors (ELE) classification.

17. Wieland performed the following plumbing and electrical work in the master bathroom:

- e. Install new copper piping in the walls after Wieland removed approximately 4 feet of copper piping from the walls to accommodate the new location of the shower stall;
- f. Install new copper plumbing piping for a length of 1 foot in the walls to accommodate an extension of the existing plumbing line for the placement of a new vanity with faucets;
- g. Install new plumbing cut-off valve;
- h. Install new shower head;
- i. Install new wiring for four new outlets and two switches;
- j. Install wiring for new lights; and
- k. Install wiring for bathroom exhaust fan.

18. In November 2002 and December 2002, Wieland performed the following plumbing and electrical work in the guest bathroom:

- Remove and install new water lines for sink and toilet;

- Install new cut off valve;
- Install new wiring for the ceiling light, vanity light, and exhaust fan; and
- Install two switches and two outlets.

19. On July 28, 2003, John M. Coro, Plans Examiner with the City of Virginia Beach, advised Investigator Wayne J. Ozmore Jr., the Board's agent, that Wieland failed to obtain a permit for the installation of shower, water lines, and drains, in violation of Section 109.1 of the Virginia Uniform Statewide Building Code.

20. Wieland performed plumbing and electrical work, for which Wieland was not licensed, and without obtaining a required permit.

21. The contract specified Wieland "will commence work on or about 11/13/2002." The contract further specified Wieland "will use Builder's best efforts to complete the work by 12/12/2002."

22. Wieland continued to perform work until February 7, 2003. Wieland failed to complete the work contracted for.

23. Wieland failed to use a written change order, signed by all parties, for a modification to the estimated completion date.

24. On December 4, 2002, Wieland told R. Lippert that the replacement windows in the master bathroom and guest bathroom were not installed correctly. Wieland told R. Lippert "I'll take care of it."

25. On February 7, 2003, Wieland sealed and completed installation of the tile floor in the kitchen/great room. Wieland installed approximately ¼ of the baseboard and shoe molding around the perimeter of the approximately 524 square feet kitchen/great room area.

26. As of February 7, 2003, Wieland failed to install a toilet, sink, vanity, light fixture over the sink, cabinets, countertop, medicine cabinet, and glass shower door in the master bathroom, install brass accessories (including towel bars, towel rings, and towel hooks) in the guest bathroom, and reinstall the remaining baseboard and shoe molding around the perimeter of the kitchen/great room.

27. On February 10, 2003, the Lipperts notified Wieland that the Lipperts were terminating the contract for failing to complete the work.

28. Wieland failed to correct the replacement windows as promised.

29. R. Lippert hired Lenny Pistritto (Pistritto) to repair the leaking windows. On April 24, 2003, R. Lippert paid Pistritto \$285.00 by check.

30. On February 10, 2003, the Lipperts terminated the contract and requested that Wieland reimburse the Lipperts' money paid for work not performed or performed in part.

## **Conclusion and Recommendation**

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

Wieland's failure to make use of a written contract which contains the minimum provisions specified in the Board's Regulations 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.*

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

Wieland'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 \$1,500.00 be imposed.*

Count 3:     18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

Wieland's failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, for modifications to the materials and cost of an already existing contract is a violation of Board Regulation 18 VAC 50-22-260(B)(31). *Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed.*

Count 4:     18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

Wieland's failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, for modifications to the materials, costs and scope of the work to be performed is a violation of Board Regulation 18 VAC 50-22-260(B)(31). *Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed.*

Count 5:     18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Wieland's action of performing plumbing work without the plumbing contractors (PLB) classification is a violation of Board Regulation 18 VAC 50-22-260(B)(27). *Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed.*

Count 6:     18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Wieland's action of performing electrical work without the electrical contractors (ELE) classification is a violation of Board Regulation 18 VAC 50-22-260(B)(27). *Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed.*

Count 7:     18 VAC 50-22-260(B)(5) (Effective September 1, 2001)

Wieland's action of performing plumbing and electrical work without obtaining the required permit constitutes negligence and/or incompetence in the practice of contracting

and is a violation of Board Regulation 18 VAC 50-22-260(B)(5). Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed along with revocation of Wieland's license.

Count 8: 18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

Wieland's failure to obtain a written change order, which is signed by both the consumer and the licensee or his agent, for modifications to the estimated completion date included in the existing contract is a violation of Board Regulation 18 VAC 50-22-260(B)(31). Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 9: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Wieland's failure to complete the 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 \$2,500.00 be imposed along with revocation of Wieland's license.

Count 10: 18 VAC 50-22-260(B)(16) (Effective September ,1 2001)

Wieland's failure to return funds paid, for which work is either not performed or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend that a monetary penalty of \$2,500.00 be imposed along with revocation of Wieland's license.

By:

\_\_\_\_\_  
Mark Kinser  
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 066001 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

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

**RE: MICHAEL P. DONOHUE  
T/A DONOHUE PAVING  
LICENSE NUMBER: 2705-068422**

**FILE NUMBER: 2003-03457**

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on May 18, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Michael P. Donohue, t/a Donohue Paving, on April 8, 2004. The following individuals participated at the conference: Leslie Scalzott, Complainant; Jennifer Kazzie, Staff Member; and Mark D. Kinser, presiding Board Member. Neither Donohue, nor anyone on behalf of Donohue Paving, appeared at the IFF.

**Background**

On June 16, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Leslie Scalzott (Scalzott) regarding work performed by Michael P. Donohue (Donohue), t/a Donohue Paving.

*On September 5, 2002, Donohue solicited door-to-door in Scalzott's neighborhood for paving work.*

On September 5, 2002, Scalzott entered into a written contract with P. Donohue Asphalt Paving & Maintenance, in the amount of \$6,400.00, to prep, tack, overlay, and seal a driveway at 8010 Wolf Run Shoals Road, Clifton, Virginia 20124.

On September 5, 2002, Donohue performed and completed the driveway at the subject property. A day after Donohue performed the work. Scalzott noticed several small holes and several spots where the asphalt was not well packed or rolled well. In addition, during the IFF, Scalzott testified that Donohue paved over the intake and outtake drains.

On October 30, 2002, Scalzott filed a complaint with the Fairfax County Department of Telecommunications and Consumer Services (Fairfax Consumer Services). During the investigation of case number 288997, the Fairfax Consumer Services tracked P. Donohue Asphalt to Donohue, who acknowledged Scalzott's problems with the paved driveway.

On June 17, 2003, a review of the licensing records of the Board for Contractors revealed Donohue was issued Class C Contractor's license number 270568422 on April 4, 2002.

### **Summation of Facts**

1. Donohue failed to operate in the name in which the license was issued.
2. The contract used by Donohue in the transaction failed to contain subsections: (a) the estimated completion date, (c) a listing of specified materials and work to be performed, which is specifically requested by the consumer, (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of the cancellation rights of the parties, (g) for contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors, and (h) contractor's license expiration date, classifications or specialty services.
3. The contract specified "Guarantee shall be limited to replacement of material and application of the same, for a period of 2 years from completion."
4. Donohue agreed to pay Scalzott \$1,500.00 towards the repair of the driveway. Donohue failed to repair the driveway or refund Scalzott money for the repairs as promised.
5. Scalzott had the repairs completed at a cost of \$2,400.00.
6. On July 9, 2003, Investigator Morgan T. Moore, the Board's Agent, made a written request to Donohue at the address of record of 20723 Asseque Falls Terrace #201, Potomac Falls, Virginia 20165, requesting a written response and supporting documents to the complaint file with the Board. The Board's Agent requested the documents be received by August 1, 2003.
7. Donohue refused or failed to respond to the Board's Agent's request.

### Conclusion and Recommendation

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

Donohue'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 \$500.00 be imposed.

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

Donohue's failure to make use of a written contract which contains the minimum provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-250(B)(9). Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 3: 18 VAC 50-22-250(B)(30) (Effective January 1, 2003)

Donohue's failure to honor the terms and conditions of the warranty by failing to repair the driveway or refund Scalzott money for the repairs as promised in violation of Board Regulation 18 VAC 50-22-260(B)(30). Therefore, I recommend that a monetary penalty of \$2,500.00 be imposed along with revocation of Donahue's license.

Count 4: 18 VAC 50-22-260(B)(13) (Effective January 1, 2003)

Donohue'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 \$1,500.00 be imposed.

By:

\_\_\_\_\_  
Mark D. Kinser  
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 068422 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

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

**RE: STEPHEN S. UTLEY, SR.  
T/A MECHANICSVILLE DISPOSAL SERVICE  
LICENSE NUMBER 2705 036424**

**FILE NUMBER: 2003-00304**

### **Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on January 27, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Stephen S. Utley, Sr., t/a Mechanicsville Disposal Service (Utley) on October 21, 2003. The following individuals participated at the conference: Steven S. Utley, Sr., Respondent; William L. Thurston, Esquire, Attorney for Respondent; Dwayne Roadcap, Complainant; Larry W. Madison, Owner of Mechanicsville Disposal Service; Charles Madison, Witness; Jennifer Kazzie, Staff Member; and Mark D. Kinser, Presiding Board Member.

By letter dated April 21, 2004, Utley c/o William Thurston was notified that the IFF conference would re-convene on May 18, 2004. The following individuals participated in the conference: Steven S. Utley, Sr., Respondent; William L. Thurston, Esquire, Attorney

for Respondent; Dwayne Roadcap, Complainant; Charles Madison, Witness; Jennifer Kazzie, Staff Member; and Mark D. Kinser, Presiding Board Member.

### **Background**

On July 23, 2002, Dwayne Roadcap (Roadcap), Project Manager for the Virginia Department of Health filed a written complaint with the Enforcement Division of the Department of Professional and Occupational Regulation regarding Stephen S. Utley Sr. (Utley), t/a Mechanicsville Disposal Service.

On July 26, 1999, sewage disposal system construction permit number 99-143-0204 was issued for the construction of a Type I sewage disposal system at White Oak Ridge subdivision, Section B, Lot 26, Henrico County, Virginia. On September 7, 1999, sewage disposal system permit number 99-143-0204 was revised. The permit specified "8 lines, 50' long, 18" deep, 3 ft. wide, 9 ft. centers, on contour, public water."

On November 23, 1999, Utley installed a sewage system at the subject property. On November 23, 1999, Utley signed a completion statement for permit number 99-143-0204, certifying the installation was in accordance with the construction permit and was in compliance with the Sewage Handling and Disposal Regulations.

On November 23, 1999, Eric Smither, Sanitarian for the Department of Health, inspected and approved the sewage system installed by Utley at the subject property.

### **Summation of Facts**

1. In a Notice of Violation dated July 23, 2002, Roadcap stated "Because you installed the sewage system with 12 to 13 inches gravel, it appears that these three percolation trenches were installed 30 inches (17 inches + 12-13 inches) to 36 inches (23 inches + 12-13 inches) below the ground's surface." Roadcap further stated "[P]rima facie evidence exists that you installed the system deeper than permitted."
2. Utley misrepresented that the installation was in accordance with the construction permit and was in compliance with the Sewage Handling and Disposal Regulations.
3. Brian and Edith Throckmorton (the Throckmortons) contacted the Department of Health because the sewage system installed by Utley failed within three years of its construction date.
4. On July 16, 2002, Roadcap performed a site and soil evaluation of the subject property. Roadcap bored four soil profile holes above three percolation ditches and hit the top of the gravel envelope at 17 inches, 19 inches, and 23 inches. (Exh. C-3)
5. On July 23, 2002, Roadcap issued a Notice of Violation to Utley for not constructing a sewage system at the subject property in accordance with the 1989 Sewage Handling and Disposal Regulations or permit. Roadcap made the following observations:

Because you installed the sewage system with 12 to 13 inches gravel, it appears that these three percolation trenches were installed 30 inches (17 inches + 12-13 inches) to 36 inches (23 inches + 12-13 inches) below the ground's surface.

[P]rima facie evidence exists that you installed the system deeper than permitted.

My evaluation revealed that you installed the distribution box at the lowest elevation in the slope and placed the percolation trenches into the higher elevations. This cause the percolation trenches closer to the distribution box to be installed at a shallower depth than trenches placed further away from the distribution box. Thus, the percolation trenches were not installed at the same depth and were installed against the direction of slope.

6. Roadcap asked Utley to assist the owners in obtaining an approved sewage system for the subject property within 60 days.

7. As of March 19, 2003, Utley failed to take the corrective actions requested in the July 23, 2002, Notice of Violation.

### **Conclusion and Recommendation**

Count 1: 18 VAC 50-22-260(B)(17) (Effective September 1, 2001) (misrepresenting that the sewage system installation was in accordance with the construction permit and was in compliance with the Sewage Handling and Disposal Regulations)

Based upon the evidence presented by the Respondent and from Larry Madison and Associates, Inc., a Virginia certified soil scientist, which revealed that additional fill was placed on the septic field after the fact. Therefore, I recommend that Count 1 be closed with a finding of no violation.

Count 2: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001) (failure to take the corrective actions requested in the July 23, 2002, Notice of Violation)

As referenced in Count 1, the liability for correction action was not the responsibility of the regulant and therefore, I recommend that Count 2 be closed with a finding of no violation.

By:

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Mark D. Kinser  
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 036424 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

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

**RE: STEPHEN S. UTLEY, SR.  
T/A MECHANICSVILLE DISPOSAL SERVICE  
LICENSE NUMBER 2705 036424**

**FILE NUMBER: 2003-02656**

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on January 27, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Stephen S. Utley, Sr., t/a Mechanicsville Disposal Service (Utley) on October 31, 2003. The following individuals participated at the conference: Steven S. Utley, Sr., Respondent; William L. Thurston, Esquire, Attorney for Respondent; Dwayne Roadcap, Complainant; Larry W. Madison, Owner of Mechanicsville Disposal Service; Charles Madison, Witness; Jennifer Kazzie, Staff Member; and Mark D. Kinser, Presiding Board Member.

By letter dated April 21, 2004, Utley c/o William Thurston was notified that the IFF conference would reconvene on May 18, 2004. The following individuals participated in the conference: Steven S. Utley, Sr., Respondent; William L. Thurston, Esquire, Attorney for Respondent; Dwayne Roadcap, Complainant; Charles Madison, Witness; Jennifer Kazzie, Staff Member; and Mark D. Kinser, Presiding Board Member.

### **Background**

On March 28, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Dwayne Roadcap (Roadcap), Project Manager for the Virginia Department of Health, regarding Stephen S. Utley Sr. (Utley), t/a Mechanicsville Disposal Service.

On August 30, 1999, sewage disposal system construction permit number 99-143-0272 was issued for the construction of a Type I sewage disposal system at Huron Hills subdivision, Lot 11, Hurop Road, Henrico County, Virginia. The permit specified the absorption trenches would be 24" ground surface to trench bottom.

On January 18, 2000, Utley installed a sewage system at the subject property. On January 18, 2000, Utley signed a completion statement for permit number 99-143-0272, certifying the installation was in accordance with Part IV of the Sewage Handling and Disposal Regulations.

On January 18, 2000, a sanitarian for the Department of Health inspected and approved the sewage system installed by Utley at the subject property. The sanitarian noted the percolation lines were "a little deeper than design."

### **Summation of Facts**

1. In a certified letter dated July 23, 2002, F. Lewis Walker (Walker), Environmental Health Supervisor for the Henrico County Health Department, stated "The system was installed deeper than 24 inches as per the permit design." Walker further stated "[I]t appears that the installation depth exceeds 30 inches in most areas of the system."
2. Utley misrepresented that the installation was in accordance with the construction permit and was in compliance with the Sewage Handling and Disposal Regulations.
3. Nancy Barr (Barr) contacted the Department of Health because the sewage system installed by Utley failed within three years of its construction date.
4. On April 17, 2002, Roadcap performed a site and soil evaluation of the subject property.
5. On March 27, 2003, Roadcap issued a Notice of Violation to Utley for not constructing a sewage system at the subject property in accordance with the 1989 Sewage

Handling and Disposal Regulations or permit. Roadcap stated "My evaluation revealed that you installed the system about 40 inches below the ground surface."

### **Conclusion and Recommendation**

Count 1: 18 VAC 50-22-260(B)(17) (Effective September 1, 2001) (misrepresenting that the sewage system installation was in accordance with the construction permit and was in compliance with the Sewage Handling and Disposal Regulations)

The Respondent installed the septic system per the Health Department permit. The installation was inspected and approved by the Health Department. Therefore, I recommend that Count 1 be closed with a finding of no violation.

Count 2: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001) (for not constructing a sewage system at the subject property in accordance with the 1989 Sewage Handling and Disposal Regulations or permit which resulted in a Notice of Violation being issued to Utley

The Respondent installed the septic system per the Health Department permit. The installation was inspected and approved by the Health Department. Therefore, I recommend that Count 2 be closed with a finding of no violation.

By:

\_\_\_\_\_  
Mark D. Kinser  
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 036424 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTEREST ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government**

1. Name: Mark D. Kinser
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on May 18, 2004
5. Nature of Personal Interest Affected by Transaction: \_\_\_\_\_

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:

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 5/18/04