

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
May 13, 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.

Ruth Ann Wall, Presiding Officer, presided. No Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

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

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

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

Participants

- | | |
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| 1. David Luther Henshaw Jr.
File Number 2003-03243 (Disc) | Horace Jarratt - C
Pamela Jarratt – C |
| 2. John P. Girardi
t/a John P. Girardi Builder
File Number 2003-02053 (Disc) | John Girardi – R
Archibald Wallace – R’s Atty.
April Niamtu – C
Sadiq Gill – C’s Atty |
| 3. O’Donnell Construction of Virginia Inc.
File Number 2003-02471 (Disc) | Terry O’Donnell – R
Debbie McFee – C |
| 4. O’Donnell Construction of Virginia Inc.
File Number 2004-01930 (Disc) | Terry O’Donnell – R |
| 5. Joseph & Joan Ilvento and
Government Acquired Properties Inc.
t/a Certified Professional Roofing Company
File Number 2003-01535 (RF) | Joseph Ilvento – C
Joan Ilvento – C |

1:00 p.m. to 3:00 p.m. Docket

6. Howard Coxe
File Number 2004-00547 (Disc)

Howard Coxe – R
Suzanne Coxe – W
Jerry Harman – W

7. RESCOM Inc.
File Number 2004-00434 (Disc)

Gregory Hermans – R

8. RESCOM Inc.
File Number 2004-02474 (Disc)

Gregory Hermans – R

9. Elizabeth Owens and
Garrett Moore Sr.
t/a Moore's General Contractor
File Number 2004-02685 (RF)

Owens – C
Bruce Robinson – C Atty
Moore -- R

DRAFT

The meeting adjourned at 2:35 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

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

**RE: DAVID L. HENSHAW, JR.
LICENSE NUMBER: 2705 042503
FILE NUMBER: 2003-03243**

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to David L. Henshaw, Jr., on March 19, 2004. The following individuals participated at the conference: Horace and Pamela Jarratt, Complainants; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Henshaw, nor anyone on his behalf, appeared at the IFF.

Background

On May 23, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Horace and Pamela Jarratt (the Jarratts) regarding work performed by David Henshaw Jr. (Henshaw).

On October 2, 2001, the Jarratts entered into a contract with David Henshaw Construction Co., in the amount of \$128,900.00, to construct a new home at 21521 Runaround Lane, Sutherland, Virginia.

On January 16, 2001, David Henshaw obtained the building permit for the subject property. On May 10, 2002, a Certificate of Occupancy was issued for the subject property.

On January 20, 2004, a review of the licensing records of the Board for Contractors revealed Henshaw was issued Class A Contractor's license number 2705042503 on December 15, 1997. The records further revealed Henshaw's address of record was 3350 Juanita Lane, Church Road, Virginia and was changed from 4008 Pack Flash Lane, Sutherland, Virginia, effective December 22, 2003.

Summation of Facts

1. Henshaw failed to operate in the name in which the license was issued.
2. The contract used by Henshaw in the transaction failed to contain subsections: (a) when the work is to begin, (c) a listing of specified materials and work to be performed, (d) a "plain-language" exculpatory clause, (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, (h) contractor's name, address, license number, expiration date, class of license, and classifications or specialty services, and (i) a 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. The Selection Sheet specified the bathroom color, which included toilets, tubs, and sinks, would be almond color. Henshaw installed a white sink and a white toilet instead of almond in the half bathroom downstairs.
4. Henshaw failed to use a written change order, signed by all parties, for a modification to the original contract.
5. On September 8, 2003, Dwayne Abernathy (Abernathy), Building Official for Dinwiddie County, performed an inspection of the subject property. During the inspection, Abernathy discovered that the inside step risers were not built to code, in violation of the 1995 Edition of the CABO Section 314.2, and that improper nails were used for the nailing of the back deck.
6. On May 24, 2002, the Jarratts closed on the home. Prior to closing, Henshaw signed a walk through addendum of items to be addressed by Henshaw.

7. On May 15, 2003, Henshaw told Horace Jarratt that Henshaw was not willing to make any repairs.
8. On May 15, 2003, the Jarratts sent Henshaw, via certified mail, the following list of items to be repaired:
 - a. Bathroom window will not operate properly;
 - b. Bedroom window lock does not work;
 - c. Back deck is falling apart, very shaky;
 - d. Missing shoe moulding in down stairs bathroom;
 - e. Siding on house is coming off;
 - f. Kitchen cabinets need repair;
 - g. Floor in kitchen and floor in upstairs bathroom has humps in it;
 - h. Bedroom ceiling needs repair; and
 - i. Ceiling in family room needs repair.
9. The Jarratts requested Henshaw contact the Jarratts regarding the repairs. The certified letter was refused and returned to the Jarratts by the United States Postal Service.
10. Henshaw failed to honor the terms and conditions of the warranty.
11. During the IFF, Horace Jarratt testified that he has completed many of the repairs himself but did not have information with him to assess how much it cost.
12. On June 24, 2003, the Board's agent sent a written request to Henshaw's address of record of 4008 Jack Flash Lane, Sutherland, Virginia, for a written response and supporting documentation to the complaint filed with the Board. The Board's agent requested a response be received by July 24, 2003.
13. On November 3, 2003, the Board's agent sent a second written request, via certified mail, to Henshaw's address of record of 4008 Jack Flash Lane, Sutherland, Virginia, for a written response and supporting documentation to the complaint file with the Board. The Board's agent requested a response be received by November 15, 2003.
14. On November 18, 2003, the certified letter was returned by the United States Postal Service and was marked "Attempted Not Known."
15. On January 21, 2004, Henshaw told the Board's agent that he would send a written response to the complaint and a copy of the agreement with the Jarratts stating they were satisfied with the job.
16. Between January 21, 2004 and February 5, 2004, the Board's agent left messages for Henshaw.
17. Henshaw provided incomplete information to an investigator.

Conclusion and Recommendation

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

Henshaw's failure to operate in 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 \$200.00 be imposed.

DRAFT

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

Henshaw'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 \$200.00 be imposed.

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

Henshaw's failure to obtain written change orders, 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 \$200.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(6) (Effective January 1, 2003)

Henshaw's action of performing work which contains deficiencies as outlined in the inspection report by Dwayne Abernathy, Building Official for Dinwiddie County, 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 \$200.00 and license revocation be imposed.

Count 5: 18 VAC 50-22-260(B)(30) (Effective January 1, 2003)

Henshaw's failure to honor the terms and conditions of the warranty is a violation of Board Regulation 18 VAC 50-22-260(B)(30). Therefore, I recommend that a monetary penalty of \$200.00 and license revocation be imposed.

Count 6: 18 VAC 50-22-260(B)(13) (Effective January 1, 2003)

Henshaw's action of providing incomplete information 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 \$200.00 be imposed.

By:

Ruth Ann Wall
Presiding Officer
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 042503 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

**RE: JOHN P. GIRARDI
T/A JOHN P. GIRARDI BUILDER
LICENSE NUMBER: 2705 042086**

FILE NUMBER: 2003-02053

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to John P. Girardi, t/a John P. Girardi Builder, on March 22, 2004. The following individuals participated at the conference: John P. Girardi, Respondent; Archibald Wallace, III, Esquire, Attorney for Respondent; April Niamtu, Complainant; Sadiq Gill, Esquire, Attorney for Complainant; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

Background

On January 30, 2003, the Enforcement Division of the Virginia Department of Professional and Occupational Regulation received a written complaint from Dr. Joe and April Niamtu (the Niamtus) regarding a contract entered into with John P. Girardi (Girardi), t/a John P. Girardi Builder.

On June 7, 2002, the Niamtus entered into a contract with Girardi, in the amount of \$121,800.00, to construct an addition at 10230 Cherokee Road, Richmond, Virginia 23235.

On July 18, 2002, the Niamtus entered into a second contract with Girardi, in the amount of \$16,700.00, for a 12 x 20 addition to be added to the addition currently under construction at the subject property.

On June 26, 2002, Girardi commenced work. On July 30, 2002, Girardi completed the foundation. On September 18, 2002, Girardi completed the framing. On October 10, 2002, Girardi completed plumbing, heating, and electrical rough-in.

On October 10, 2002, the Niamtus verbally agreed with Girardi to construct a tool shed in the amount of \$2,870.00. On October 10, 2002, Girardi submitted an Addendum to Contract, in the amount of \$2,870.00, to construct a tool house to the new addition under construction. The Addendum was signed by Girardi but not the Niamtus.

Girardi built the tool shed. On November 13, 2002, Girardi completed the exterior finish.

On December 11, 2002, the Niamtus terminated the contract with Girardi.

On January 30, 2003, a review of the licensing records of the Board for Contractors revealed Girardi was issued Class A Contractor's license number 2705042086 on November 17, 1997.

Summation of Facts

1. The contracts used by Girardi in the transaction failed to contain subsections: (a) when the work is to begin and estimated completion date, (d) a "plain language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance, (e) a statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning, (f) disclosure of the cancellation rights of the parties, (h) contractor's license number, expiration date, class of license and classification 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. The contract specified "install 3' wide pocket doors in two walk in closets, the laundry room, and two bathroom entrances instead of the hinged doors as shown on the plans."

3. The Niamtus requested the window on the south side of the new wing be reduced in width to the next smaller width and two windows on the western side of the new wing be relocated to the northwest corner (one on the western side and one on the northern side) as close to the corner as possible. The Niamtus also requested Girardi build a corner window seat with hinged storage.

4. On September 16, 2002, Girardi sent the Niamtus a letter to confirm changes in the windows. Girardi also advised the Niamtus that the changes would require changes to the structural framing and would cost an additional \$950.00.

5. On October 16, 2002, Girardi sent the Niamtus a letter regarding a quote for the tool shed and credits. Girardi stated the Niamtus could receive a credit if they hired their own painter and for ceramic tile labor for vanity tops.

6. On October 24, 2002, Girardi sent the Niamtus a letter regarding a quote to add a rectangular box design and an accent strip on the addition. Girardi advised the Niamtus this additional work would cost \$580.00.

7. On November 17, 2002, the Niamtus noticed that six of the eight door jams installed by Girardi were 32 inches wide instead of 36 inches wide. Girardi told the Niamtus that he made an executive decision to change the door jams to 32 inches.

8. According to Answers to Plaintiff's First Set of Interrogatories and Request for Production of Documents, Girardi identified the following work as extra work:

- Abandoned swimming pool repairs
- Additional excavation around addition
- Changed window size and location
- Added sensor, switch and CFI
- Installed electrical sub-panel
- Laundry sink and extra hose faucet
- Niche for bookcase in study and storage compartment in the new hall
- Change thermostat location after drywall installed, and removed HVAC supply duct off attic floor and strap to rafters
- Install six panel door with special milled alder trim
- Install different type of hand held shower
- Repair four leaking faucets in existing house
- Installed accent strips and a rectangular design for a large blank exterior wall
- Repair work to existing EIFS on driveway entrance columns and two locations on garage door entrance columns
- Framing changes and delays caused by changes in ceramic tile design
- Additional painting
- Relocation of air conditioning condenser for new tool house.

The cost of this additional work totaled \$9,937.62.

9. On September 5, 2003, Girardi told Investigator E. Nathan Matthews, the Board's agent, that the Niamtus owe Girardi approximately \$25,752.62, which includes the \$9,937.62 for extras. Girardi also told the Board's agent that he did not utilize written change orders, signed by both parties, for the extras.
10. Girardi failed to obtain written change orders signed by the Niamtus for modifications to the cost and scope of the work to be performed. Girardi also failed to obtain the Niamtus' signatures for the Addendum to Contract for the construction of the tool house.
11. On May 15, 2003, Mike Green (Green), Senior Building Inspector for the City of Richmond, inspected the subject property. Green observed that bedroom #1 of the new addition was larger than the plans and that a tool shed not included in the plans was attached to the addition.
12. On July 24, 2003, David W. Schanz (Schanz), Building Inspector for the City of Richmond, advised the Board's agent that the inspection by Green determined that the second addition and tool shed were not covered by the original building permit. On November 6, 2003, Schanz advised the Board's agent that the original permit should have been revised to include the second addition and tool shed, as required by Section 109.1 of the Uniform Statewide Building Code.
13. On November 13, 2003, Girardi advised the Board's agent that he told the Niamtus to submit revised plans to the City of Richmond.
14. Girardi verbally subcontracted Jeff Tatum (Tatum) to perform plumbing and gas work at the subject property. Tatum showed Girardi a business card with the business name "Southern Ventures."
15. On September 17, 2002, the City of Richmond Bureau of Permits and Inspections issued plumbing permit number P02091720 and gas piping permit number P02091721 for plumbing and gas piping work being performed at the subject property. Tatum was listed on the permits as the contact person.
16. On July 9, 2002, a review of the licensing records of the Board for Contractors revealed Tatum was not a licensed contractor.

Conclusion and Recommendation

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

Girardi'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 \$100.00 be imposed.

Girardi stated during the IFF that he would provide a corrected copy of his contract within 10 days.

Count 2: 18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

Girardi's failure to obtain written change orders, 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 \$250.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Girardi's action of performing work which was not covered by the original building permit 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 \$250.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(29) (Effective September 1, 2001)

Girardi'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 \$250.00 be imposed.

By:

Ruth Ann Wall
Presiding Officer
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 042086 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

**RE: O'DONNELL CONSTRUCTION OF VIRGINIA, INC.
LICENSE NUMBER: 2701 038498**

FILE NUMBER: 2003-02471

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Terrence O'Donnell of O'Donnell Construction of Virginia, Inc., on March 25, 2004. The following individuals participated at the conference: Terry O'Donnell, on behalf of O'Donnell Construction of Virginia, Inc., Respondent; Debbie McFee, Complainant; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

Background

On March 14, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complainant from Debbie McFee (McFee) regarding a contract entered into with O'Donnell Construction of Virginia Inc. (O'Donnell).

On April 24, 2002, McFee received a written proposal from O'Donnell Construction Inc., in the amount of \$350.00, to repair a roof leak at 201 Park Road, Suffolk, Virginia. O'Donnell told McFee that she needed a new roof.

On May 10, 2002, McFee entered into a written contract with O'Donnell Construction Inc., in the amount of \$10,000.00, to perform roof and repair work at 201 Park Road, Suffolk, Virginia. The contract was submitted by Terry O'Donnell, President of O'Donnell Construction Inc. On May 10, 2002, McFee paid O'Donnell \$5,000.00 by check.

In a letter dated May 14, 2002, McFee requested O'Donnell "hold off on the kitchen floor & bathroom work per contract dated 5-9-02. Continue roof repair & tree trimming. Delete items 3, 4 at this time. Continue with items 1, 2, 5, 6, 7, 8. Total \$7,000.00." On or about May 21, 2002, O'Donnell verbally agreed to reduce the amount of the May 10, 2002, contract from \$10,000.00 to \$7,000.00 and to not install the kitchen floor and to not perform the bathroom work.

On May 31, 2002, McFee paid O'Donnell \$2,000.00 by check.

O'Donnell told McFee it would be better to replace the gutters than repair the gutters. On or about June 25, 2002, O'Donnell verbally promised McFee to replace the front gutters instead of soldering the leaks. In September 2002, someone returned to the subject property to take measurements for the gutters. In a response letter dated May 27, 2003, O'Donnell admitted to agreeing to replace the gutters in trade for secretarial work.

On October 16, 2003, a review of the licensing records for the Board for Contractors revealed O'Donnell Construction of Virginia Inc. was issued Class A Contractor's license number 2701038498 on April 22, 1991, with the building contractors (BLD) classification. The records further revealed Terrance O'Donnell as the Designated Employee, Qualified Individual, and Responsible Management for license number 2701038498.

Summation of Facts

1. O'Donnell failed to operate in the name in which the license was issued.
2. On January 5, 2004, O'Donnell obtained a new Class A license number 2705-081696 in the name of O'Donnell Construction II, Inc. O'Donnell testified that he intends to operate under this name only.
3. The contract used by O'Donnell failed to contain subsections: (a) when work is to begin and the estimated completion date, (d) a "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance, (e) a statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning, and (h) contractor's license number, expiration date, class of license, and classifications or specialty services
4. O'Donnell did not sign the May 10, 2002, contract. O'Donnell failed to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract.
5. The contract specified: "Clean gutters and solder 2 leaks."
6. O'Donnell failed to use a written change order for a modification to the cost and scope of the work to be performed.
7. On February 18, 2003, McFee sent O'Donnell a certified letter requesting O'Donnell replace the gutters by February 28, 2003.
8. In a response letter dated May 27, 2003, O'Donnell stated that O'Donnell "would be happy to solder them at any time" and would "schedule the repair immediately."
9. O'Donnell failed to solder the gutters or install the front gutters as promised.

10. On October 20, 2003, Wayne Whitehurst (Whitehurst), Chief Building Official for the City of Suffolk, advised the Board's agent that O'Donnell failed to obtain a building permit prior to performing roof work at the subject property, in violation of Section 109.1 of the Virginia Uniform Statewide Building Code.

Conclusion and Recommendation

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

O'Donnell'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 \$50.00 be imposed.

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

O'Donnell'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 \$100.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(10) (Effective September 1, 2001)

O'Donnell's failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract for construction or contracting work is a violation of Board Regulation 18 VAC 50-22-260(B)(10). Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

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

O'Donnell's failure to make use of 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 \$100.00 be imposed.

Count 5: 18 VAC 50-22-260(B)(6) (Effective January 1, 2003)

O'Donnell's failure to solder the gutters or install the front gutters as promised 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 \$100.00 be imposed.

Count 6: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001) (O'Donnell's failure to obtain a building permit prior to performing roof work at the subject property)

The provided information was unclear whether the scope of the work required a building permit. Therefore, I recommend that Count 6 be closed with a finding of no violation.

By:

Ruth Ann Wall
Presiding Officer
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2701 038498 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

BOARD FOR CONTRACTORS

RE: O'DONNELL CONSTRUCTION OF VIRGINIA, INC.
LICENSE NUMBER: 2701 038498

FILE NUMBER: 2004-01930

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Terrance O'Donnell of O'Donnell Construction of Virginia, Inc., on March 25, 2004. The following individuals participated at the conference: Terry O'Donnell, on behalf of O'Donnell Construction of Virginia, Inc., Respondent; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

Background

On October 31, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Sandra Craine-Gonzalez on behalf of William Long and Hazel Long (the Longs) regarding work performed by O'Donnell Construction of Virginia Inc. (O'Donnell).

On September 30, 2003, William Long (W. Long) entered into a contract with O'Donnell Construction Inc., in the amount of \$8,895.00 plus \$150.00 for permit, to install a new roof over an existing roof, replace pipe collars, haul debris, clean up completely, run a magnet for nails, replace fence in rear and replace damaged gutters at 8044 Glade Road, Norfolk, Virginia. The contract also indicated the name O'Donnell Construction II Inc.

On September 30, 2003, the Longs paid Terry O'Donnell \$4,522.50 by check.

On November 17, 2003, a review of the licensing records for the Board for Contractors revealed O'Donnell was issued Class A Contractor's license number 2701038498 on April 22, 1991. The records further revealed T. O'Donnell as the Designated Employee, Qualified Individual, and Responsible Management for license number 2701038498.

On December 15, 2003, Terry O'Donnell told Investigator Valerie Matney, the Board's agent, that O'Donnell was defunct. Terry O'Donnell further told the Board's agent that he was now operating as O'Donnell Construction II, Inc. and that O'Donnell Construction Inc. was a trade name of the company.

Summation of Facts

1. On December 16, 2003, a search of the licensing records of the Board for Contractors records revealed O'Donnell Construction II, Inc. is not a licensed contractor.

2. On December 19, 2003, Terry O'Donnell told the Board's agent that he thought the license under O'Donnell would carry over to O'Donnell Construction II, Inc.
3. On February 17, 2004, the State Corporation Commission (SCC) records revealed O'Donnell became incorporated on October 4, 1989, and was terminated on February 28, 2001. The SCC records further revealed O'Donnell did not have any fictitious names registered.
4. On February 17, 2004, the SCC records revealed O'Donnell Construction II, Inc. became incorporated on February 11, 1999, and is still an active corporation. The SCC records further revealed O'Donnell Construction and O'Donnell Construction Inc. were fictitious names for O'Donnell Construction II, Inc.
5. O'Donnell failed to obtain a new license within thirty (30) days of a change of the business entity.
6. O'Donnell failed to operate in the name in which the license was issued.
7. On January 5, 2004, O'Donnell obtained a new Class A license number 2705-081696 in the name of O'Donnell Construction II, Inc. O'Donnell testified that he intends to operate under this name only.
8. The contract used by O'Donnell in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (d) a "plain-language" exculpatory clause, (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, (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.
9. On December 16, 2003, O'Donnell admitted that the contract used in this transaction did not contain subsections (a) and (d).

10. On November 17, 2003, the Board's agent made a written request to O'Donnell at the address of record of 3596 Landstown Road, Virginia Beach, Virginia 23456, requesting O'Donnell produce documents regarding the Long transaction. The Board's agent requested the documents be received by December 3, 2003.

11. On December 19, 2003, the Board's agent verbally requested, at a scheduled appointment at the business address of 3596 Landstown Road, Virginia Beach, Virginia 23456, O'Donnell produce a copy of the Longs' contract. O'Donnell was unable to produce the requested document because O'Donnell thought the contract was given to O'Donnell's attorney.

12. O'Donnell failed to maintain all documents relating to a contract for a period of 5 years.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-210(3) (Effective January 1, 2003)

O'Donnell's failure to obtain a new license within thirty days of a change of the business entity is a violation of Board Regulation 18 VAC 50-22-210(3). Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

Count 2: 18 VAC 50-22-230(A) (Effective January 1, 2003)

O'Donnell'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 \$50.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(9) (Effective January 1, 2003)

O'Donnell'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 \$100.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(11) (Effective January 1, 2003)

O'Donnell's failure to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to the contract is a violation of Board Regulation 18 VAC 50-22-260(B)(11). Therefore, I recommend that a monetary penalty of \$50.00 be imposed.

By:

Ruth Ann Wall
Presiding Officer
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2701 038498 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 JOSEPH & JOAN A. ILVENTO (CLAIMANTS) AND GOVERNMENT AQUIRED PROPERTIES, INC., T/A CERTIFIED PROFESSIONAL ROOFING COMPANY (REGULANT)

LICENSE NUMBER: 2705 065709

FILE NUMBER: 2003-01535

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Joseph and Joan Ilvento and to J. Morris of Government Acquired Properties, Inc., t/a Certified Professional Roofing Company, on February 27, 2004. The following individuals participated at the conference: Joseph and Joan Ilvento, Claimants; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer. No one on behalf of Government Acquired Properties, Inc., t/a Certified Professional Roofing Company (Regulant) appeared at the IFF.

Background

On **May 17, 2002**, in the City of Virginia Beach General District Court, Joseph and Joan A. Ilvento obtained a **Judgment** against Government Acquired Properties, Inc., t/a Certified Professional Roofing, **in the amount of \$3,741.50, plus interest and \$42.00 costs plus additional legal costs.**

On **July 25, 2002**, in the United States Bankruptcy Court, Eastern District of Virginia, Norfolk Division, Government Acquired Properties, Inc., a/k/a Certified Professional Roofing, filed a Chapter 7 Petition.

The **claim** in the amount of **\$3,817.50** was received by the Department of Professional and Occupational Regulation on **October 8, 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 “willful cover-up of holes in supposedly completed roof, also false claim as to amount of wood utilized on roof and re-using repainted old roof vents and pipe collars which were supposed to be new and stress” as the basis of 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 contract does not have the company name or address on the proposal. The authorized signature on the proposal appears to be M. C. Becker.

M. Becker is the Qualified Individual for Government Aquired Properties, Inc., t/a Certified Professional Roofing Company, on the Board for Contractors licensing record. The Board issued Class C License Number 2705065709 to Government Aquired Properties, Inc., t/a Certified Professional Roofing Company, on **October 17, 2001**. The license was terminated on **June 19, 2002**. The claimant entered into a written proposal with M. Becker for the installation of a new roof at 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 **October 8, 2002**. Judgment was obtained on **May 17, 2002**. The regulant filed for bankruptcy on **July 25, 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 proposal with M. Becker for the installation of a new roof at 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.

The Warrant in Debt recites "willful cover-up of holes in supposedly completed roof, also false claim as to amount of wood utilized on roof and re-using repainted old roof vents and pipe collars which were supposed to be new and stress" as the basis of the suit.

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 and information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$3,817.50. The Judgment Order recites "willful cover-up of holes in supposedly completed roof, also false claim as to amount of wood utilized on roof and re-using repainted old roof vents and pipe collars which were supposed to be new", which falls within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: _____

Ruth Ann Wall
Presiding Officer
Board for Contractors

Date: _____

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

BOARD FOR CONTRACTORS

**RE: HOWARD COXE
LICENSE NUMBER: 2705 009749**

FILE NUMBER: 2004-00574

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Howard Coxe, on March 17, 2004. The following individuals participated at the conference: Howard Coxe, Respondent; Suzanne Coxe, Witness; Jerry Harman, Witness; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, presiding Officer.

Background

On July 28, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Frank Irelan (Irelan) regarding work performed by Howard Coxe (Coxe).

On December 13, 2002, Irelan entered into a contract with Coxe Hardwood Floors (a division of Coxe Woodfinishing Industries Inc.), in the amount of \$8,435.00, to install hardwood floors at 4641 Deer Trail Drive, Salem, Virginia 24153.

On July 30, 2003, a review of the licensing records of the Board for Contractors revealed Coxe was issued Class B Contractor's license number 270509749 on May 5, 1992, as a sole proprietor.

In a written response dated August 20, 2003, Coxe represented himself as the President of Coxe Hardwood Floors.

On February 12, 2004, the State Corporation Commission (SCC) records revealed Coxe Wood Finishing Industries Inc. became incorporated on April 21, 1995. The SCC records revealed Coxe Hardwood Floors as a fictitious name of the corporation. The SCC records further revealed Coxe as the Registered Agent of the corporation.

Summation of Facts

1. Coxe failed to obtain a new license after a change in the business entity.
2. Coxe failed to operate in the name in which the license was issued.
3. The contract used by Coxe 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 and (h) contractor's license number, expiration date, class of license, and classifications or specialty services.
4. In mid December 2002, Coxe delivered the wood flooring to the subject property. In early January 2003, Coxe installed the flooring. On February 3, 2003, Coxe sanded the floors. On February 12, 2003, Coxe completed the final coat.
5. In the spring of 2003, Irelan noticed the hardwood floors began creaking, which resulted in the walls buckling.
6. On June 21, 2003, Irelan notified Coxe, via e-mail, of the problems. On June 23, 2003, the e-mail was received by Coxe.
7. On July 11, 2003, Coxe returned to the subject property to look at Irelan's complaint in regard to the installation of the 4" Hickory V-Groove flooring. In a letter dated July 15, 2003, Coxe noted that the following observations:
 - flooring was slightly buckled by the kitchen door due to moisture;
 - all of the other damaged area had been dried out; and
 - about three feet out along the outside walls the boards were loose from expansion/contraction.
8. At the request of Irelan, Jerry F. Harman (Harman), Master Installer, Certified by the International Certified Floorcovering Installers Association, inspected the floor installed by Coxe. In an inspection report dated October 22, 2003, Harman noted that the flooring was installed improperly. Harman further noted that the flooring was not nailed properly and should be installed with a $\frac{3}{4}$ " expansion space between the flooring and all walls, plates, posts, fireplaces, etc.
9. During the IFF, Suzanne Coxe testified that she and Coxe were not aware that they needed to notify the board of the name change of the entity. She also testified that the name has since been changed and that a new licence has been obtained. In addition, she stated that they have since corrected their contract to include the required provisions.
10. During the IFF, Suzanne Coxe stated that Irelan had requested that no shoe mold be installed and that the floor be installed with a $\frac{5}{8}$ " baseboard instead of the recommended $\frac{3}{4}$ " baseboard. Coxe testified that he visited the subject property July of 2003, several months after installation of the floor was complete, and observed that there were no gutters

or windows on the home and that the resulting water damage was the reason the floor buckled.

11. During the IFF, Harman testified that special molding should have been installed with the floor to allow the floor to expand and contract properly.

12. During the IFF, Suzanne Coxe provided an affidavit from James Wood, the installer of the floor at Irelan's property, which stated that Irelan told Coxe that he did not want shoe mold installed in the floor.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-210 (Effective January 1, 2003)

Coxe's failure to obtain a new license after a change in the business entity is a violation of Board Regulation 18 VAC 50-22-210. Therefore, I recommend that a monetary penalty of \$50.00 be imposed.

Count 2: 18 VAC 50-22-230(A) (Effective September 1, 2001)

Coxe'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 \$50.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Coxe'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 \$50.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(5) (Effective September 1, 2001) (Coxe's actions of performing work which contains deficiencies, as outlined in the inspection report by Jerry F. Harman)

Based on the testimony and the evidence provided at the IFF, it is apparent that the damage to the floor was the result of Irelan's request to not install shoe mold with the floor. Therefore, I recommend that this count of the file be closed with a finding of no violation.

By:

Ruth Ann Wall

Presiding Officer
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 _____ UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

**RE: RESCOM, INC.
LICENSE NUMBER: 2705 060744**

FILE NUMBER: 2004-00434

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Gregory Hermans of RESCOM, Inc., on March 19, 2004. The following individuals participated at the conference: Gregory Hermans, Respondent; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, presiding Officer.

Summation of Facts

1. On July 17, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Janine McCormack (McCormack) regarding a contract entered into with RESCOM Inc. (RESCOM).
2. On May 26, 2003, McCormack entered into a contract with RESCOM, in the amount of \$5,360.00, to remove old windows and install new windows at 2132 Haverford Drive, Chesapeake, Virginia.
3. The contract used by RESCOM failed to contain subsections: (a) when the work is to begin and the estimated completion date, (d) a "plain-language" exculpatory clause, (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, (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.
4. During the IFF, Hermans testified that that he now includes an addendum containing the required provisions with all of his contracts.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective January 1, 2003)

RESCOM'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 \$50.00 be imposed. In addition, I recommend that a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Ruth Ann Wall
Presiding Officer
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 060744 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

**RE: RESCOM, INC.
LICENSE NUMBER: 2705 060744
FILE NUMBER: 2004-02474**

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Gregory Hermans of RESCOM, Inc., on March 22, 2004. The following individuals participated at the conference: Gregory Hermans, Respondent; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, presiding Officer.

Summation of Facts

1. On December 19, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Queenie Snyder (Snyder) regarding contracts entered into with RESCOM Inc. (RESCOM).
2. On June 18, 2003, Snyder entered into written contract with RESCOM, in the amounts of \$3,980.00, to remove and install vinyl siding at 5752 Cheyenne Circle, Virginia Beach, Virginia.

3. On June 20, 2003, Snyder entered into second written contract with RESCOM, in the amounts of \$5,677.00, to remove and install vinyl siding at 5752 Cheyenne Circle, Virginia Beach, Virginia.
4. On July 30, 2003, Snyder entered into addendum to the contract with RESCOM, in the amounts of \$845.00, for additional trim work at 5752 Cheyenne Circle, Virginia Beach, Virginia.
5. The contracts used by RESCOM in the transaction failed to contain subsections: (a) when work is to begin and the estimated completion date, (d) a "plain-language" exculpatory clause, (e) a statement of assurance that the contractor will comply with all local requirements for building permits, inspection, and zoning, (h) contractor's license expiration date, classification 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.
6. During the IFF, Hermans testified that that he now includes an addendum containing the required provisions with all of his contracts.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective January 1, 2003)

RESCOM'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 \$50.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Ruth Ann Wall
Presiding Officer
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 060744 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 Elizabeth Owens (Claimant) and Garrett Moore, Sr., t/a Moore S
General Contractor (Regulant)**

LICENSE NUMBER: 2705 004331

FILE NUMBER: 2004-02685

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Elizabeth Owens and to Garrett Moore, Sr., t/a Moore's General Contractor on February 27, 2004. The following individuals participated at the conference: Garrett Moore, Sr., Regulant; Elizabeth Owens, Claimant; Bruce E. Robinson, Attorney for Claimant; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

Background

On December 19, 2002, in the Circuit Court of Brunswick County Court, Elizabeth Owens obtained a Judgment against Garrett Moore, Sr., in the amount of \$19,330.33, \$1,295.00 attorney fees and \$345.00 costs.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on March 27, 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 Order recites improper and dishonest conduct as the basis for the award.

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 B License Number 270504331 to Garrett Moore, Sr., t/a Moore S General Contractor, on August 30, 1991. The license is scheduled to expire on August 31, 2005. The claimant entered into a written contract with Moore's General Contractor and with Southside Planning District Commission on August 16, 2000 for the construction of a house.

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 receive pleadings and/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 19, 2002. The claim was received on March 27, 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 the Moore's General Contractor and with Southside Planning District Commission for the construction of a house.

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 of value 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 Order recites improper and dishonest conduct as the basis of the award.

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 information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The Order recites improper and dishonest conduct as the basis of the award.

By: _____

**Ruth Ann Wall
Presiding Officer
Contractor's Recovery Fund**

Date: _____

DRAFT