

Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
December 1, 2004

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.

Jeffrey Buckley appeared for the Department of Professional and Occupational Regulation.

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

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

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

Participants

- | | |
|---|--|
| 1. Gerald James and
David Garcia
t/a David G. Carpentry
File Number 2004-01809 (RF) | James – C |
| 2. Dennis Buchanan
Edward S. Pultz
t/a Scott Construction
File Number 2004-01072 (RF) | Buchanan – C
Susanna Hickman – C Atty |
| 3. Deborah K. Bagley and
Kelly R. Peregoy
t/a Master Roofing Company
File Number 2004-02466 (RF) | Bagley – C
Peregoy – R |
| 4. Beth Lewis and
North Potomac Home Maintenance LLC
File Number 2004-03040 (RF) | Beth Lewis – C
Lee Lewis – C |
| 5. Gerald and Dianne Einhorn
Harrison Roofing Co.
t/a Harrison Roofing Co. | Joseph Lassiter – C Atty
James Harrison – R |

File Number 2004-00839 (RF)

6. Eleanor J. Atkinson and
Thomas R. Croxton
t/a T R C Custom Homes
File Number 2004-01020 (RF)

Eleanor Atkinson – C
Van Atkinson – C
Arthur Bredemeyer – C Atty
7. Stephen Lander and
Cecil G Bell
t/a Gary's Home Repair
File Number 2004-04269 (RF)

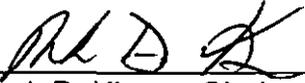
Jeanne Lauer – C Atty
(By phone)
8. Maye and Phillip Jepson and
Bator Construction Company
File Number 2004-04157 (RF)

Maye Jepson – C
Phillip Jepson – C
Edwin Bischoff – C Atty
Henry Bator – R
Kenneth Hirtz – R Atty
Richard Moore – W
Craig Jones – W
Glen Miller – W
9. Jean Wilson and
Kenneth Dwayne Blankenship
t/a Homeworks Improvement
File Number 2004-00309 (RF)
10. Sarah Harris and
Person Maintenance and Repair
File Number 2004-01019 (RF)
11. Marjorie Williams and
BP Construction Company Inc.
File Number 2004-03808 (RF)
12. Deborah Lake and
Leon A Hundley III
t/a Home Improvement
File Number 2004-01071 (RF)

Lake – C

The meeting adjourned at 3:00 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: Gerald James (Claimant) and David Garcia, t/a David G. Carpentry (Regulant)

File Number: 2004-01809
License Number: 270535375

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 28, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Gerald James ("Claimant") and David Garcia, t/a David G. Carpentry ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail was signed for and received by the Regulant. The certified mail sent to the Claimant has not been signed for or received and has not been returned by the United States Postal Service.

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Gerald James, Claimant; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither David Garcia, t/a David G. Carpentry nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

In June 2003, the Claimant entered into a written contract with the Regulant to replace a porch ceiling at the Claimant's rental property.

On July 15, 2003, in City of Richmond General District Court, Gerald E. James obtained a Judgment against David Garcia, in the amount of \$750.00, plus interest and \$36.00 costs.

During the IFF, James stated the subject property is a second house. James further stated he does not reside at the subject property, but rents it out to relatives.

However, section § 54.1-1120 of the Code of Virginia states that "The claimant shall be (i) an individual whose contract with the regulant involved contracting for the claimant's residence(s) located in the Commonwealth..." Conversely, the Claimant entered into a contract with the Regulant to perform work at his rental property.

Therefore, I recommend the recovery fund claim be denied

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: August 4, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Gerald James (Claimant) and David Garcia t/a David G. Carpentry (Regulant)
File Number: 2004-01809

BACKGROUND

On July 15, 2003, in City of Richmond General District Court, Gerald E. James obtained a Judgment against David Garcia, in the amount of \$\$750.00, plus interest and \$36.00 costs.

The claim in the amount of \$822.00 was received by the Department of Professional and Occupational Regulation on October 2, 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 "encompletion [*sic*] of work" 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 for repairs to the claimant's rental property.

The Board issued Class C License Number 2705035375 to David Garcia t/a David G. Carpentry, on November 5, 1997. The license was permanently revoked on November 13, 2003. The claimant entered into a written contract with David Garcia on June 7, 2003 to replace the porch ceiling at the claimant's rental property.

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 Board for Contractors 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.

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 July 15, 2003. The claim was received on October 2, 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 David Garcia June 7, 2003 to replace the porch ceiling at the claimant's rental property.

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 Director's Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

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

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 does recite the basis for the suit.

In the Affidavit of Facts dated June 7, 2003, the claimant assert that he contracted with the regulant to replace the 9x9 front porch roof at his rental property. The claimant paid the regulant a retainer of \$750.00 toward the \$1,500.00 contract. The regulant notified the claimant that the cost would increase from \$1,500.00 to \$4,500.00 due to the rotten beams needing to be replaced. The claimant hired another contractor to repair the porch roof for \$750.00. The contractor advised the claimant that the beams were wet and not rotten.

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."

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.

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

Re: Dennis Buchanan (Claimant) and Edward S. Pultz Jr., t/a Scott Construction (Regulant)

File Number: 2004-01072
License Number: 2705022827

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 29, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Dennis Buchanan ("Claimant") and Edward S. Pultz Jr., t/a Scott Construction ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail sent to the Claimant was signed and received. The certified mail sent to the Regulant was returned by the United States Postal Service marked "Not deliverable as addressed, unable to forward."

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Dennis Buchanan, Claimant; Susanna Hickman, Attorney for Claimant; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Board Member. Neither Edward S. Pultz Jr., t/a Scott Construction nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

The claimant entered into a written contract with the Scott Construction, Custom Home Building on April 1, 2002 for the construction of a house. The dollar amount specified on the contract was \$285,000.00.

The Regulant failed to pay sub-contractor Virginia Maid Kitchens. Consequently, Virginia Maid Kitchens pursued and was awarded a judgment on June 13, 2003, in the Newport News General District Court, against both Edward S. Pultz, Jr. t/a Scott Construction and Dennis Buchanan, in the amount of \$12,541.08, plus interest, \$48.00 costs and \$1,254.01 in attorney fees.

On June 26, 2003, in the United States Bankruptcy Court, Eastern District of Virginia, Edward Scott Pultz, Jr., filed a Chapter 7 Petition.

The judgment awarded against the Claimant is a result the Regulant's failure to pay the sub-contractor Virginia Maid Kitchens from the funds previously given to him by the Claimant.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on September 8, 2003.

During the IFF, Hickman stated that the Claimant was unable to take legal action against the Regulant because the Regulant filed for bankruptcy protection. Hickman further stated the Claimant paid Virginia Maid Kitchens \$13,929.00 towards the judgment. The Claimant submitted a copy of the check paid to Virginia Maid Kitchens.

Based on the record and the testimony provided by the Claimant, it appears that the Regulant's improper conduct resulted in an actual monetary loss to the Claimant. Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$10,000.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant.

DATE: August 3, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of
Dennis Buchanan (Claimant) and Edward S. Pultz, Jr. t/a Scott
Construction

(Regulant)
File Number: 2004-01072

BACKGROUND

On June 13, 2003, in Newport News-Civil Court, Virginia Maid Kitchens, Inc., obtained a Judgment against Edward S. Pultz, Jr. t/a Scott Construction and Dennis Buchanan, in the amount of \$12,541.08, plus interest, \$48.00 costs and \$1,254.01 in attorney fees.

On June 26, 2003, in the United States Bankruptcy Court, Eastern District of Virginia, Edward Scott Pultz, Jr., filed a Chapter 7 Petition.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on September 8, 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 claimant did not receive a judgment against the regulant. Virginia Maid Kitchens, Inc., obtained a judgment against the claimant and the regulant. The block designated "Contract" has been marked.

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 2705022827 to Edward S. Pultz, Jr., t/a Scott Construction, on February 22, 1994. The license expired on February 29, 2004. The claimant entered into a written contract with Scott Construction Custom Home Building on April 1, 2002 for the construction of a house.

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 against the claimant and the regulant was entered on June 13, 2003. The claim was received on September 8, 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 the Scott Construction, Custom Home Building on April 1, 2002 for the construction of a house.

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 filed a Chapter 7 protection with the United States Bankruptcy Court.

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

In the Affidavit of Facts dated July 5, 2003, the claimant asserts he paid Scott Construction (regulant) the full amount due for the construction of a house. Scott Construction did not pay all the subcontractors and suppliers. On June 13, 2003, Virginia Maid Kitchens, Inc., obtained a judgment against both the regulant and the claimant. The regulant filed for bankruptcy protection on June 26, 2003 leaving the claimant responsible for the debt to Virginia Maid Kitchens, Inc.

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." A notation was made on the claim form that claimant was advised not to file a Proof Claim with the Court.

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.

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

Re: Deborah K. Bagley (Claimant) and Kelly R. Peregoy, t/a Master Roofing Company (Regulant)

File Number: 2004-02466
License Number: 270520053

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 28, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Deborah K. Bagley ("Claimant") and Kelly R. Peregoy, t/a Master Roofing ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail was signed for and received by both the Claimant and the Regulant.

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Deborah Bagley, Claimant; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither R. Peregoy, t/a Master Roofing Company nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

The Claimants entered into a written contract with Master Roofing Co. for the *removal of the old roof and the installation of a new vent, flashing and shingles on June 17, 2002.*

In October 2002, the roof began to leak. The Claimant contacted the Regulant regarding the leaking roof. The Regulant agreed to make the necessary repairs to prevent the roof from leaking, but has never returned to the subject property to complete the repairs.

On June 26, 2003, in the City of Richmond General District Court – Civil Division, Deborah K. Bagley obtained a Warrant In Debt against C. B. Peregoy, Individually and t/a Master Roofing, in the amount of \$3,500.00, plus interest and \$36.00 costs.

The Claimant is seeking a payment from the Recovery Fund in the amount of \$3,689.00. This amount includes \$150.00 in additional costs for the service of debtor interrogatories.

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$3,689.00.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: September 9, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of
Deborah K. Bagley (Claimant) and Master Roofing (Regulant)
File Number: 2004-02466

BACKGROUND

On June 26, 2003, in the City of Richmond General District Court – Civil Division, Deborah K. Bagley obtained a Warrant In Debt against C. B. Peregoy, Individually and t/a Master Roofing, in the amount of \$3,500.00, plus interest and \$36.00 costs.

The claim in the amount of \$3,536.00 was received by the Department of Professional and Occupational Regulation on September 26, 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 does not recite the basis of the award. The block designated "Contract" has been marked.

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

The claimants did contract with the regulant.

The Board issued Class B License Number 2705020053 to Kelly R. Peregoy, t/a Master Roofing Company, on March 3, 1993. The license was permanently revoked on October 1, 2002. The claimant entered into a written contract with Master Roofing Co., on June 17, 2002, for the removal of the existing roof and the installation of a new roof at the 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 pleadings and/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 June 26, 2003. The claim was received on September 26, 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 claimants entered into a written contract with Master Roofing Co. for the removal of the old roof and the installation of a new vent, flashing and shingles.

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 conducted. No assets were revealed.

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 does not recite the basis of the award. The block designated "Contract" has been marked.

In an Affidavit dated September 25, 2003, the claimant asserts the claimant's roof never had a leaking problem prior to the installation of the new roof by the regulant. The regulant agreed to make the necessary corrections to prevent the roof from leaking. The regulant has never returned to the claimant's residence to complete the repair.

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? The claimant answered "No."

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.

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

Re: Beth Lewis (Claimant) and North Potomac Home Maintenance LLC (Regulant)

File Number: 2004-03040
License Number: 2705063593

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 18, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Beth Lewis ("Claimant") and North Potomac Home Maintenance LLC ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail was signed for and received by the Claimant. The certified mail sent to the Regulant was returned by the United States Postal Service marked "Not deliverable as addressed, unable to forward."

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Beth Lewis, Claimant; Lee Lewis, Witness; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither North Potomac Home Maintenance LLC nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

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

In November 2000, the Claimant entered into two written contracts with the Regulant for various interior and exterior work to be performed at the Claimant's residence. The Claimant paid the Regulant \$8,854.84 towards the contract. The Regulant never completed the work.

On January 2, 2003, in the General District Court of Prince William County, Beth Lewis obtained a judgment Order against North Potomac Home Maintenance, LLC, in the amount of \$15,000.00, plus \$500.00 in attorney fees and \$32.00 court costs. The Order recites "... improper and dishonest conduct ..." as the basis of the award.

The Claimant is seeking a payment from the Recovery Fund in the amount of \$10,000.00

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$10,000.00.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: September 16, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Beth Lewis (Claimant) and North Potomac Home Maintenance, LLC, t/a North Potomac Home Maintenance, LLC (Regulant)
File Number: 2004-03040

BACKGROUND

On January 2, 2003, in the General District Court of Prince William County, Beth Lewis obtained a judgment Order against North Potomac Home Maintenance, LLC, in the amount of \$15,000.00, plus \$500.00 in attorney fees and \$32.00 court costs.

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

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 2705063593 to North Potomac Home Maintenance, LLC, t/a North Potomac Home Maintenance, LLC on October 31, 2001. The license expired on October 31, 2003. The claimant

entered into two written contracts with North Potomac Home Maintenance for various interior and exterior work to be performed at the 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 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 receive pleadings and/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.

An Order was entered on January 2, 2003. The claim was received on October 27, 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 two written contracts with North Potomac Home Maintenance, LLC for various interior and exterior work to be performed.

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 could not be found.

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.

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? Claimant answered "No."

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.

IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS

Re: Gerald Einhorn and Dianne C. Einhorn (Claimant) and Harrison Roofing Co.
(Regulant)

File Number: 2004-00839
License Number: 2705006355

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 21, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Gerald Einhorn and Dianne C. Einhorn ("Claimant") and Harrison Roofing Co. ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail was signed for and received by both the Claimant and the Regulant.

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joseph R. Lassiter, Attorney for Claimants; James J. Harrison III, on behalf of Harrison Roofing Co., Regulant; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

RECOMMENDATION

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

In September 1997, the Claimant entered into a written contract with the Regulant to remove and replace a roof, and reinstall copper coping at the Claimant's residence.

In November 1997, the Regulant performed the work. In September 1998, the roof began to leak. After several attempts by the Claimants to get the Regulant to repair the roof, the Claimants hired an engineer to inspect the roof. It was determined the roof was improperly installed.

On December 23, 2002, in City of Virginia Beach Circuit Court, Gerald Einhorn & Dianne C. Einhorn obtained a Judgment against Cora Harrison t/a Harrison Roofing Company, and Harrison Roofing Company, Incorporated, in the amount of \$19,445.00, plus interest and costs.

Cora Elizabeth Harrison filed for Chapter 7 bankruptcy protection and received a Discharge of Debtor(s) on July 11, 2003 from the United States Bankruptcy Court, Eastern District of Virginia.

The Claimants are seeking a payment from the Recovery Fund in the amount of \$10,000.00.

During the IFF, Harrison stated the labor was under a five year guarantee, and when he was notified of leaks, he returned to the property to make repairs.

However, the judgment states the Regulant breached their warranty to the Claimants. Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$10,000.00.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: August 5, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Gerald Einhorn & Dianne C. Einhorn (Claimants) and Harrison Roofing Co., t/a Harrison Roofing Co. (Regulant)
File Number: 2004-00839

BACKGROUND

On December 23, 2002, in City of Virginia Beach Circuit Court, Gerald Einhorn & Dianne C. Einhorn obtained a Judgment against Cora Harrison t/a Harrison Roofing Company, and Harrison Roofing Company, Incorporated, in the amount of \$19,445.00, plus interest and costs.

Cora Elizabeth Harrison filed for Chapter 7 bankruptcy protection and received a Discharge of Debtor(s) on July 11, 2003 from the United States Bankruptcy Court, Eastern District of Virginia.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on June 27, 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 Judgment not does recite the basis of the award.

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

The claimants did contract with the regulant.

The Board issued Class B License Number 270506355 to Harrison Roofing Co., t/a Harrison Roofing Co., on December 17, 1991. The license expired on December 31, 2003. The claimant entered into a written contract with Harrison Roofing Company, on September 11, 1997 for the removal and replacement of a roof and reinstallation of the existing copper coping at the claimants' 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 23, 2002. The claim was received on June 27, 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 Harrison Roofing Company, on September 11, 1997 for the removal and replacement of a roof and reinstallation of the existing copper coping at the claimants' 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 conducted. No assets were revealed.

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 Judgment recites the basis for the suit.

In the Affidavit of Facts dated June 31, 2003, the claimants assert that the regulant improperly installed a roof on their home. The roof was installed in November 1997 and in September 1998 the roof began to leak. After several attempts to contact the regulant and/or have the regulant repair the roof, the claimants requested that the roof be inspected by a roof engineering company. It was determined that the improperly installed roof allowed water to penetrate under the roof and into the walls of the home causing considerable damage. The roof engineer inspector noted that no flashing was used. The field sheet was installed over the vertical surfaces and in many places was not sealed at the top. The thru-wall scuppers were sleeved with membrane and not properly flashed, and should have been replaced with copper sleeves. Also, when the copper coping was re-installed it was fastened through the top with an assortment of fasteners, none of which were sealed, thus allowing moisture to penetrate.

The engineer inspector found no evidence of any repairs having been made to the roof.

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." A Discharge of Debtors for Cora Elizabeth Harrison dated July 11, 2003 was submitted by the claimants.

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.

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

Re: L.V. Atkinson and Eleanor Atkinson (Claimants) and Thomas R. Croxton, t/a T R C Custom Homes (Regulant)

File Number: 2004-01020
License Number: 2705023627

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 28, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Eleanor Atkinson ("Claimant") and R. Croxton, t/a T R C Custom Homes ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail was signed for and received by the Claimant. The certified mail sent to the Regulant at the address of record was returned by the United States Postal Service and was marked ""Not Deliverable As Addressed, Unable To Forward" The Notice was also mailed to the Regulant at 2567 Leawood Loop, Sierra Vista, Arizona 85650 and was returned by the United States Postal Service marked "Forwarded Order Expired."

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Leland and Eleanor Atkinson, Claimants; Arthur Bredemeyer, Attorney for Claimants; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Thomas R. Croxton, t/a T R C Custom Homes nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

In May 2001, the Claimants hired the Regulant to construct a residence. During the course of construction, there were cost overruns to complete the work. The Claimants paid the Regulant for the overages, which were to be used to pay subcontractors for work completed at the subject property.

On September 3, 2002, in the City of Suffolk General District Court, L. V. Atkinson and Eleanor J. Atkinson obtained a Judgment against TRC Custom Homes, Inc., t/a TRC Custom Homes, Ltd., and TRC Custom Homes the amount of \$15,000.00, plus interest, court costs and attorney's fee in the amount of \$3,750.00. The

Judgment recites "fraud and improper or dishonest conduct as defined in Code Section 54.1-1118 seq. of the Code of Virginia" as the basis for the award.

On July 21, 2003, the Claimants submitted separate claims for payment from the Recovery Fund. However, the Claimants, not as separate individuals, entered into the contract with the Regulant and were awarded only one judgment against the Regulant. The Claimants submitted a revised claim form, which indicated both L.V. and Eleanor Atkinson as the Claimants, to replace the claims submitted by L.V. Atkinson and Eleanor Atkinson separately.

During the IFF, the Claimants presented another copy of the revised claim. The Claimants also acknowledged they revised their claim and were seeking a claim from the Recovery Fund jointly instead of separately as originally submitted. The Claimants are seeking a payment from the Recovery Fund in the amount of \$10,000.00.

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$10,000.00.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: September 16, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of L. V. Atkinson and Eleanor J. Atkinson (Claimants) and Thomas R. Croxton t/a TRC Custom Homes (Regulant)
File Number: 2004-01020

BACKGROUND

On September 3, 2002, in the City of Suffolk General District Court, L. V. Atkinson and Eleanor J. Atkinson obtained a Judgment against TRC Custom Homes, Inc., t/a TRC Custom Homes, Ltd., and TRC Custom Homes the amount of \$15,000.00, plus interest, court costs and attorney's fee in the amount of \$3,750.00.

The claim in the amount of \$9,414.50 was received by the Department of Professional and Occupational Regulation on July 21, 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 Judgment recites "fraud and improper or dishonest conduct as defined in Code Section 54.1-1118 seq. of the Code of Virginia" the basis for the award.

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.

A copy of the contract with TRC Custom Homes (regulant) was not provided.

The claimants provided an invoice from TRC Custom Homes, LTD., dated September 21, 2001. The address on the invoice is 129 Nansemond Pt. Rd., Suffolk, VA, 23435.

The Board issued Class A License Number 2705023627 to Thomas R. Croxton t/a TRC Custom Homes on March 16, 1994. The license expired on March 13, 2002. The address of record with the Board for Contractors for TRC Custom Homes is 114 Lookout Circle, Suffolk, VA, 23435. The claimants have provided a copy of an invoice from TRC Custom Homes, LTD., for upgrades, rent for the month of September, tree removal, driveway overage for the claimants' 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 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 receive pleadings and/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 September 3, 2002. The claim was received on July 21, 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 claimants have provided a copy of an invoice from TRC Custom Homes, LTD., for upgrades, rent for the month of September, tree removal, driveway overage for the claimants' 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, as the regulant failed to appear.

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 Judgment recites "fraud and improper or dishonest conduct as defined in Code Section 54.1-1118 seq. of the Code of Virginia" the basis for the award.

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." However, no documents were provided.

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.

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

Re: Stephen and Karen Lander (Claimants) and Cecil G. Bell, t/a Gary's Home Repair (Regulant)

File Number: 2004-04269
License Number: 2705048944

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 3, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Stephen and Karen Lander ("Claimants") and Cecil G. Bell, t/a Gary's Home Repair ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail sent to the Claimants was signed for and received. The certified mail to the Regulant was returned by the United States Postal Service and was marked "No Such Number."

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jeanne Lauer (by phone), Attorney for Claimants; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Cecil G. Bell, t/a Gary's Home Repair nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

The Claimants entered into a written contract with GCP, Inc., on March 5, 2001 for the installation of a new roof at 3805 Chellwood, Virginia Beach, Virginia, 23452

The Claimants' attorney asserts that the Regulant received a down payment in the amount of \$1,450.00 prior to starting the project for the purchase of materials. The Regulant never returned to install the roof and never returned the Claimants' funds.

On February 20, 2002, in the City of Virginia Beach General District Court, Stephen & Karen Lander obtained a Judgment against Cecil "Gary" Bell, t/a Gary's

Home Repair, in the amount of \$1,450.00, attorney fees of \$500.00, plus interest and \$30.00 costs for a total judgment of \$1,980.00. The judgment indicated that the basis for the suit as "Fraud/Conversion."

The Claimants are seeking a payment from the Recovery Fund in the amount of \$2,003.00. The claim form indicates a judgment of \$1,450.00, \$53.00 in court costs, and \$500.00 in attorney's fees.

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$1,803.60. This includes \$1,450.00 for the judgment, \$53.00 for court costs, and \$300.60 for attorney's fees.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: April 28, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Stephen & Karen Lander (Claimants) and Cecil G. Bell t/a Gary's Home Repair (Regulant)
File Number: 2004-04269

BACKGROUND

On February 20, 2002, in the City of Virginia Beach General District Court, Stephen & Karen Lander obtained a Judgment against Cecil "Gary" Bell, t/a Gary's Home Repair, in the amount of \$1,450.00, attorney fees of \$500.00, plus interest and \$30.00 costs for a total judgment of \$1,980.00.

A claim in the amount of \$2,003.00 was received by the Department of Professional and Occupational Regulation on February 13, 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 "Fraud/Conversion" as the basis for the suit.
The block designated "Other" has been marked.

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

The claimants did contract with the regulant.

The Board issued Class C License Number 2705048944 to Cecil G. Bell t/a Gary's Home Repair on April 1, 1999. The license will expire on April 30, 2005. The claimants entered into a written contract with GCP, Inc., on March 5, 2001 for the installation of a new roof at 3805 Chellwood, Virginia Beach, Virginia, 23452. (note: the address on the claim form is 8310 Quail Creek Drive, Colfax, N.C. 27235).

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 February 20, 2002. The claim was received on February 13, 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 GCP, Inc., on March 5, 2001 for the installation of a new roof at 3805 Chellwood, Virginia Beach, Virginia, 23452.

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.

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 "Fraud/Conversion the basis for the suit. The block designated "Other" has been marked.

In the Affidavit of Facts dated April 14, 2003, the claimant asserts that the regulant received a down payment in the amount of \$1,450.00 prior to starting the project for the purchase of materials. The regulant never returned to install the roof and never returned the claimants' funds.

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."

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.

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

Re: Maye and Philip Jepson (Claimants) and Bator Construction Company (Regulant)

File Number: 2004-04157
License Number: 2702032629

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 3, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Maye and Philip Jepson ("Claimants") and Bator Construction Company ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail was signed for and received by both the Claimant and the Regulant.

On November 3, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to the Claimant and the Regulant. The certified mail to the Claimant was signed and received. The certified mail was signed for and received by both the Claimant and the Regulant.

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Maye and Philip Jepson, Claimants; Edwin Bischoff, Attorney for Claimants; Henry Bator, Regulant; Kenneth Hirtz, Attorney for Regulant; Richard Moore, Craig Jones, and Fred Glenn Miller, Witnesses; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

RECOMMENDATION

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

The Claimant entered into a written contract on July 14, 2000, to purchase a dwelling constructed by Bator Construction Company.

On October 23, 2002, in the Circuit Court of Henrico County, Maye H. & Philip R. Jepson obtained a Judgment against Bator Construction Company, t/a Bator Construction Company, in the amount of \$28,426.35, plus interest and 25% attorney fees of the full compensatory award.

The Claimants assert that the regulant failed to obtain a final occupancy permit, and obtained a temporary certificate of occupancy. The Regulant represented and warranted to the Claimants that the construction and/or punch list items would be completed after closing. After taking possession of the property the claimants experienced construction defects and landscape/drainage problems. The temporary certificate of occupancy expired and corrections were not completed within 15 days as specified by the County of Henrico. There were violations to the Virginia Uniform Statewide Building Code which were not corrected within 30 days as specified by the County of Henrico. The Regulant continued to refuse to take the necessary actions to correct the violations and discrepancies. As a direct result of the fraud and misrepresentation the Regulant has received funds for which he was not entitled to. The Claimants have and will in the future incur costs as a result of the work performed by the Regulant.

The Claimants are seeking a payment from the Recovery Fund in the amount of \$10,000.00.

During the IFF, Hirtz stated the Regulant tried to fix the problems with the subject property, but was denied access to the property to resolve the issues. Hirtz further stated the judgment issued to the Claimants was a default judgment, and was not a trial on the merits.

During the IFF, Bischoff stated the improper and dishonest conduct of the Regulant resulted in the Claimants having to hire another contractor to make the necessary repairs.

Based on the record, and the testimony presented during the IFF, it appears that the Claimants gave the Regulant opportunities to make the needed repairs, and abate the code violations. In letters dated February 7, 2001 and March 15, 2001, Bischoff informed the Regulant, through its attorney, of the Claimants' willingness to have the Regulant return to the property to make the repairs. The Regulant did not make the repairs.

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$10,000.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: April 30, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of
Maye H. & Philip R. Jepson (Claimants) and Bator Construction Company
t/a Bator Construction Company (Regulant)
File Number: 2004-04157

BACKGROUND

On October 23, 2002, in the Circuit Court of Henrico County, Maye H. & Philip R. Jepson obtained a Judgment against Bator Construction Company, t/a Bator Construction Company, in the amount of \$28,426.35, plus interest and 25% attorney fees of the full compensatory award.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on May 27, 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 Order does not recite the basis for the award.

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

The claimants did contract with the regulant.

The Board issued Class A License Number 2701032629 to Bator Construction Company, on August 11, 1988. The license will expire on August 31, 2004. The claimants entered into a written contract with Bator Construction Company on July 14, 2000 to purchase a dwelling constructed by Bator Construction Company.

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 Board for Contractors was 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 receive 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 October 23, 2002. The claim was received May 27, 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 to purchase a dwelling constructed by Bator Construction Company.

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 Director's Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

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

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 does not recite the basis for the award.

In the Affidavit of Facts April 8, 2003 the claimants assert that the regulant failed to obtain a final occupancy permit, and obtained a temporary certificate of occupancy. The regulant represented and warranted to the claimants that the construction and/or punch list items would be completed after closing. After taking possession of the property the claimants experienced construction defects and landscape/drainage problems. The temporary certificate of occupancy expired and corrections were not completed within 15 days as specified by the County of Henrico. There were violations to the Virginia Uniform Statewide Building Code which were not corrected within 30 days as specified by the County of Henrico. The regulant continued to refuse to take the necessary actions to correct the violations and discrepancies. As a direct result of the fraud and misrepresentation the regulant has received funds for which he was not entitled to. The claimants have and will in the future incur costs as a result of the work performed by 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, "No."

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.

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

Re: Jean P. Wilson (Claimant) and Kenneth Dwayne Blankenship, t/a Homeworks Improvement (Regulant)

File Number: 2004-00309
License Number: 2705049863

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 3, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Jean P. Wilson ("Claimant") and Kenneth Dwayne Blankenship, t/a Homeworks Improvement ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail sent to the Claimant was signed for and received. The certified mail sent to the Regulant was returned by the United States Postal Service and was marked "Not Deliverable As Address, Unable to Forward."

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jean P. Wilson, Claimant; Ben Gardner, Claimant's Attorney; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall Presiding Officer. Neither Kenneth Dwayne Blankenship, t/a Homeworks Improvement nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

The Claimant entered into a written contract with Homeworks Improvement on September 26, 2002 for the removal and replacement of a roof and the replacement of the gutter on left side of claimant's residence.

The Claimant stated that she paid a \$2,000.00 down payment to the Regulant in September 2002. After signing the contract and paying the down payment the Regulant never returned to start the project. After several attempts to have the Regulant complete the project, the Claimant requested a refund of the down payment. The Regulant has never returned the claimant's money. Due to the Regulant's failure to install the new roof, the Claimant incurred additional damages

to the interior ceilings due to the rains, snow and ice storms in her area during the months of January and February 2002.

On May 28, 2003, in the Martinsville General District Court, Jean Wilson obtained a Judgment against Kenneth Blankenship, in the amount of \$2,400.00, plus interest, and \$36.00 costs.

The Claimant is seeking a payment from the Recovery Fund in the amount of \$3,186.00. This amount includes a claim for \$750.00 in attorney's fees.

The record indicates that the Claimant also had an additional \$36.00 in court costs for debtor interrogatories.

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$2,966.00. This amount includes the additional court costs, and \$494.00 paid to the Claimant for attorney's fees.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: September 16, 2004

RE: In the matter of Virginia Contractor Transaction Recovery Act Claim of
Jean P. Wilson (Claimant) & Kenneth Dwayne Blankenship t/a Homeworks
Improvement (Regulant)
File Number 2004-00309

BACKGROUND

On May 28, 2003, in the Martinsville General District Court, Jean Wilson obtained a Judgment against Kenneth Blankenship, in the amount of \$2,400.00, plus interest, and \$36.00 costs.

The claim in the amount of \$3,186.00 was received by the Department of Professional and Occupational Regulation on June 23, 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 does not recite the basis for the suit. The block designated "Contract" has been marked.

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 C License Number 2705049863 to Kenneth Dwayne Blankenship t/a Homeworks Improvement, on June 7, 1999. The license was permanently revoked on December 1, 2003. The claimant entered into a written contract with Homeworks Improvement on September 26, 2002 for the removal and replacement of a roof and the replacement of the gutter on left side of 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 May 28, 2003. The claim was received on June 23, 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 Homeworks Improvement on September 26, 2002 for the removal and replacement of a roof and the replacement of the gutter on left side of 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 conducted. No assets were revealed.

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 does not recite the basis for the suit. The block designated "Contract" has been marked.

In the Affidavit of Facts dated September 11, 2003, the claimant asserts she paid a \$2,000.00 down payment to the regulant in September 2002. After signing the contract and paying the down payment the regulant never returned to start the project. After several attempts to have the regulant complete the project, the claimant requested a refund of the down payment. The regulant has never returned the claimant's money. Due to the regulant's failure to install the new roof the claimant incurred additional damages to the interior ceilings due to the rains, snow and ice storms in her area during the months of January and February.

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 her knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

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.

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

Re: Sarah S. Harris (Claimant) and Person Maintenance and Repair (Regulant)

File Number: 2004-01019
License Number: 2705060203

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 3, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Sarah S. Harris ("Claimant") and Person Maintenance and Repair ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail to the Claimant was signed and received. The certified mail to the Regulant was returned by the United States Postal Service, and marked as "Attempted, Not Known."

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. The Claimant did not appear at the IFF. Neither Takai Person 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:

In March 2001, the Claimant entered into a written contract with the Regulant to perform roof and gutter repairs, repair bad wood, and paint trim at Claimant's residence.

The Regulant did not complete the repairs properly. As a result, the gutters leaked and caused damage to the Claimant's residence.

On November 18, 2002, in the Newport News General District Court, the Claimant obtained a judgment against Takai Person, in the amount of \$540.00, plus interest and \$36.00 in court costs. The licensing records for the Regulant indicate that Takai Person is the responsible management for the Regulant.

The Claimant is seeking a payment from the Recovery Fund in the amount of \$576.00.

The record indicates that the Claimant had an additional \$108.00 in court costs.

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$684.00.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: October 4, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Sarah S. Harris (Claimant) and Person Maintenance and Repair t/a Person Maintenance and Repair (Regulant)
File Number: 2004-01019

BACKGROUND

On November 18, 2002, in the Newport News-Civil Division General District, Sarah S. Harris obtained a Judgment against Takai Y. Person, in the amount of \$540.00, plus interest and \$36.00 costs.

The claim in the amount of \$576.00 was received by the Department of Professional and Occupational Regulation on August 13, 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 "repairments not satisfactory" as the basis of 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 C License Number 2705060203 to Person Maintenance and Repair t/a Person Maintenance and Repair on January 24, 2001. The license was revoked on October 16, 2002. T. Person is listed on the Board for Contractors licensing record as the Responsible Management and Qualified Individual for Person Maintenance and Repair. The claimant entered into a contract with Person Maintenance and Repair LLC on March 2, 2001 for roof and gutters repairs, repairing of bad wood and painting of the trim at the 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 Board for Contractors 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 pleadings and/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 November 18, 2002. The claim was received on August 13, 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 contract with Person Maintenance and Repair LLC on March 2, 2001 for roof and gutters repairs, repairing of bad wood and painting of the trim at the 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 Director's 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, as the regulant could not be found.

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 "repairments not satisfactory" as the basis for the suit.

In the Affidavit of Facts dated September 24, 2003 the claimant asserts that the regulant did not repair the items contracted for. The gutters were not repaired properly causing additional water damage to the master bedroom and another room at the claimant's residence.

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(s) was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant(s) responded, "No."

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.

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

Re: Marjorie Jean Williams (Claimant) and BP Construction Company Inc. (Regulant)

File Number: 2004-03808
License Number: 2705059593

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 3, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Marjorie Jean Williams ("Claimant") and BP Construction Company Inc. ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail to the Claimant was signed and received. The certified mail to the Regulant was returned by the United States Postal Service, and marked as "Refused."

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. The Claimant did not appear at the IFF. BP Construction Company Inc. did not appear in person, or by any other qualified representative, at the IFF.

RECOMMENDATION

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

In June 2003, the Claimant entered into a written contract with the Regulant to construct a modular home for the Claimant. The Claimant paid the Regulant \$17,000.00 as a deposit to begin work. The Claimant made several attempts to get the Regulant to commence work at the subject property. On August 18, 2003, the Regulant commenced work by putting down frame and rebar for the first footing. On August 25, 2003, the Regulant poured concrete for the framed footing, but never returned to the subject property to complete the work. The Claimant requested that the Regulant return the \$17,000.00 deposit. The Regulant never returned any money to the Claimant.

On October 20, 2003, in the Campbell County General District Court, the Claimant obtained a judgment against the Regulant in the amount of \$15,000.00, plus

interest and \$49.00 in court costs. The judgment cited "Failure to perform work, failure to return funds."

The Claimant is seeking a payment from the Recovery Fund in the amount of \$10,000.00.

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$10,000.00.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: October 4, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Marjorie Jeanne Williams (Claimant) and BP Construction Company Inc., t/a BP Construction Company, Inc., (Regulant)
File Number: 2004-03808

BACKGROUND

On October 20, 2003, in the Campbell County General District Court, Marjorie J. Williams obtained a Judgment against BP Construction Co., Inc. & Creative Design Homes, Inc., in the amount of \$15,000.00, plus interest and \$49.00 costs.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on March 16, 2004.

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 "Failure to perform work, failure to return funds" as the basis for the suit. The block designated "Other" has been marked.

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 2705059593 to BP Construction Company Inc., t/a BP Construction Company, Inc., on December 4, 2000. The license will expire on December 31, 2004. The claimant entered into a written contract with BP Construction, Inc., on June 24, 2003 to construct a modular home for the claimant.

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 Board for Contractors 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 October 20, 2003. The claim was received on March 16, 2004.

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 BP Construction Company, Inc., on June 24, 2003 to construct a modular home for the claimant.

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 Director's Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed. A notation was made on the claim form "two judgment debtors: Bank of America, Buena Vista, Bank of Botetourt, Lexington." A letter dated April 23, 2004 was provided by the claimant's attorney -no assets were revealed.

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 "failure to perform work, failure to return funds" as the basis for the suit. The block designated "Other" has been marked. In the Affidavit of Facts dated May 3, 2004, the claimant asserts she agreed to a written contract with BP Construction Company, Inc., to construct a modular home for the claimant. The regulant received a payment of \$17,000.00 toward the cost of the modular home. The regulant failed to start the construction or obtain the permits in a timely manner. The regulant did not apply the funds received from the claimant toward the construction of the project. The regulant failed to complete the project and did not return the claimant's money as requested by the claimant.

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(s) was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant(s) responded, "No."

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.

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

Re: Deborah Lake (Claimant) and Leon A. Hundley III, t/a Home Improvement (Regulant)

File Number: 2004-01071
License Number: 2705066195

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 3, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Deborah Lake ("Claimant") and Leon A. Hundley III, t/a Home Improvement ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail to the Claimant was signed and received. The certified mail to the Regulant was returned by the United States Postal Service, and marked as "Box Closed, Unable to Forward."

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Deborah Lake, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Leon Hundley nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

In April 2002, the Claimant entered into a written contract with the Regulant for improvements to a bedroom at the Claimant's residence. The Claimant paid the Regulant \$1,000.00 as a deposit, and work was to commence in early May. In May 2002, the Claimant contacted the Regulant regarding the commencing of work, but the start of the project was delayed for several weeks. On June 10, 2002, the Regulant commenced work by demolishing a wall. The Regulant requested that the Claimant pay him an additional \$800.00 by June 14, 2002, as well as an additional \$300.00 for a door. The Claimant paid the Regulant \$1,100.00. The Regulant agreed that all work would be completed by June 20, 2002. The Regulant did not complete the work by this date.

In June 2002 and July 2002, the Claimant contacted the Regulant several times regarding the completion of work. The Regulant never returned to the property to

complete the work. The Claimant requested a refund of a portion of the money paid to the Regulant. The Regulant never returned any money. The Claimant has incurred additional expenses in order to correct the work not completed, or completed improperly, by the Regulant.

On December 20, 2002, in the Fairfax County General District Court, the Claimant obtained a judgment against the Regulant, in the amount of \$1,600.00, plus interest and \$36.00 in court costs.

During the IFF, the Claimant submitted information regarding attorney's fees, in the amount of \$312.50. The Claimant revised her claim, and is seeking a payment from the Recovery Fund in the amount of \$2,020.50.

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$2,020.50.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: October 4, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Marjorie Jeanne Williams (Claimant) and BP Construction Company Inc., t/a BP Construction Company, Inc., (Regulant)
File Number: 2004-03808

BACKGROUND

On October 20, 2003, in the Campbell County General District Court, Marjorie J. Williams obtained a Judgment against BP Construction Co., Inc. & Creative Design Homes, Inc., in the amount of \$15,000.00, plus interest and \$49.00 costs.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on March 16, 2004.

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 "Failure to perform work, failure to return funds" as the basis for the suit. The block designated "Other" has been marked.

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 2705059593 to BP Construction Company Inc., t/a BP Construction Company, Inc., on December 4, 2000. The license will expire on December 31, 2004. The claimant entered into a written contract with BP Construction, Inc., on June 24, 2003 to construct a modular home for the claimant.

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 Board for Contractors 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 October 20, 2003. The claim was received on March 16, 2004.

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 BP Construction Company, Inc., on June 24, 2003 to construct a modular home for the claimant.

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 Director's Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed. A notation was made on the claim form "two judgment debtors: Bank of America, Buena Vista, Bank of Botetourt, Lexington." A letter dated April 23, 2004 was provided by the claimant's attorney -no assets were revealed.

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 "failure to perform work, failure to return funds" as the basis for the suit. The block designated "Other" has been marked. In the Affidavit of Facts dated May 3, 2004, the claimant asserts she agreed to a written contract with BP Construction Company, Inc., to construct a modular home for the claimant. The regulant received a payment of \$17,000.00 toward the cost of the modular home. The regulant failed to start the construction or obtain the permits in a timely manner. The regulant did not apply the funds received from the claimant toward the construction of the project. The regulant failed to complete the project and did not return the claimant's money as requested by the claimant.

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(s) was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant(s) responded, "No."

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.

**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 December 1, 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

12-01-04
Date