

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
September 30, 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 and Joe Haughwout 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. Virginia E. Van Dyke
t/a V & M Enterprises
File Number 2004-03216 (Disc) | Virginia Van Dyke – R
Judith Harris – W
Steven Harris – W
Bane Van Dyke III – W
Shirley Matula – W |
| 2. Virginia E. Van Dyke
t/a V & M Enterprises
File Number 2004-03296 (Disc) | Virginia Van Dyke – R
Judith Harris – W
Steven Harris – W
Bane Van Dyke III – W
Clarence G. Jackson – C |
| 3. Tracey A Casteel
t/a K C Construction
File Number 2003-01177 (Disc)
(Consent Order) | T. Casteel (RM) – R
Kevin Casteel (DE & QI) -R
Charles Barr – C |
| 4. Sheila B. Sheats and
QVS Construction of VA LLC
File Number 2004-04165 (RF) | Sheats – C |
| 5. Bowers Mechanical Corporation
File Number 2004-03159 (Disc) | Holly Ratcliff – C |

6. James E. Stallings
t/a Jim Stallings Carpentry
File Number 2004-01436 (Disc)

Stallings – R

The meeting adjourned at 2:10 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

DRAFT

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

Re: Virginia E. Van Dyke, t/a V & M Enterprises

File Number: 2004-03216
License Number: 2705055987

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On July 14, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Virginia E. Van Dyke, t/a V & M Enterprises ("V & M") 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 for and received.

On August 6, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to V & M to the address of record. The certified mail was signed and received.

On September 30, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Virginia Van Dyke on behalf of V & M, Respondent; Bane Van Dyke III, Judith Harris, Steven Harris, and Shirley Matula; 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:

During the IFF, Virginia Van Dyke stated that V & M is her company, and that Bane Van Dyke manages the portion of the business dedicated to new home construction. She also stated that she does not spend the majority of her time involved with the operation of V & M, as she also holds a Real Estate license. She also stated that Bane Van Dyke III handles the accounting and finances for V & M. Bane Van Dyke III stated that he was a contractor. He also stated that his answers to interrogatories, which reflected the fact that he was the owner of V & M, were erroneous.

During the IFF, the Harrisises stated that most of their involvement with V & M was through Bane Van Dyke III, and that he introduced and represented himself as the

owner of V & M. The Harrises further stated that Bane Van Dyke III managed and supervised the construction project. The Harrises also stated that they made the majority of their payments to V & M, with the exception of one check, which was made payable to Bane Van Dyke III.

During the IFF, Shirley Matula made some statements regarding V & M that were taken down as part of the record, but do not form or support a basis for this recommendation.

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

V & M's acting as, or being an ostensible licensee for another who controls or directs, directly or indirectly, the operation of the licensee's business is a violation of Board Regulation 18 VAC 50-22-260.B.20. In November 2001, Steve and Judith Harris entered into a written contract with V & M to construct a home on the Harrises property. The contract was signed by Bane Van Dyke III on behalf of the licensee. Bane Van Dyke III represented to the Harrises that he was the owner of the business and the contractor. In March 2002, the Harrises entered into a second contract with V & M, which superceded the previous agreement. The contract was signed by Bane Van Dyke III, on behalf of the licensee. The Harrises made a payment directly to Bane Van Dyke III. Between November 15, 2001 and December 6, 2002, Bane Van Dyke III handled construction at the subject property. During construction, the Harrises initiated a civil action against Bane Van Dyke III. In response to Plaintiff's Interrogatories, Virginia Van Dyke and Bane Van Dyke III described themselves as owners and principals of the business. Virginia Van Dyke and Bane Van Dyke III further stated that Bane Van Dyke III is exclusively in charge of, and receives all of the profits from, V & M's new home construction projects. Therefore, I recommend that a monetary penalty of \$500.00 and license revocation be imposed.

Count 2: Code of Virginia

V & M's substantial identity of interest with a contractor whose license was previously revoked by the Board is a violation of § 54.1-1110 of the Code of Virginia. In November 1998, the Board revoked the license of Van Dyke Construction Co. Inc, license number 2701022649, upon payment from the Virginia Contractor Transaction Recovery Fund. Bane Van Dyke III was the Responsible Management, Qualified Individual, and Designated Employee for the licensee. Bane Van Dyke is a principal of V & M. Therefore, I recommend that license revocation 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.

DRAFT

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 22, 2004 (revised June 18, 2004)
RE: 2004-03216; Virginia E. Van Dyke, t/a V & M Enterprises

BACKGROUND:

During the investigation of File Number 2003-03089, the Enforcement Division of the Department of Professional and Occupational Regulation received information regarding Virginia E. Van Dyke, t/a V & M Enterprises ("V & M"). (Exh. C-1)

On February 20, 2004, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Steven Harris ("Harris") regarding Bane Van Dyke III. (Exh. C-2)

On May 22, 2000, the Board for Contractors issued Class A Contractor's license number 2705055987 to V & M as a sole proprietor. The Responsible Management, Qualified Individual, and Designate Employee is Virginia E. Van Dyke. (Exh. I-2)

On November 15, 2001, Harris and Judith K. Jumper (currently Judith Harris) (collectively "the Harris's") entered into a written contract with V & M, in the amount of \$172,000.00, to construct a new home at 7370 Pine Fork Road, Quinton, Virginia. The contract was signed by Bane Van Dyke III on behalf of V & M, who told Harris that V & M was his company and he was the owner and contractor. (Exh. C-2 and C-3)

The contract specified "Settlement" under this Purchase Agreement to be on or about Dec 10th, 2001 or within five (5) days after notification by Seller that the Property has been "completed" or within five (5) business days after the loan has been approved, whichever occurs last ("Settlement Date"). (Exh. C-3)

On March 21, 2002, the Harris's entered into a second written contract with V & M, in the amount of \$172,000.00, to construct a new home at 7370 Pine Fork Road, Quinton, Virginia. The second contract was to supersede the November 15, 2001, contract that had expired because the settlement date of December 10, 2001 was not met. The contract was signed by Bane Van Dyke III on behalf of V & M. (Exh. C-2 and C-4)

On March 21, 2002 and August 2, 2002, the Harris's agreed and signed change orders. The change orders were signed by Bane Van Dyke III on behalf of V & M. (Exh. C-2)

On August 2, 2002, the Harris's paid Bane Van Dyke III \$9,199.00 by check for the August 2, 2002, change order. (Exh. C-2)

On December 7, 2002, the Harris's agreed and signed a walk through punch list. The punch list was signed by Bane Van Dyke III on behalf of V & M. (Exh. C-2)

Between November 15, 2001 and December 6, 2002, Ban Van Dyke III handled the construction at the subject property. During the construction, the Harris's decided to seek legal advice and initiated a civil action against Bane Van Dyke III and Virginia Van Dyke. (Exh. C-1 and C-2)

In Answers to Interrogatories, Bane Van Dyke III and Virginia Van Dyke described themselves as owners of V & M, a sole proprietorship. (Exh. C-1)

In Supplemental Answers to Interrogatories, Bane Van Dyke III and Virginia Van Dyke stated the following:

- Virginia Van Dyke and Ban Van Dyke III are the owners of V & M and principals of the business
- Virginia Van Dyke verbally authorized Ban Van Dyke III to operate under her license
- Virginia Van Dyke operates the home improvement portion of the business and is compensated only through the funds paid for home improvements to the business
- Bane Van Dyke III is in charge of all new construction, which the business performs, and he is compensated only through funds paid into the business for new construction
- Neither party shares any compensation from the other party. (Exh. C-1)

In Answers to Interrogatories, Bayne Van Dyke III stated the following:

- Bayne Van Dyke III receives 100% of the profits from new home construction
- Bayne Van Dyke III keeps all V & M business records at his home. (Exh. I-4)

In Answers to Interrogatories Virginia E. Van Dyke stated the following:

- Virginia E. Van Dyke is the sole owner of V & M and Bane Van Dyke III is an employee of V & M.
- Bane Van Dyke III has full authority to conduct the new home construction division of the firm
- Virginia E. Van Dyke exercises no oversight over the new home division
- Virginia E. Van Dyke receives no compensation from the new home division
- Virginia E. Van Dyke does not know how much money comes into V & M from new home construction. (Exh. I-5)

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

18 VAC 50-22-260(B)(20)

FACTS:

Virginia E. Van Dyke acted as or was an ostensible licensee for Bane Van Dyke III, who controlled or directed, directly or indirectly, the operation of the licensee's business.

2. Violation of Code of Virginia

§ 54.1-1110

FACTS:

On September 29, 1982, the Board for Contractors issued Class A Contractor's license number 2701022649 to Van Dyke Construction Co Inc. The Responsible Management, Qualified Individual, and Designate Employee was Bane Van Dyke III. (Exh. I-3)

On April 30, 1998, license number 2701022649 expired. On November 19, 1998, the Board for Contractors revoked license number 2701022649 following payment of Contractor Transaction Recovery Fund claim in accordance with Final Order No. 99-100RF. (Exh. I-3)

V & M, license number 2705055987, may have a substantial identity of interest with Van Dyke Construction Co Inc, license number 2701022649, because Bane Van Dyke III is a principal of V & M.

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

Re: Virginia E. Van Dyke, t/a V & M Enterprises

File Number: 2004-03296
License Number: 2705055987

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On July 14, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Virginia E. Van Dyke, t/a V & M Enterprises ("V & M") 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 for and received.

On August 6, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, V & M to the address of record. The certified mail was signed and received.

On September 30, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Virginia Van Dyke, Responsible Management for V & M, Respondent; Clarence Jackson, Complainant; Bane Van Dyke III, Judith Harris, and Steven Harris, 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:

The correct address for the property where work was performed is 7370 Pine Fork Road, New Kent County, Virginia.

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

V & M's failure to abate a building code violation is a violation of Board Regulation 18 VAC 50-22-260.B.25. In February 2004, Jackson issued a Notice of Violation to V & M for a building code violation. V & M has failed to abate the building code violation. During the IFF, the Harrises stated that the trespass notice only prohibited Bane Van Dyke III

from coming onto the property, but did not prohibit Virginia Van Dyke or any other representative of V & M from doing so. This was verified by a review of the record. Jackson stated that as of today, the Notice of Violation has not been abated. Therefore, I recommend that a monetary penalty of \$900.00 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

INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors
DATE: April 22, 2004 (revised June 18, 2004)
RE: 2004-03296; Virginia E. Van Dyke, t/a V & M Enterprises

BACKGROUND:

On February 13, 2004, the Enforcement Division of the Department of Professional and Occupational Regulation received information from Clarence G. Jackson ("Jackson"), Building Official for New Kent County, regarding Virginia E. Van Dyke ("Van Dyke"), t/a V & M Enterprises. (Exh. C-1)

On February 12, 2004, Jackson issued a Notice of Violation to Van Dyke for a building code violation at 7370 Pink Fork Road, New Kent County, Virginia. (Exh. C-1)

1. Violation of Board Regulation (January 1, 2003)

18 VAC 50-22-260(B)(25)

FACTS:

The Notice of Violation cited violation of § 303.0 of CABO, water closet compartments and other similar rooms shall be provided with aggregate glazing area in windows of not less 3 square feet, one-half of which must be operable. (Exh. C-1)

Jackson instructed Van Dyke to submit the proper construction documents and apply for a building permit within ten (10) days. (Exh. C-1)

In a written response received April 5, 2004, Van Dyke stated it was not made aware of the problem until it received the Notice. Van Dyke further stated that prior to receiving the Notice, Van Dyke was issued a "no trespassing notice." (Exh. R-1)

As of April 14, 2004, Van Dyke failed to abate the Notice of Violation. (Exh. I-2)

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

Re: Tracey A Casteel, t/a K C Construction
Fulks Run, VA 22830

File Number 2003-01177
License Number 2705012346

CONSENT ORDER

Respondent Tracey A Casteel, t/a K C Construction ("Tracey A Casteel") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's 2001 Regulations provides:

18 VAC 50-22-200. Revocation or suspension; fines.

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On February 4, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Tracey A. Casteel ("Casteel"), t/a K C Construction 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 for by Tracey Casteel.

On April 6, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Casteel to the address of record. The certified mail was signed and received.

On July 27, 2004, a letter to reschedule the IFF was mailed, via certified mail, to Casteel to the address of record. The certified mail was signed and received.

On September 30, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Tracey and Kevin Casteel, Respondents; Charles Barr; Complainant; Joe Haughwout, Staff Member; and Ruth Ann Wall, Presiding Board Member.

The Informal Fact-Finding Conference Memorandum, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

The Board and Tracey A Casteel, as evidenced by the signatures affixed below, enter into this Consent Order. Tracey A Casteel knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Tracey A Casteel acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Informal Fact-Finding Conference Memorandum. Tracey A Casteel consents to the following term(s):

	Count 1	18 VAC 50-22-230.A	\$0.00
	Count 2	18 VAC 50-22-260.B.9	\$0.00
	Count 3	18 VAC 50-22-260.B.15	\$500.00

	TOTAL		\$500.00

In addition, Tracey A. Casteel agrees to the following for violation of Counts 1 and 2:

Count 1 is closed with a finding of no violation if Tracey A. Casteel changes the name on license number 2705012346 to reflect that Kevin L. Casteel is the owner of the sole proprietorship, and notifies the Board, in writing, that Kevin L. Casteel is the Responsible Management for the firm, within thirty (30) days of the entry of this order.

Count 2 is closed with a finding of no violation if Tracey A. Casteel provides the Board with a revised contract, within thirty (30) days of the entry of this order.

Kevin L. Casteel must successfully complete the Board's Basic Contractor Licensing course within six months of the entry of this order.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically

noted above. Tracey A Casteel acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Tracey A Casteel will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Tracey A Casteel acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Tracey A Casteel's license until such time as there is compliance with all terms of this Order. Tracey A Casteel understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Tracey A. Casteel
t/a K C Construction

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____,
2004.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2004.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

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: July 21, 2003
RE: 2003-01177; Tracey A Casteel, t/a K C Construction

BACKGROUND:

On October 17, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Charles L. Barr ("Barr") regarding work performed by Tracey A Casteel ("Casteel"), t/a K C Construction. (Exh. C-1)

On December 26, 2001, Barr entered into a contract with Casteel Construction Company, in the amount of \$68,800.00, to construct a two-story log home with a small dormer at 601 McDonald Road, Winchester, Virginia. The contract was signed by Kevin L. Casteel. (Exh. C-4 and R-3)

In a response letter dated December 12, 2003, Casteel told Investigator Morgan Moore, the Board's agent, that the contract with Barr was written up with the name Casteel Construction by mistake. Casteel further told the Board's agent that K C Construction is the only business name used by Casteel. (Exh. R-6)

On December 23, 2003, a review of the licensing records of the Board for Contractors revealed Casteel was issued Class B Contractor's license number 2705012346 on June 5, 1992, as a sole proprietorship. The records further revealed Kevin Lee Casteel was the Designated Employee and Qualified Individual for license number 2705012346. (Exh. I-2)

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

18 VAC 50-22-230(A)

FACTS:

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

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

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

FACTS:

The contract used by Casteel in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, and (h) the contractor's license number, expiration date, class of license/certificate, and classification or specialty services. (Exh. C-4 and R-3)

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

18 VAC 50-22-260(B)(15).

FACTS:

As of August 8, 2002, Casteel did not return to the subject property to perform any additional work. (Exh. C-1 and C-2)

On August 9, 2002, Paul Poston ("Poston"), building inspector for the County of Frederick, performed a final inspection. Poston rejected the final inspection for the following reasons: no record of 2 chimney; porch slab never inspected; pressure treated porch; (engineer on front wall); need house numbers up; need kit lights up; need GFI outlets in baseboard of bathrooms; need outlets between door right front room lost polarity; seal around duct pipe in closet; need handrail up on stairs; need basement insulation; need single outlet on washer; need paper work on front wall; need furnace fired up. Poston approved issuance of a temporary occupancy permit for the subject property. (Exh. I-1)

A temporary occupancy permit was issued for the subject property, with an expiration date of October 9, 2002. On October 31, 2002, the temporary occupancy permit was extended for thirty (30) days. (Exh. I-1)

On September 15, 2002, Casteel agreed to return to the subject property and finish the work necessary to obtain the occupancy permit. On September 16, 2002, an employee for Casteel returned to the subject property but was not permitted to enter the residence. (Exh. R-1)

On September 23, 2002, Barr sent Casteel a certified letter regarding items to be done in order to get a final occupancy permit. On September 26, 2002, Casteel signed for the certified receipt. (Exh. C-5)

On February 23, 2003, Casteel sent Barr a certified letter regarding completion of the work contracted for, including repair foundation wall, insulation on basement wall, and draft stop/firestop tub drain at floor. (Exh. C-3 and R-5)

DRAFT

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

Re: Shelia B. Sheats (Claimant) and QVS Construction of VA LLC (Regulant)

File Number: 2004-04165
License Number: 2705046860

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 9, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Shelia B. Sheats ("Claimant") and QVS Construction of VA LLC ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail was signed and received by the Claimant. The certified mail to the Regulant was returned by the United States Postal Service, and marked as "Moved, Left No Address."

On September 30, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Shelia Sheats, Claimant; Joe Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Roland Hook nor anyone on the Regulant's behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the recovery fund claim:

On May 15, 2002, the Claimant entered into a written contract with the Regulant to renovate the kitchen at the Claimant's residence.

The Claimant paid \$1,500.00 to the Regulant.

The Claimant requested a refund of her deposit, prior to the commencement of any work by the Regulant. The Regulant issued a check to the Claimant, in the amount of the deposit; however the Claimant was unable to cash the check because the Regulant's account had no funds, and was inactive.

On December 20, 2002, in the Fairfax County General District Court, the Claimant obtained a judgment against the Regulant, in the amount of \$1,500.00 plus interest and \$36.00 in court costs.

The Claimant is seeking a payment from the Recovery Fund, in the amount of \$1,671.00.

During the IFF, Sheats stated that she is seeking only to get her money back, and that she incurred no attorney's fees in obtaining a judgment against the contractor. She further stated she would be satisfied with a payment from the Recovery Fund in the amount of the judgment plus court costs.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$1,536.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

DRAFT

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: July 27, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Shelia Sheats (Claimant) and QVS Construction of VA LLC t/a QVS Construction of VA LLC (Regulant)
File Number: 2004-04165

BACKGROUND

On December 20, 2002, in the Fairfax County General District Court, Shelia B. Sheats obtained a Judgment against QVS Construction of VA LLC in the amount of \$1,500.00, plus interest and \$36.00 costs.

The claim in the amount of \$1,671.00 was received by the Department of Professional and Occupational Regulation on May 30, 2003.

CLAIM FILE INFORMATION

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 "NSF Check #1347 will not refund deposit" as the basis for the suit.

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

The claimant did contract with the regulant.

The Board issued Class A License Number 2705046860 to QVS Construction of VA LLC t/a QVS Construction of VA LLC, on October 6, 1998. The license will expire October 31, 2004. The claimant entered into a written contract with QVS of VA LLC on May 15, 2002 for kitchen refacing at claimant's residence.

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.

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.

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 20, 2002. The claim was received on May 30, 2003.

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 QVS of VA LLC on May 15, 2002 for kitchen refacing at claimant's residence.

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."

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 failed to appear according to the claimants Affidavit of Facts.

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 "NSF Check #1347 will not refund deposit" as the basis for the suit.

In the Affidavit of Facts dated June 17, 2003, the claimant asserts that the regulant received \$1,500.00 from her as a deposit to complete kitchen refacing at her residence. The claimant chose to enforce the right of rescission and requested the deposit of \$1, 500.00 be returned. The regulant's check had insufficient funds on an inactive account. The claimant has never received the money back from the regulant.

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."

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 include interest, however, does not include damages.

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

Re: Bowers Mechanical Corporation

File Number: 2004-03159
License Number: 2705030032

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 9, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Bowers Mechanical Corporation ("Bowers Mechanical") to the address of record. 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 returned by the United States Postal Service, and marked as "Unclaimed."

On September 30, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Holly Ratcliff; Complainant; Joe Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Curtis Bowers nor anyone on Bowers Mechanical's 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 September 1, 2001)

Bowers Mechanical's failure to apply for 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. Bowers Mechanical was incorporated in Virginia. On September 30, 2002, Bowers Mechanical was purged from the State Corporation Commission's records. Therefore, I recommend that a monetary penalty of \$500.00 and license revocation be imposed.

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

Bowers Mechanical'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. The contract used in the transaction reflected the name "Mountain Air Mechanical Inc." The contract was signed by Curtis Bowers. The license was issued as Bowers Mechanical Corporation. Curtis Bowers

applied for a building permit using the Bowers Mechanical's license number. Therefore, I recommend that a monetary penalty of \$500.00 and license revocation be imposed.

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

Bowers Mechanical's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. In June 2003, Bowers Mechanical commenced work at the subject property. In August 2003, Bowers Mechanical last performed work at the subject property. Since August 2003, Ratcliff had to buy water heaters and perform plumbing work that was supposed to have been performed by Bowers Mechanical. Therefore, I recommend that a monetary penalty of \$2,000.00 and license revocation 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: Board for Contractors
DATE: May 26, 2004 (revised July 26, 2004)

FILE NUMBER: 2004-030032
RESPONDENT: Bowers Mechanical Corporation
LICENSE NUMBER: 2705030032
EXPIRATION: 08/31/2005

SUBMITTED BY: Becky C. Angelilli
APPROVED BY: E. Wayne Mozingo

COMMENTS:

None.

Bowers Mechanical Corporation ("Bowers Mechanical") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705030032).

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 February 4, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Holly P. Ratcliff ("Ratcliff"), Vice President of ROF Investments Inc., regarding Curtis Bowers, t/a Mountain Air Mechanical Inc. (Exh. C-1)

On June 13, 2003, Ratcliff entered into a written contract with Mountain Air Mechanical Inc., in the amount of \$49,597.00, to remodel, remove, and replace the domestic water system at the Wallace Building, 16 West Third Street, Pulaski, Virginia. The contract was signed by Curtis H. Bowers and indicated an address of 935 Topaz Drive, Max Meadows, Virginia 24360. (Exh. C-2)

On June 18, 2003, Curtis Bowers applied for a building permit to perform work at the subject property. On the application, Curtis Bowers listed contractor's license number 2705030032. (Exh. C-1)

On August 18, 1995, Bowers Mechanical was issued Class A Contractor's license number 2705030032 as a corporation. Curtis H. Bowers, individual certificate number 2706009360, is the Responsible Management for license number 2705030032. (Exh. I-1) The address of record for license number 2705030032 is 935 Topaz Drive, Max Meadows, Virginia 24360. (Exh. I-1)

1. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-210. Change of business entity requires a new license.

Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the firm shall apply for a new license, on a form provided by the board, within 30 days of the change in the business entity. Such changes include but are not limited to:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

FACTS:

Bowers Mechanical was incorporated in Virginia; however, on September 30, 2002, Bowers Mechanical Corporation was purged from the State Corporation Commission records. (Exh. I-2)

Bowers Mechanical failed to apply for a new license within thirty (30) days of a change in the business entity.

2. 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:

Bowers Mechanical failed to operate in the name in which the license was issued. (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

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

- B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

Immediately after obtaining the building permit, Bowers Mechanical commenced work. (Exh. C-1)

The last day Bowers Mechanical performed work on the subject property was August 4, 2003. (Exh. C-1)

On August 20, 2003, Bowers Mechanical requested Ratcliff pay another draw; however, Ratcliff refused to pay until Bowers Mechanical completed the job. Bowers Mechanical stated the job would be finished next week. (Exh. C-1)

Since August 2003, Ratcliff had to buy three water heaters that were to be provided by Bowers Mechanical and to complete all plumbing for the final three apartments that were not finished. (Exh. C-1)

Bowers Mechanical failed to return and complete the work contracted for.

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

Re: James E. Stallings, t/a Jim Stallings Carpentry

File Number: 2004-01436
License Number: 2705060264

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 19, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to James E. Stallings ("Stallings"), t/a Jim Stallings Carpentry to the address of record. 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 September 30, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Stallings, 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 Report of Findings:

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

Stallings's failure to make use of a legible written contract prior to commencing work is a violation of Board Regulation 18 VAC 50-22-260.B.8. Stallings used a verbal contract in the transaction. Stallings verified this fact during the IFF. 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.

DRAFT

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: December 23, 2003 (revised August 11, 2004)

FILE NUMBER: 2004-01436
RESPONDENT: James E. Stallings, t/a Jim Stallings Carpentry
LICENSE NUMBER: 2705060264
EXPIRATION: January 31, 2005

SUBMITTED BY: Shelby Smith-Hill
APPROVED BY:

COMMENTS:

None.

James E. Stallings ("Stallings"), t/a Jim Stallings Carpentry was at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705060264).

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 September 29, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from David and Jean Steelman ("the Steelmans") regarding Jim Stallings. (Exh. C-1)

In June 2003, Jean Steelman entered into a verbal contract with Stallings, on a time and materials basis as no firm price was ever discussed and agreed to, to build a 14 x 26 addition including carpentry work at 5271 Willow Oak Road, Eastville, Virginia. (Exh. C-1)

On November 19, 2003, the Steelmans withdrew the complaint. (Exh. C-2)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

In July 2003, Stallings commenced work on the project. (Exh. C-1) Stallings failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed, signed by all parties, prior to commencement of work.