

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
August 26, 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, Board member, presided. No other Board members were present.

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

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

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

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

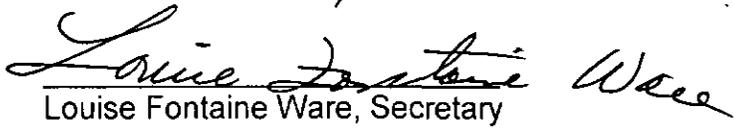
Participants

- | | |
|--|---|
| 1. Latham Fueling Systems Inc.
File Number 2004-01178 (Disc) | Thomas C. Latham – R |
| 2. Richard Allen Bush
File Number 2004-01991 (Disc) | Adam Zieger – C |
| 3. Hampton Roads Mechanical Inc
File Number 2004-01943 (Disc) | Wendell Hershaw – R
Stephen L. Grobel – R Atty
Phyllis Dudley – C |
| 4. United Restoration LLC
United Air Comfort (Henrico Co.)
File Number 2004-00195 (Disc) | Timothy Schanken – C |
| 5. Tre Suz Ann Development/Foster Management Co Inc.
File Number 2004-00395 (Disc) | R. Foster – R
James "Mike" Wilson - R
James Ward – R Atty
Joel Pinnix – W
James Miller – W
Paula Danyi – C |

The meeting adjourned at 3:35 p.m.

BOARD FOR CONTRACTORS


Mark D. Kinser, Chairman


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

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

Re: Latham Fueling Systems Inc.

File Number: 2004-01178
License Number: 2705033267

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 30, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Latham Fueling Systems Inc. ("Latham Fueling") to the address of record. The Notice included the Informal Fact-Finding Conference Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On May 19, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Latham to the address of record. The certified mail was signed and received.

On July 30, 2004, a letter to reschedule the IFF was mailed, via certified mail, to Latham to the address of record. The certified mail was signed and received.

On August 26, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Thomas C. Latham, President and Responsible Management for Latham Fueling, Respondent; Joe Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the IFF Memorandum:

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

(FOURTEEN COUNTS)

The bulk of Latham's business is service work. Latham has no interest of becoming a Class A contractor because he primarily is a subcontractor. In addition, the work involved conduit and wiring, including some less than 50 volts. Therefore, I recommend that Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.27.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
ENFORCEMENT DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Contractors
DATE: February 13, 2004 (revised March 19, 2004 and March 29, 2004)
RE: 2004-01178; Latham Fueling Systems Inc.

BACKGROUND:

On August 20, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from James W. Kingery ("Kingery"), Electrical Supervisor for Virginia Department of Transportation ("VDOT") Salem District, regarding work performed by Latham Fueling Systems Inc. ("Latham"). (Exh. C-1)

In 2002, VDOT entered into a contract with E.J. Ward Co. for work to be performed on automated fueling systems in approximately 270 fueling locations in Virginia. (Exh. C-1)

E.J. Ward Co. subcontracted Latham to upgrade and/or install the automated fueling systems in the Staunton District. (Exh. R-1)

1. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(27) (FOURTEEN COUNTS)

FACTS:

Between March 2003 and May 2003, Latham installed and upgraded automated fueling systems at the following sites: Verona AHQ, Staunton AHQ, Fishersville AHQ, Mint Springs AHQ, Moscow AHQ, McDowell AHQ, Monterey AHQ, Fairfield AHQ, Kerrs Creek AHQ, Fancy Mills AHQ, Triangle AHQ, Warm Springs AHQ, Covington AHQ, and Millboro AHQ. (Exh. R-1)

On September 5, 2003, a review of the licensing records of the Board for Contractors revealed Latham was issued Class A Contractor's license number 2705033267 on April 16, 1996, with the electronic communication service contracting ("ESC") and equipment machinery contracting ("EMC") specialties. (Exh. I-1)

On December 9, 2003, William Scott, Building Official for VDOT, advised E. Wayne Mozingo, the Board's agent, that the installations involved high voltage electricity and would require a license. (Exh. I-3)

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

Re: Richard Allen Bush

File Number: 2004-01991
License Number: 2705074695

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On July 28, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Richard Allen Bush ("Bush") at 123 N. Maple Leaf Avenue, Highland Springs 23075. The Notice included the Informal Fact-Finding Conference Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service and marked as "Attempted, Not Known." On August 4, 2004, the Notice was mailed to Bush, via certified mail, to the correct address of record, at 123 N. Maple Leaf Avenue, Highland Springs, Virginia 23075. The certified mail was not returned to the Department.

On August 26, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Adam Ziegler; Complainant; Joe Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Bush nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the IFF Memorandum:

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

Bush's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend that a monetary penalty of \$300.00 and license revocation be imposed.

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

Bush's failure to obtain a final inspection is a violation of Board Regulation 18 VAC 50-22-260.B.6. During the IFF, Zeigler stated Bush obtained the mechanical permit but did not

obtain any other permits. Therefore, I recommend that a monetary penalty of \$500.00 and license revocation be imposed.

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

Bush's failure to complete work under the contract the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. During the IFF, Zeigler stated he hired another contractor to complete the work. Therefore, I recommend that a monetary penalty of \$500.00 and license revocation be imposed.

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

Bush's misapplication of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. During the IFF, Zeigler stated he was contacted by the heating and air subcontractor because Bush had not paid the subcontractor \$800.00. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

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

Bush's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

Bush's failure to notify the Board, in writing, within thirty (30) days of a change of address is a violation of Board Regulation 18 VAC 50-22-230.B. Therefore, I recommend that a monetary penalty of \$200.00 and license revocation be imposed.

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
ENFORCEMENT DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

INFORMAL FACT FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors
DATE: April 16, 2004 (revised July 22, 2004)
RE: 2004-01991; Richard Allen Bush

BACKGROUND:

On November 7, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from the Eastville Volunteer Fire Co. Inc. ("Eastville Fire") regarding Richard Allen Bush ("Bush"). (Exh. C-1)

On February 10, 2003, Eastville Fire entered into a written contract with Bush, in the amount of \$8,750.00, to perform renovations to Eastville Fire's fire station at 16453 Courthouse Road, Eastville, Virginia 23347. (Exh. C-2)

In February 2003, Bush commenced work. (Exh. C-1)

1. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(9)

FACTS:

The contract used by Bush 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, (h) contractor's name, address, license number, expiration date, class of license, and classification 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. (Exh. C-2)

2. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(6)

FACTS:

On February 25, 2003, Eastville Fire obtained permit number MC003-03-01. (Exh. W-1)

On April 29, 2003, a rough mechanical inspection was performed and approved. (Exh. W-1)

As of January 5, 2004, Bush failed to obtain a final inspection, in violation of Section 114.10 of the Virginia Uniform Statewide Building Code ("USBC"). (Exh. W-1)

3. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(14)

FACTS:

In August 2003, Bush stopped performing work at the subject property. (Exh. C-1)

As of October 8, 2003, Bush failed to complete the work contracted for, including installation of the ceiling, paneling, and wiring of the lights and telephone jacks. (Exh. C-1)

4. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(16)

FACTS:

On February 12, 2003, Eastville Fire paid Bush \$3,000.00 by check. On March 4, 2003, Eastville Fire paid Bush \$2,000.00 by check. (Exh. C-3) On March 7, 2003, Eastville Fire paid Bush \$1,800.00 by check. (Exh. C-4) On March 18, 2003, Eastville Fire paid Bush \$600.00 by check. (Exh. C-5)

The heating and air conditioning subcontractor hired by Bush contacted Eastville Fire regarding payment for work performed at the subject property. (Exh. C-1)

5. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(13)

FACTS:

On November 24, 2003, Investigator Robert Hansel, the Board's agent, made a written request to Bush at the address of record of 123 N. Maple Leaf Avenue, Highland Springs, Virginia 23075, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by December 8, 2003. (Exh. I-1)

On December 10, 2003, As of April 15, 2004, Bush refused or failed to respond to the Board's agent's request.

6. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230(B)

FACTS:

On December 10, 2003, the Board's agent made a second written request to Bush at the address of record of 123 N. Maple Leaf Avenue, Highland Springs, Virginia 23075, requesting a written response and supporting documents to the complaint filed with the Board. (Exh. I-2)

On December 2, 2003, the letter, which was marked "Not deliverable as addressed, unable to forward," was returned by the United States Postal Service ("USPS"). (Exh. I-3)

On December 15, 2003, the USPS certified that Bush was not known at the address of record. (Exh. I-5)

Bush failed to notify the Board, in writing, within thirty (30) days of a change of address.

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

Re: Hampton Roads Mechanical, Inc.

File Number: 2004-01943
License Number: 2705007719

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On April 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Hampton Roads Mechanical, Inc. ("Hampton Roads") to the address of record. The Notice included the Informal Fact-Finding Conference Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On June 4, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Hampton Roads through its attorney Stephen L. Grobel, Esq at 122 East Pembroke Avenue, Hampton, Virginia 23669. The certified mail was signed and received.

On July 13, 2004, a letter to reschedule the IFF was mailed, via certified mail, to Hampton Roads through its attorney. The certified mail was signed and received.

On August 26, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Keith Hershaw, President and Responsible Management for Hampton Roads, Respondent; Stephen L. Grobel, Attorney for Respondent; Phyllis Dudley, Complainant; Joe Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the IFF Memorandum:

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

Hampton Roads Mechanical, Inc.'s failure to obtain a new license within thirty (30) days of a change of business entity is a violation of Board Regulation 18 VAC 50-22-210.3. During the IFF, Grobel admitted Hampton Roads Mechanical Inc. did not obtain a new license after

termination of the corporation. Grobel also stated Hershaw would apply for a new license as a sole proprietorship. Therefore, I recommend that a monetary penalty of \$500.00 be imposed. However, \$250.00 of the monetary penalty shall be waived if Hershaw applies for a new license within thirty (30) days of the entry of the order.

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

Hampton Roads Mechanical, Inc.'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. During the IFF, Hershaw presented a letter dated February 14, 2000, from the Board for Contractors that acknowledged Hampton Roads Mechanical Inc.'s request for a corporate change of name and requested Hampton Roads Mechanical Inc. submit a copy of the Certificate of Amendment from the State Corporation Commission. Hershaw stated he did not respond to the February 14, 2000, letter. Therefore, I recommend that a monetary penalty of \$350.00 be imposed.

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

During the IFF, Hershaw stated he only performed work outside and the electrical shock was a result of a problem with the electrical system inside the house.

Although the first inspection was not passed, Hampton Roads Mechanical Inc. made the necessary repairs. On August 22, 2003, the meter base was re-inspected and passed inspection. Therefore, I recommend Count 3 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.5.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
ENFORCEMENT DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors
DATE: March 10, 2004 (revised April 15, 2004)
RE: 2004-01943; Hampton Roads Mechanical Inc.

BACKGROUND:

On November 3, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Phyllis Dudley ("Dudley") regarding a verbal contract between her landlord, Michael Battey ("Battey"), and Hampton Roads Mechanical Inc. ("Hampton Roads"). (Exh. C-1)

In the first week of August 2003, Battey asked Keith Hershaw about replacing the meter base at 233 West Kelly Avenue, Hampton, Virginia. (Exh. I-7) Battey entered into a verbal agreement with Keith Hershaw, in the amount of \$300.00, to replace the electrical meter base at the subject property. (Exh. I-1)

On August 15, 2003, Hampton Roads obtained electrical permit number E03-01116 for work performed at the subject property. (Exh. W-1)

Between August 15, 2003 and August 20, 2003, Keith Hershaw and Kenneth R. Bailey ("Bailey"), t/a Viking Mechanical Contractors, installed an electric meter base at the subject property. (Exh. I-7 and I-8)

On August 19, 2003, a business card for Basic Electrical Services was left at the subject property. The business card also indicated the name Keith Hershaw. (Exh. C-2 and I-9) On the back of the business card was a hand-written note stating "Will turn off elect. power tomorrow 8-20-03 about 9:00 am. will be off not 4 hrs. Thanks Keith" (Exh. C-2)

On November 5, 2003, a review of the licensing records of the Board for Contractors revealed Hampton Roads was issued Class B Contractor's license number 2705007719 on February 26, 1992. (Exh. I-2)

On November 17, 2003, a review of the licensing records of the Board for Contractors revealed Wendell Keith Hershaw Jr. ("Hershaw") was issued Tradesman Master Electrician's license number 2710021379 on September 18, 1995. (Exh. I-10)

On November 26, 2003, Hershaw told Investigator Valerie J. Matney, the Board's agent, that Hampton Roads was his corporation and was being phased out due to confusion with another company. Hershaw also told the Board's agent that he was the sole proprietor of Basic Electrical Services. (Exh. I-6) In a written response dated December 9, 2003, Hershaw told the Board's agent that he was changing his operating name from Hampton Roads to Basic Electrical Services. (Exh. R-1)

On January 8, 2004, a review of the licensing records of the Board for Contractors records revealed Basic Electrical Services was not a licensed contractor. (Exh. I-3)

On February 24, 2004, a review of the licensing records of the Board for Contractors revealed Bailey was issued Class A Contractor's license number 2701027800 on April 10, 1986. (Exh. I-11)

1. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-210(3)

FACTS:

On February 24, 2004, the State Corporation Commission ("SCC") records revealed Hampton Roads became incorporated on September 30, 1998. The SCC records further revealed the corporation was terminated on January 31, 2000. (Exh. 1-4)

Hampton Roads failed to obtain a new license within thirty (30) days of a change of the business entity.

2. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230(A)

FACTS:

Hampton Roads failed to operate in the name in which the license was issued.

3. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(5)

FACTS:

Between August 15, 2003 and August 20, 2003, Hershaw and Bailey performed electrical work and installed an electric meter base at the subject property. (Exh. I-7 and I-8) On August 20, 2003, the electrical power was turned off at the subject property. (Exh. I-7)

On August 20, 2003, the electrical meter base at the subject property was inspected by an inspector for the City of Hampton Codes and Compliance and failed the inspection. (Exh. I-7)

On August 20, 2003, Dudley found a notice that the City of Hampton Codes and Compliance inspector failed the inspection of the electric meter base. Dudley called Hershaw to advise him that the inspection failed and that power could not be restored until repairs were made. On August 21, 2003 and August 22, 2003, Hershaw and Bailey returned to make the necessary repairs. On August 22, 2003, the electrical meter base was re-inspected and passed inspection. (Exh. I-7 and I-9)

On August 23, 2003, after power was restored by Virginia Power, Dudley turned the circuit breaker back on at the panel box. There was an explosion with sparks and a loud noise. Dudley received a severe shock. (Exh. C-1, I-1, and I-9)

On August 30, 2003, Battey went to the subject property and observed the screws that held the meter base passed through the meter base and came into contact with the panel box on the other side of the wall. (Exh. I-1 and I-9) Hershaw repaired the meter base by removing a portion of the siding, installing a piece of plywood between the panel box and electrical meter base, and fastening the electrical meter base onto the rear wall with shorter screws. (Exh. I-1 and I-7)

On December 31, 2003, Hershaw admitted the screws holding the electrical meter base were too long, causing them to pass through the exterior of the utility room wall and come into contact with electrical panel box on the interior of the utility room wall. (Exh. I-7)

IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS

Re: United Restoration LLC, t/a United Air Comfort (Henrico Co.)

File Number: 2004-00195
License Number: 2705072974

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On June 14, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to United Restoration LLC ("United Restoration"), t/a United Air Comfort (Henrico Co.) through its attorney Alan Cochran, Esq. at 400 Fairway Drive, Suite 102, Deerfield Beach, Florida 33441. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On July 14, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to United Restoration through its attorney. The certified mail was signed and received.

On August 26, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Timothy Schanken; Complainant; Joe Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither United Restoration nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

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

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

United Restoration'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: Board Regulation (Effective January 1, 2003)

During the IFF, Schanken stated he did not receive the offer from Cochran, attorney for United, stating Schanken should contact any local licensed HVAC in the Virginia area for installation of or the exchange of the compressor since the work would be covered under warranty. Schanken also stated the compressor still has not been repaired. Schanken also stated local companies do not wish to repair the compressor because they believe they will not be reimbursed by United.

United Restoration's failure to honor a promise to repair is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Contractors
DATE: March 26, 2004 (revised June 4, 2004)

FILE NUMBER: 2004-00195
RESPONDENT: United Restoration, LLC, t/a United Air Comfort (Henrico Co.)
LICENSE NUMBER: 2705072974
EXPIRATION: December 31, 2004

SUBMITTED BY: Shelby Smith-Hill
APPROVED BY: David Dorner

COMMENTS:

None.

United Restoration, LLC ("United"), t/a United Air Comfort (Henrico Co.), was at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705072974).

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

BACKGROUND:

On August 15, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Timothy E. Schanken ("Schanken") regarding United Air Comfort Inc. (Exh. C-1)

On August 2, 2003, Schanken requested United tune-up the air conditioning unit at 2360 Scotchtown Drive, Virginia Beach, Virginia. United examined the unit and added five pounds of Freon to the system. (Exh. C-1)

On August 2, 2003, Schanken received a service invoice from United Air Comfort Inc./United Restoration LLC, in the amount of \$109.00, to check and service the air conditioning unit at the subject property. The invoice indicated "VA License# 2705072974." (Exh. C-2)

Several days later, Schanken contacted United because the air conditioning unit would not put out cool air. (Exh. C-1)

On August 8, 2003, two United technicians checked the air conditioning unit and discovered the unit had too much Freon. The technicians advised Schanken that another technician would be back on August 9, 2003. (Exh. C-1)

On August 8, 2003, Schanken received a second service invoice from United Air Comfort Inc./United Restoration LLC, at no charge, to check and service the air conditioning unit at the subject property. The invoice indicated "VA License# 2705072974." (Exh. C-3)

On August 9, 2003, another United technician took the air conditioning unit apart and discovered the compressor was missing and the unit had a leak. (Exh. C-1)

On August 9, 2003, Schanken received a third service invoice from United Air Comfort Inc./United Restoration LLC, at no charge, to check and service the air conditioning unit at the subject property. The invoice indicated "VA License# 2705072974." (Exh. C-4)

In a letter dated August 11, 2003, Schanken requested United repair or replace the air conditioning unit and provide a warranty. (Exh. C-5)

On August 19, 2003, a review of the licensing records for the Board for Contractors revealed United was issued Class C Contractor's license number 2705072974 on December 31, 2002, as a limited liability company. (Exh. I-3)

In a written response dated September 11, 2003, United stated it will return to Schanken's residence and inspect the system at no charge. United stated that if the compressor is found to have the result of anything done by the technicians for United, it will replace the compressor at no charge. United further stated that if the problem turns out to be something other than the compressor, United expects to be paid for work performed to repair the system. (Exh. R-1)

On October 11, 2003, a United technician inspected the air conditioning unit and recommended the unit be replaced. (Exh. C-7)

On October 11, 2003, Schanken received a fourth service invoice from United Air Comfort Inc./United Restoration LLC, at no charge, to check and service the air conditioning unit at the subject property. The invoice indicated "VA License# 2705072974." (Exh. C-7)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

United failed to operate in the name in which the license was issued.

2. Board Regulation (Effective January 1, 2003)

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

- B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On October 30, 2003, James Renfro ("Renfro"), manager of the Virginia office for United, indicated United will replace the compressor part of the air conditioning unit. (Exh. I-1)

As of January 14, 2004, United failed to replace the compressor part. (Exh. I-4)

On February 18, 2004, Alan Cochran ("Cochran"), attorney for United, stated he instructed Schanken, both verbally and in writing, to contact any local licensed HVAC in the Virginia area for installation of or the exchange of the compressor since the work would be covered under warranty. Cochran also stated that United would pay for the installation. (Exh. I-5)

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

Re: Tre Suz Ann Development/Foster Management Co. Inc.

File Number: 2004-00395
License Number: 2705014109

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On May 3, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Tre Suz Ann Development/ Foster Management Co. Inc. ("Tre Suz Ann") through its attorney James H. Ward, Esq. at P.O Box 356, 837 Gloucester Road, Saluda, Virginia 23149. The Notice included the Informal Fact-Finding Conference Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On May 13, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Tre Suz Ann through its attorney. The certified mail was signed and received.

On July 13, 2004, a letter to reschedule the IFF was mailed, via certified mail, to Tre Suz Ann through its attorney. The certified mail was signed and received.

On August 26, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Robert Foster, President and Responsible Management, and James "Mike" Wilson, for Tre Suz Ann, Respondent; James Ward, Attorney for Respondent; Paula Danyi; Complainant; James Miller, and Joel Pinnix, Witnesses; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the IFF Memorandum:

Count 1: Board Regulation (Effective September 1, 2001)

Tre Suz Ann's failure to use a written change order is a violation of Board Regulation 18 VAC 50-22-260.B.31. Wilson stated that he did not use a written change order to extend the

estimate completion date, because he believed one was not needed for delays caused by the weather. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective September 1, 2001)

During the IFF, there was evidence presented that the barn passed all necessary inspections. Therefore, I recommend that Count 2 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.5.

Count 3: Board Regulation (Effective September 1, 2001)

Tre Suz Ann's failure to obtain a permit prior to performing plumbing work is a violation of Board Regulation 18 VAC 50-22-260.B.6. Wilson stated that Tre Suz Ann performed plumbing, and did not obtain a permit. Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 4: Board Regulation (Effective September 1, 2001)

Tre Suz Ann's action of practicing in a classification or specialty service for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
ENFORCEMENT DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

SECOND AMENDED
INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors
DATE: March 4, 2004 (revised April 22, 2004, amended June 15, 2004, and amended July 2, 2004)
RE: 2004-00395; Tre Suz Ann Development/Foster Management Co. Inc.

BACKGROUND:

On July 16, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Paula Danyi ("Danyi") regarding a contract entered into with Tre Suz Ann Development/Foster Management Co. Inc. ("Tre Suz Ann"). (Exh. C-1)

On September 3, 2002, Danyi entered into a written contract with Tre Suz Ann, in the amount of \$86,400.00, to construct a barn at 5595 White Hall Road, Gloucester, Virginia. (Exh. C-2)

The contract specified "Work to Commence within 5 Days and to be Completed within 120 Days." (Exh. C-2)

On September 10, 2002, Tre Suz Ann submitted an application for zoning/building permit to construct the barn at the subject property. On September 11, 2002, the application was approved. (Exh. C-4) On September 26, 2002, building permit number 02-947 was issued for the work to be performed at the subject property. (Exh. R-1)

In late September 2002, Tre Suz Ann commenced work. (Exh. R-1)

Between October 2002 and January 2003, Tre Suz Ann experienced delays in the work because of personal issues, weather conditions, discrepancies in electrical code interpretations, and delays in payments by Danyi. (Exh. R-1) As of early February 2003, Tre Suz Ann failed to complete the barn construction. Tre Suz Ann requested additional time to complete the barn. (Exh. C-1)

On March 20, 2003, Danyi sent a letter to Tre Suz Ann regarding Danyi's desire to terminate the contract because the work was two months beyond the guaranteed completion date and the barn had serious structural and electrical issues. (Exh. C-6)

1. Violation of Code of Virginia or Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260(B)(31).

FACTS:

Tre Suz Ann failed to use a written change order for a modification to the estimated completion date.

2. Violation of Code of Virginia or Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260(B)(5).

FACTS:

In late August 2002, Danyi and Tre Suz Ann discussed the construction of a barn. The parties discussed how much hay could be stored in the barn. Tre Suz Ann told Danyi that the barn had the capacity to store all the hay Danyi needed. (Exh. R-1)

On March 20, 2003, David Forest ("Forest"), Structural Building Inspector for County of Gloucester, and Kenneth Somerset ("Somerset"), Building Official for County of Gloucester, performed a courtesy inspection on the barn under construction at the subject property. In a letter dated March 24, 2003, Somerset advised Danyi of building the code violations observed by Forest and Somerset, which would need to be corrected prior to the final building inspection being performed. (Exh. C-5)

On April 16, 2003, Earthworks Consulting Engineers performed an inspection of the foundation support conditions of the barn structure constructed by Tre Suz Ann. In a report dated May 5, 2003, Robert C. Moss III ("Moss"), P.E., outlined the observations and concluded that the "foundation support conditions of the barn are probably inadequate." (Exh. C-7)

Robin Sydnor ("Sydnor"), P.E., Hampton Roads Engineering, P. C., performed field measurements of the hayloft and related structures to determine if the hayloft of the existing wood frame barn was structurally sound when fully loaded with hay. In a report dated May 2, 2003, Sydnor outlined his observations and concluded "The hayloft floor and girders are within allowable design limits." However, Sydnor did identify items that needed to be addressed. (Exh. C-8)

3. Violation of Code of Virginia or Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260(B)(6).

FACTS:

On June 9, 2004, Mike Wilson ("Wilson") of Tre Suz Ann told Investigator Janet P. Creamer, the Board's agent, that his company ran the water lines to the barn for the installation of the waterers. (Bd. Exh. 7)

On June 9, 2004, Kenneth Sommerset, Gloucester County Building Official, advised the Board's agent that a plumbing permit was required for the work performed by Tre Suz Ann at the subject property. (Bd. Exh. 7)

4. Violation of Code of Virginia or Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260(B)(27).

FACTS:

On August 12, 1992, Tre Suz Ann was issued Class A Contractor's license number 2705014109 with the building contractors ("BLD") classification. (Exh. I-4)

On June 21, 2004, Tre Suz Ann told the Board's agent that a licensed plumber was hired to install the water lines to the barn. Tre Suz Ann also stated that the plumber did not want to do the job because of the weather and because Danyi wanted the job done as soon as possible, Tre Suz Ann installed the water line. (Bd. Exh. 12)

Tre Suz Ann performed plumbing work without the required specialty.

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

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

1. Name: Ruth Ann Wall
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on August 26, 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.

Ruth Ann Wall
Signature

8-26-04
Date