

**Minutes of Meeting  
BOARD FOR CONTRACTORS  
INFORMAL FACT-FINDING CONFERENCES  
February 24, 2005 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Ruth Ann Wall, presiding officer, presided. No Board members were present.

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

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

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

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

Participants

- |  |   |
|--|---|
| 1. Christopher M. Carter<br>t/a Carters Contracting Services<br>File Number 2004-04653 (Disc)            | Betty Lane – C<br>Linda LeGay – W         |
| 2. Coastal Cottages & Cabinets Inc.<br>File Number 2004-02630 (Disc)                                     | Pete Gotwals – C<br>Judy Gotwals – C      |
| 3. Bernard A. Spain<br>t/a Spain Construction<br>File Number 2004-02765 (Disc)<br><b>(Consent Order)</b> | Spain – R                                 |
| 4. Affordable Home Improvement Solutions Inc.<br>File Number 2004-05134 (Disc)                           | None                                      |
| 5. Classic Touch Unlimited Inc.<br>File Number 2005-01317 (Disc)   | Janice Fuller – C<br>Sutalia Townsend – W |
| 6. Geoffrey O. Dean<br>t/a Gateway Fence Company<br>File Number 2005-01342 (Disc)                        | None                                      |

7. Arnold Ford Sr.  
t/a Ford & Ford Construction Carpentry  
Interior & Exterior  
File Number 2004-02647 (Disc)  
**(No Decision Made)**

Ford – R  
Tammy Shahinian – C

8. R S Woodson Excavating Inc.  
File Number 2004-04861 (Disc)  
**(Consent Order)**

Ronald Woodson – R  
Victoria Scott – C

9. Odell Caldwell  
t/a Caldwell Construction  
File Number 2004-05022 (Disc)

Caldwell – R  
J. William Brennan – R Atty  
Saundra Delk – W  
Henry Beamon – W  
Vernice Epps – W  
Miles Cross – C  
Mary Cross – C

**(No Decision Made)**

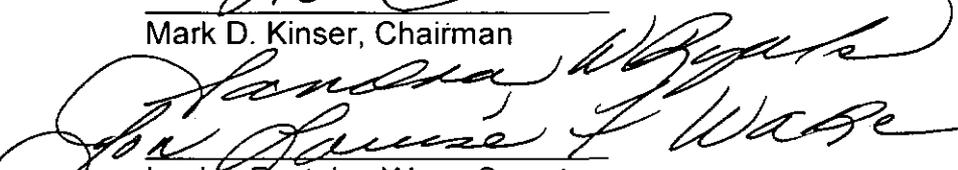
10. Fred W. Munford Jr.  
t/a Shore Cut & Care  
File Number 2005-01151 (Disc)

Munford – R  
William Cathell – C  
Kimberly Cathell – C  
Hallie Munford – W

The meeting adjourned at 4:00 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: Christopher M. Carter, t/a Carters Contracting Services

File Number: 2004-04653  
License Number: 2705069954

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 21, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Christopher M. Carter ("Carter"), t/a Carters Contracting Services to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On February 24, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Betty Lane ("Lane"), Complainant; Linda Legay ("Legay"), Witness; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Christopher Carter, Respondent, nor anyone on his behalf appeared at the IFF.

**RECOMMENDATION**

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

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

The contract used in the transaction failed to include three of the provisions required by the Board's regulation.

Carter's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

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

In November 2003, Lane contracted with Carter to perform home improvements at the subject property. The contract was signed by Lane, but not by Carter. Lane later entered

into a second contract with Carter to construct a shed at the subject property. The contract was not signed by either party. Carter failed to provide Lane a copy of the contracts with his signature.

Carter's failure to deliver a fully executed contract to the consumer before beginning work or accepting payments is a violation of Board Regulation 18 VAC 50-22-260.B.10. Therefore, I recommend a monetary penalty of \$500.00 and license revocation be imposed.

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

Carter contracted with Lane on November 4, 2003, and began work six days later on November 10, 2003. After this date, Carter did not continue performing work. Lane's daughter and son-in-law each contacted Carter regarding the incomplete work. Carter did not resume work until late May 2004, when he returned to the subject property to deliver a load of crush gravel. In June or July of 2004, Carter then returned with a tractor to spread the gravel, but did not do so because the tractor sank into the wet ground. Carter has failed to complete the work.

During the IFF, Lane stated Carter had not contacted her since May 2004. In January 2004 and March 2004, Legay inquired about why the work was delayed. Each time, Carter told her work could not be performed because of weather.

Carter's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

Lane signed over two checks, totaling \$8,564.62, to Carter. Carter did not complete work, and never returned any money to Lane for work he did not perform.

Carter's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

In August 2004, in Henrico County General District Court, Lane obtained a judgment against Carter in the amount of \$4,100.76. Carter has failed to satisfy the judgment.

Carter's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: \_\_\_\_\_  
Ruth Ann Wall  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

**MONETARY PENALTY TERMS**

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: December 14, 2004 (revised December 28, 2004)

FILE NUMBER: 2004-04653  
RESPONDENT: Christopher M Carter t/a Carters Contracting Services  
LICENSE NUMBER: 2705069954  
EXPIRATION: June 30, 2005

SUBMITTED BY: E. Nathan Matthews  
APPROVED BY: Wayne Mozingo

COMMENTS:

None.

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Christopher M Carter ("Carter"), t/a Carters Contracting Services, was at all times material to this matter a Class C contractor licensed in Virginia (No. 2705069954).

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

BACKGROUND:

On May 13, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Betty Lane ("Lane") regarding Carter. (Exh. C-1)

On October 14, 2003, Lane received a \$4,100.73 check from her insurance company. (Exh. C-4)

On November 4, 2003, Carter entered into a written contract, in the amount of \$7,175.00, with Lane to perform home improvements at 3814 Ronnie Avenue, Richmond, Virginia 23222. (Exh. C-2)

On November 4, 2003, Lane signed the \$4,100.73 check over to Carter. (Exh. C-4)

On November 10, 2003, Carter commenced work. (Exh. I-2)

Carter provided Lane a written proposal ("contract"), in the amount of \$3,864.65, to construct a 12 x 14 shed with double doors, two windows, and two motion lights at the subject property. (Exh. C-3)

On December 13, 2003, Lane received a \$4,463.89 check from her insurance company. On December 23, 2003, Lane signed the \$4,463.89 check over to Carter. (Exh. C-5)

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1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

- a. When work is to begin and the estimated completion date;
- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- h. Contractor's license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contracts used by Carter in the transaction failed to contain subsections: a., e., and h. (Exh. C-2 and C-3)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

FACTS:

The November 4, 2003, contract provided by Lane did not have Carter's signature. (Exh. C-2) The second contract provided by Lane was not signed by either Carter or Lane. (Exh. C-3)

Carter failed to provide Lane with a copy of the contracts with his signature. (Exh. I-3)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

Carter stopped performing work at the subject property on November 10, 2003. (Exh. I-3)

In January 2004, Lane's daughter contacted Carter about completing the work. Carter stated he would complete the work in a couple of weeks. (Exh. I-11)

On March 8, 2004, Lane's daughter contacted Carter about completing the work. Carter stated he would return in April and complete the work. (Exh. I-11)

On March 31, 2004, Lane's son-in-law contacted Carter. Carter stated he would return on April 1, 2004. (Exh. I-11)

In late May 2004, Carter delivered a load of crush gravel to the subject property and told Lane he would return the following week to fill the yard and landscape. (Exh. I-3 and I-5)

In June 2004 or July 2004, Carter took a Bobcat tractor to the subject property to spread the crush gravel. However, Carter was unable to spread the gravel because the tractor sank into the wet ground. (Exh. I-5)

As of September 30, 2004, Carter failed to return to the subject property or contact Lane regarding completion of the work. (Exh. I-3)

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

On July 9, 2004, in the Henrico General District Court, Lane filed a Warrant in Debt against Carter for breach of contract. (Exh. C-6)

Carter retained funds paid for work not performed or performed only in part.

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On August 30, 2004, in the Henrico General District Court, Lane was awarded a \$4,100.76 judgment against Carter. (Exh. C-6)

As of October 18, 2004, Carter failed to satisfy the judgment. (Exh. I-4)

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

Re: Coastal Cottages & Cabinets Inc.

File Number: 2004-02630  
License Number: 2705062717

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 21, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Coastal Cottages & Cabinets Inc. ("Coastal Cottages") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 26, 2005, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Coastal Cottages to the address of record. The certified mail was signed for and received.

On February 24, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Pete and Judy Gotwals ("the Gotwals"), Complainants; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Board Member. Neither David Englehart, Responsible Management for Coastal Cottages, Respondent nor anyone on its behalf appeared at the IFF.

**RECOMMENDATION**

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

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

The contract used in the transaction failed to contain six of the provisions required by the Board's regulation.

Coastal Cottages's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In October 2003, Coastal Cottages's Class A contractor's license was suspended by the Board. Coastal Cottages continued to practice contracting and perform work after its license was suspended.

Coastal Cottages's action of contracting while having a suspended contractor's license is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$900.00 and license revocation be imposed.

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

In September 2003, Judy Gotwals ("J. Gotwals") contracted with Coastal Cottages to construct a deck and perform other work at the subject property. In October 2003, Coastal Cottages commenced work. Coastal Cottages modified the contract to establish a completion date of November 15, 2003. On November 11, 2003, Coastal Cottages delivered materials to the subject property and performed some work. After this date, Coastal Cottages never returned to the subject property to complete the work. David Englehart ("Englehart") told the Board's agent that work was not completed.

During the IFF, J. Gotwals stated she paid Coastal Cottages a 50% deposit after signing the contract on September 25, 2003. Beginning on September 27, 2003, J. Gotwals made several attempts to contact Coastal Cottages; however, Coastal Cottages did not respond. On October 21, 2003, when J. Gotwals returned to the subject property, she discovered the steps were removed. J. Gotwals contacted Coastal Cottages regarding construction of the new steps. On October 29, 2003, Coastal Cottages returned to the subject property but did not perform any work. On November 11, 2003; Coastal Cottages began installation of the deck posts, but the posts were not placed in the correct area to make the deck the size specified in the contract. Coastal Cottages did not perform any additional work after November 11, 2003.

Coastal Cottages's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

Coastal Cottages failed to complete the work contracted for.

Coastal Cottages's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

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

The Gotwals paid Coastal Cottages \$1,800.00 as a deposit on the contract. Coastal Cottages did not complete the work. The Gotwals requested Coastal Cottages refund the deposit. Coastal Cottages did not refund the deposit, or any money it received for work it did not perform.

Coastal Cottages's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

In April 2001, the Board issued Coastal Cottages its Class A contractor's license as a corporation. In July 2002, the State Corporation Commission ("SCC") terminated Coastal Cottages as a corporation. Englehart told the Board's agent that he recently became aware the SCC terminated his corporation, and stated his attorney was trying to get the corporation back in good standing with the SCC. Coastal Cottages failed to apply for a new license within thirty (30) days of a change of business entity.

Coastal Cottages's failure to apply for a new license within thirty (30) days of a change of business entity is a violation of Board Regulation 18 VAC 50-22-210.3. Therefore, I recommend a monetary penalty of \$500.00 and license revocation be imposed.

Count 7: Board Regulation (Effective January 1, 2003)

In August 2004, in Chesterfield General District Court Peter Gotwals ("P. Gotwals") obtained a judgment against Coastal Cottages, in the amount of \$1,800.00. Englehart told the Board's agent he would pay the Gotwals' judgment; however, Coastal Cottages has failed to satisfy the judgment.

During the IFF, J. Gotwals stated, during the debtor's interrogatories, Coastal Cottages offered to make payments towards the judgment. J. Gotwals attempted to contact Coastal Cottages regarding the offer to make payments; however, Coastal Cottages did not respond. As of date, Coastal Cottages has not made any payments towards the judgment.

Coastal Cottages's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

**MONETARY PENALTY TERMS**

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: October 15, 2004 (revised January 3, 2005)

FILE NUMBER: 2004-02630  
RESPONDENT: Coastal Cottages & Cabinets Inc  
LICENSE NUMBER: 2705062717  
EXPIRATION: April 30, 2005

SUBMITTED BY: E. Nathan Matthews  
APPROVED BY: Wayne Mozingo

COMMENTS:

On October 15, 2003, the license issued to Coastal Cottages & Cabinets Inc. was suspended.

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Coastal Cottages & Cabinets Inc ("Coastal Cottages") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705062717).

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

BACKGROUND:

On December 23, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Pete and Judy Gotwals ("the Gotwals") regarding Coastal Cottages. (Exh. C-1)

On April 25, 2001, Coastal Cottages was issued Class A contractor's license number 2705062717. David W. Englehart ("Englehart") is the Responsible Management of license number 2705062717. (Exh. I-1)

On September 25, 2003, Coastal Cottages entered into a written contract, in the amount of \$3,754.79, with Judy Gotwals to construct a deck, replace stair treads and risers, install pressure treated lumber to direct water away from gables, and remove and replace rotten

boards at 4559 Vauxhall Road, Richmond, Virginia 23234. (Exh. C-2) (NOTE: Judy Gotwals and Coastal Cottages only agreed to four items in the contract.)

On September 25, 2003, the Gotwals paid Coastal Cottages \$1,800.00 by check. (Exh. C-3)

On October 15, 2003, license number 2705062717 was suspended by the Board for Contractors. (Exh. I-1)

On October 21, 2003, Coastal Cottages commenced work. (Exh. I-3)

On October 29, 2003, Coastal Cottages modified the contract to indicate the work would be completed by November 15, 2003. (Exh. C-2 and I-3)

On November 11, 2003, Coastal Cottages delivered materials to the subject property and installed some deck posts. (Exh. I-3)

On November 11, 2003, the Gotwals and Coastal Cottages agreed to modify the contract and void all the work to be performed except construction of the 48 square foot deck addition and the stairway with treads and risers by November 26, 2003. (Exh. I-3)

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1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Coastal Cottages in the transaction failed to contain subsections: a., d., e., f., h., and i. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

Coastal Cottages continued to practice contracting and perform work after its license was suspended.

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The last day Coastal Cottages performed work at the subject property was November 11, 2003. (Exh. I-3)

The Gotwals attempted to contact Coastal Cottages by telephone; however, Coastal Cottages did not return the calls. (Exh. I-3)

On July 14, 2004, Englehart stated he delivered materials to the job site and started work; however, the deck and stairway were not completed. (Exh. I-4)

Coastal Cottages abandoned the work contracted for.

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

In addition to the facts outlined in Count 3:

As of July 14, 2004, Coastal Cottages failed to complete the work contracted for and comply with the terms of the contract. (Exh. I-4)

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition the facts outlined in Counts 3 and 4:

The Gotwals left a message for Coastal Cottage requesting it refund the deposit. (Exh. C-1)

As of December 23, 2003, Coastal Cottages failed to refund money received for work not performed or performed only in part. (Exh. C-1)

On June 30, 2004, in the Chesterfield County General District Court, Pete Gotwals filed a Warrant and Debt against Coastal Cottages. (Exh. I-5)

6. Board Regulation (Effective January 1, 2003)

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

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

3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

FACTS:

On July 31, 2002, the State Corporation Commission ("SCC") terminated Coastal Cottages as a corporation. (Exh. I-2)

On July 14, 2004, Englehart stated he recently found out from his attorney that the SCC terminated the corporate status of Coastal Cottages. Englehart further stated his attorney is trying to get the corporation back in good standing with the SCC. (Exh. I-4)

As of January 3, 2005, the SCC records still indicated Coastal Cottages was terminated as a corporation. (Exh. I-2)

Coastal Cottages failed to apply for a new license within thirty (30) days of a change of the business entity.

7. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On August 30, 2004, in the Chesterfield General District Court, Peter Gotwals was awarded a \$1,800.00 judgment against Coastal Cottages. (Exh. I-5)

Englehart stated he offered to pay \$650.00 up front and the balance of the judgment in monthly payments. Englehart further stated he would attempt to pay the \$1,800.00 to the Gotwals. (Exh. I-4)

As of October 15, 2004, Coastal Cottages failed to satisfy the judgment. (Exh. I-7)

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

Re: Bernard A Spain, t/a Spain Construction  
Chester, VA 23831

File Number           2004-02765  
License Number       2705003766

**CONSENT ORDER**

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

**Board's 2003 Regulations provides:**

**18 VAC 50-22-200. Remedial education, revocation or suspension; fines.**

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

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

On January 21, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Bernard A. Spain ("Spain"), t/a Spain Construction to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On February 24, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Bernard Spain, Respondent; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

During the IFF, Spain stated the contract did not include the minimum provisions because he previously performed work for Carola Barnett. Spain agreed to revise his contract to include the minimum provisions.

Spain stated this was the first time he constructed a deck with composite decking. Spain further stated he reconstructed the deck to the satisfaction of Carola Barnett. Spain provided documentation that the deck was inspected on December 20, 2004, and no problems existed with the reconstructed deck.

The Amended Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

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

By signing this Consent Order, Bernard A Spain acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Amended Report of Findings. Bernard A Spain consents to the following term(s):

	Count 1	18 VAC 50-22-260.B.9	\$500.00
	Count 2	18 VAC 50-22-260.B.6	\$500.00
			-----
	TOTAL		\$1,000.00

In addition, the Board agrees to waive the \$500.00 monetary penalty for Count 1 provided Bernard A Spain produces a copy of a revised contract within thirty (30) days of entry of this order. If Bernard A. Spain fails to produce a copy of revised contract, then the \$500.00 monetary penalty will be automatically imposed for violation of Count 1.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically noted above. Bernard A Spain acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Bernard A Spain will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

**Bernard A Spain acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Bernard A Spain's license until such time as there is compliance with all terms of this Order. Bernard A**

**Spain understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.**

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

SEEN AND AGREED TO:

\_\_\_\_\_  
Bernard A Spain  
t/a Spain Construction

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF \_\_\_\_\_  
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2005.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SO ORDERED:**

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

*Board for Contractors*

BY: \_\_\_\_\_  
Louise Fontaine Ware, Secretary

E00

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

AMENDED  
REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: November 29, 2004 (amended February 24, 2005)

FILE NUMBER: 2004-02765  
RESPONDENT: Bernard A. Spain, t/a Spain Construction  
LICENSE NUMBER: 2705003766  
EXPIRATION: August 31, 2005

SUBMITTED BY: Renee H. Popielarz  
APPROVED BY: E. Wayne Mozingo

COMMENTS:

Manufacturer installation instructions are included for Fibron and Trex since the home inspector included Fibron with his report and the contract calls for Trex. Both require spacing between the boards for expansion and drainage.

\*\*\*\*\*

Bernard A. Spain ("Spain"), t/a Spain Construction, was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705003766).

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

BACKGROUND:

On January 9, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Carola Barnett ("Barnett") regarding Spain. (Exh. C-1)

On May 13, 2002, Spain entered into a written contract, in the amount of \$9,600.00, with Barnett to build a deck (three sides around Florida room) at 105 Stratford Drive, Colonial Heights, Virginia 23834. (Exh. R-2)

On May 15, 2002, Barnett paid Spain \$5,000.00 by check. (Exh. C-2) On June 25, 2002, Barnett paid Spain \$2,000.00 by check. (Exh. C-3) On August 8, 2002, Barnett paid Spain \$2,600.00 by check. (Exh. C-4)

\*\*\*\*\*

1. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Spain in the transaction failed to contain subsections: a., b., d., e., f., h., and i. (Exh. R-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

In June 2002 and July 2002, Spain built the deck at the subject property. On August 8, 2002, Spain completed the deck. (Exh. R-1)

After Spain constructed the deck, Barnett noticed the support posts leaned outward causing the railings to become crooked and wood to warp. (Exh. C-1)

In April 2003, Barnett contacted Spain and explained the problem. (Exh. C-1)

On August 10, 2003, Spain received a message from Barnett regarding rails coming out the post and some leaning posts. About two weeks later, Spain returned to the subject property and looked at the rails while Barnett was not home. Spain determined "[t]here was a problem with expansion which caused the deck to push the post out of line which caused the rails to be loose, they are vinyl rails and post." (Exh. R-1)

On September 2, 2003, Barnett contacted Spain to discuss the problem. Spain told Barnett he would return to the subject property and look at the problem together and decide what to do. (Exh. R-1)

Barnett and Spain met at the subject property and discussed the problem. Spain told Barnett the unusual amount of rain, the yard being flat, and the deck being 4 to 6 inches off the ground caused expansion to move the post. Since Spain felt it was not his fault, Spain offered Barnett to correct the post for \$50.00 per hour, for two men, not to exceed \$800.00. (Exh. R-1)

In December 2003, Spain told Barnett the warranty expired and he would correct the problem for an additional \$800.00. (Exh. C-1)

On April 19, 2004, Richard Mellon ("Mellon") of Home Inspection Service inspected the subject property. In an undated report, Mellon outlined his observations, deficiencies found, and possible ways to correct the deck problems. (Exh. C-5)

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

Re: Affordable HomeImprovement Solutions Inc.

File Number: 2004-05134  
License Number: 2705081731

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 21, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Affordable HomeImprovement Solutions Inc. ("Affordable") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On February 24, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Wayne Shorter, Responsible Management for Affordable, Respondent, nor anyone on its behalf appeared at the IFF.

**RECOMMENDATION**

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

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

In February 2004, Ed Kostrzebski ("Kostrzebski") verbally contracted with Affordable to finish the basement at the subject property. Shorter admitted to the Board's agent that he entered into a verbal agreement, rather than a written contract.

Affordable's failure to use a written contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$500.00 and license revocation be imposed.

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

After three months, Affordable left and failed to return to perform additional work. Affordable failed to complete framing, electrical, and plumbing at the subject property.

Shorter told the Board's agent that Affordable did not complete work because Kostrzebski would not pay any more money.

Affordable's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: November 30, 2004 (revised December 10, 2004)

FILE NUMBER: 2004-05134  
RESPONDENT: Affordable HomeImprovement Solutions Inc.  
LICENSE NUMBER: 2705081731  
EXPIRATION: January 31, 2006

SUBMITTED BY: Sherell Queen  
APPROVED BY: Linda J. Boswell

COMMENTS:

None.

\*\*\*\*\*

Affordable HomeImprovement Solutions Inc. ("Affordable") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705081731).

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

BACKGROUND:

On June 21, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Ed Kostrzebski ("Kostrzebski") regarding Affordable. (Exh. C-1)

On February 14, 2004, Affordable entered into a verbal agreement, in the amount of \$14,000.00, with Kostrzebski to finish the basement at 12009 William and Mary Circle, Woodbridge, Virginia. (Exh. C-1)

Kostrzebski paid Affordable \$3,000.00. (Exh. C-1)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On July 29, 2004, Wayne Short ("Short") of Affordable admitted entering a verbal agreement with Kostrzebski. Short also stated he know he should not have started the work without a written contract. (Exh. I-1)

Shorter failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed, signed by all parties, prior to commencement of work.

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

After three months, Affordable left and failed to return to perform additional work. Kostrzebski made several attempts to contact Affordable, but Affordable did not respond. (Exh. C-1)

As of June 21, 2004, Affordable failed to complete framing, electrical, and plumbing at the subject property. (Exh. C-1)

On July 29, 2004, Short stated Affordable did not complete the job because Kostrzebski would not pay any more money. (Exh. I-1)

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

Re: Classic Touch Unlimited Inc.

File Number: 2005-01317  
License Number: 2701039885

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 25, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Classic Touch Unlimited Inc. ("Classic Touch") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. As of date, the certified mail has not been returned by the United States Postal Service. The Notice was also mailed, via certified mail, to Classic Touch at 985 Ingleside Road, #6, Norfolk, Virginia 23467. As of date, the certified mail has not been returned by the United States Postal Service. The Notice was also mailed, via certified mail, to Classic Touch at 9 Little Church Road, Portsmouth, Virginia 23703. The certified mail was signed for and received.

On February 24, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Janice Fuller ("Fuller"), Complainant; Sotalia Townsend ("Townsend"), Witness; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Classic Touch nor anyone on its behalf appeared at the IFF.

**RECOMMENDATION**

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

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

In February 1992, the Board issued Classic Touch its Class A contractor's license. Gene Crandle ("G. Crandle") is the Designated Employee and Qualified Individual for the firm. In September 2004, the State Corporation Commission ("SCC") records indicated Crandle is the President. The SCC records also indicate there are four other officers for the corporation. The Board's licensing records do not reflect any Responsible Management for Classic Touch.

Classic Touch's failure to inform the Board, in writing, within ninety (90) days of a change of corporate officers is a violation of Board Regulation 18 VAC 50-22-220.A. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

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

The contract used in the transaction failed to contain one of the provisions required by the Board's regulation.

During the IFF, Fuller stated she could not remember if Gene Crandle presented a copy of Classic Touch's license at the time of signing the contract. Fuller stated Gene Crandle did indicate Classic Touch was licensed.

Classic Touch's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

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

In April 2004, Melvin and Audrey Copeland ("the Copelands"), negotiated with Renee Crandle ("R. Crandle") to sell the subject property to Classic Touch. The Copelands wanted the Crandles to provide them with a non-refundable deposit at the time of contract signing. The Copelands had a verbal agreement with G. Crandle for Classic Touch to buy the property for \$25,000.00, with an earnest money deposit of \$1,000.00. However, Classic Touch only offered to buy the property for only \$24,000.00, with an earnest money deposit of \$300.00. The Copelands did not agree to the modified terms for the land purchase, and subsequently backed out of the verbal agreement. Prior to this, Classic Touch entered into a contract with Fuller to purchase the property and construct a house. Fuller paid Classic Touch \$2,500.00 as a non-refundable deposit on the property. This money was eventually reimbursed.

During the IFF, Fuller stated she did not find out the subject property was owned by the Copelands until after it was discovered the subject property was not marketable. Townsend, Fuller's real estate agent, stated a week after the contract to purchase the property was entered into, the title work revealed the property belonged to the Copelands and not the Crandles. Townsend attempted to contact the Crandles regarding the marketability of the subject property because the Crandles did not own the subject property as previously represented; however, Townsend could not reach the Crandles because the phones and addresses for the Crandles were no longer valid.

Classic Touch failed to disclose to Fuller that it did not, in fact, have a written contract with the Copelands to purchase the property it had already contracted for her to purchase from Classic Touch.

Classic Touch's misrepresentation in order to obtain a contract is a violation of Board Regulation 18 VAC 50-22-260.B.17. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

By: \_\_\_\_\_  
Ruth Ann Wall  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

**MONETARY PENALTY TERMS**

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: November 10, 2004 (revised November 22, 2004)

FILE NUMBER: 2005-01317  
RESPONDENT: Classic Touch Unlimited Inc.  
LICENSE NUMBER: 2701039885  
EXPIRATION: February 28, 2006

SUBMITTED BY: Valerie J. Matney  
APPROVED BY: David C. Dorner

COMMENTS:

The complainant received a refund of the \$2,500.00 deposit paid to the respondent.

\*\*\*\*\*

Classic Touch Unlimited Inc. ("Classic Touch") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2701039885).

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

BACKGROUND:

On September 1, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Janice Fuller ("Fuller") regarding Classic Touch. (Exh. C-1)

On April 12, 2004, Fuller, as purchaser, and Classic Touch, as seller, entered into an Unimproved Lot Purchase Agreement ("Purchase Agreement") for property known as 5100 James Street, Chesapeake, Virginia, through Long & Foster Realtors ("Long & Foster"), by Sotalia Townsend ("Townsend"), as Buyer's Agent, and by Renee Crandle ("R. Crandle"), as Seller's agent. Fuller deposited \$2,500.00 with Classic Touch as a non-refundable deposit. The deposit would be refundable less any costs incurred if the lot was not buildable. (Exh. C-1, C-2, R-1, R-2, and R-4)

On April 12, 2004, Classic Touch entered into a Residential Construction Contract with Fuller to construct a house on the subject property. (Exh. C-3 and R-3)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

18,VAC 50-22-220. Change of responsible management, designated employee, or qualified individual.

- A. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 90 days of the change.

FACTS:

On February 27, 1992, Classic Touch was issued Class A contractor's license number 2701039885 as a corporation. Gene Crandle ("G. Crandle"), individual tracking number 2706017568, is the Designated Employee and Qualified Individual for license number 2701039885. (Exh. I-1)

On September 15, 2004, the State Corporation Commission records indicated G. Crandle is the President, John C. Baker Sr and Myles E Crandle are Vice Presidents, Renee B. Crandle is Secretary and Treasurer, and Genet Crandle is the Assistant Treasurer for Classic Touch. (Exh. I-2)

As of September 22, 2004, there is no Responsible Management listed for license number 2701039885. (Exh. I-1)

Classic Touch failed to report to the board in writing within ninety (90) days of a change in the officers of the corporation.

2. Board Regulation (Effective January 1, 2003)

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

- B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
- h. Contractor's license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Classic Touch in the transaction failed to contain subsection: (h) the contractor's license number, expiration date, class of license, and classifications or specialty services. (Exh. C-3 and R-3)

In a written response dated October 22, 2004, G. Crandle of Class Touch stated, "A copy of my license was submitted to her along with the construction contract." (Exh. R-1)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

FACTS:

Classic Touch was listed as "Contract Owner" on the Purchase Agreement with Fuller. (Exh. C-2 and R-2)

In April 2004, Melvin Copeland Sr. and Audrey Copeland ("the Copelands), the current record owners of the subject property, negotiated with R. Crandle for the purchase of Lot 81 by Classic Touch. (Exh. R-1, I-3, I-4, I-5, and I-6) Melvin Copeland told R. Crandle a non-refundable deposit was required at the time of contract signing if the land was held for the Crandles. Otherwise, the Copelands would consider an offer after the lot was determined to be buildable. (Exh. R-1, I-5, and I-6)

The Copelands had a verbal agreement with R. Crandle for Classic Touch to purchase the subject property for \$25,000.00 with an earnest money deposit of \$1,000.00. However, the offer presented by R. Crandle and G. Crandle on behalf of Classic Touch was for \$24,000.00 with an earnest money deposit of \$300.00. The Copelands told R. Crandle and G. Crandle they did not agree to the modified terms and they no longer wanted to sell the subject property to Classic Touch. (Exh. R-1 and I-5) On April 28, 2004, the Copelands cancelled the deal to sell the subject property. (Exh. C-4, R-1, and I-6)

Classic Touch failed to inform Fuller a written contract with the Copelands did not exist.

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

Re: Geoffrey O. Dean, t/a Gateway Fence Company

File Number: 2005-01342  
License Number: 2705055090

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 25, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Geoffrey O. Dean ("Dean"), t/a Gateway Fence Company to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On February 24, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Geoffrey Dean, Respondent, nor anyone on his behalf appeared at the IFF.

**RECOMMENDATION**

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

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

The contract used in the transaction failed to contain six of the provisions required by the Board's regulation.

Dean's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In July 2004, Donna Cermak ("Cermak") contracted with Dean to build a wooden fence at the subject property. Dean never commenced work, and told the Board's agent that he never returned to the subject property to perform the work contracted for.

Dean's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

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

Cermak paid Dean \$1,400.00 towards the contract amount of \$2,800.00. In August 2004, and again October 2004, Cermak requested Dean to return her money. Dean failed to return Cermak's money.

Dean's retention of funds received for work not performed is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: \_\_\_\_\_  
Ruth Ann Wall  
Presiding Officer  
  
Board for Contractors

Date: \_\_\_\_\_

**MONETARY PENALTY TERMS**

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

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

REPORT OF FINDINGS

BOARD: Virginia Board For Contractors  
DATE: December 14, 2004 (revised December 28, 2004)

FILE NUMBER: 2005-01342  
RESPONDENT: Geoffrey O Dean, t/a Gateway Fence Company  
LICENSE NUMBER: 2705055090  
EXPIRATION: March 31, 2006

SUBMITTED BY: Investigator Lethia Jones  
APPROVED BY: Linda Boswell

COMMENTS:

None.

\*\*\*\*\*

Geoffrey O Dean ("Dean"), t/a Gateway Fence Company, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705055090).

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

BACKGROUND:

On September 23, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Donna Ray Cermak ("Cermak") regarding Dean. (Exh. C-1)

On July 29, 2004, Dean entered into a written contract, in the amount of \$2,800.00, with Cermak to build a wooden fence at 17997 Possom Point Road Dumfries, Virginia. (Exh. C-2)

On July 29, 2004, Cermak paid Dean \$1,400.00 by check. (Exh. C-3)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Dean in the transaction failed to contain subsections: a., d., e., f., h., and i. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

On December 23, 2004, Dean admitted he never returned to the subject property to perform the work contracted for. (Exh. I-3)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 2:

On August 6, 2004, Cermak sent Dean a letter, via certified mail, requesting Dean return funds received for work not performed. (Exh. C-4)

On August 23, 2004, Cermak sent Dean a letter requesting Dean return funds received for work not performed. (Exh. C-5)

Dean told Cermak he would return the \$1,400.00 by September 10, 2004. (Exh. C-1)

On October 13, 2004, Cermak sent Dean a letter, via certified mail, requesting Dean return funds received for work not performed. The certified mail was returned to Cermak as unclaimed. (Exh. C-6)

On November 23, 2004, Dean offered to refund \$1,400.00 to Cermak. (Exh. I-3)

Dean retained funds paid by Cermak for work not performed.

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

Re: R S Woodson Excavating Inc, t/a R S Woodson Excavating Inc  
North Garden, VA 22959

File Number           2004-04861  
License Number       2705024349

**CONSENT ORDER**

Respondent R S Woodson Excavating Inc, t/a R S Woodson Excavating Inc ("R S Woodson Excavating Inc") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

**Board's 2003 Regulations provides:**

**18 VAC 50-22-200. Remedial education, revocation or suspension; fines.**

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

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

On January 26, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to R S Woodson Excavating Inc ("Woodson") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On February 24, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Ronald Woodson ("R. Woodson"), Responsible Management for Woodson, Respondent; Victoria Scott ("Scott"), Complainant; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

During the IFF, R. Woodson stated he was hired by Advanced Concrete Foundations Inc. to excavate the stump that was protruding into the foundation a the subject property. R. Woodson anticipated he might have a conflict with the water line so he uncovered the main water line in case he needed to shut off the water line. R. Woodson did not deny the machinery penetrated the water line and caused damage; however, before leaving the property, R. Woodson did attempt to contact several plumbers to repair the damage. R. Woodson has agreed to reimburse Scott for the cost of the plumbing repair.

The Amended Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

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

By signing this Consent Order, R S Woodson Excavating Inc acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Amended Report of Findings. R S Woodson Excavating Inc consents to the following term(s):

	Count 1	18 VAC 50-22-260.B.5	\$1,000.00
			-----
	TOTAL		\$1,000.00

In addition, the Board waives the imposition of the \$1,000.00 monetary penalty for Count 1 provided R S Woodson Excavating Inc refunds the homeowner \$530.00 and provides the Board with proof of payment within thirty (30) days of the effective date of this order. If R S Woodson Excavating Inc fails to refund the money, then the \$1,000.00 monetary penalty will be automatically imposed.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically noted above. R S Woodson Excavating Inc acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, R S Woodson Excavating Inc will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

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

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

SEEN AND AGREED TO:

\_\_\_\_\_  
R S Woodson Excavating Inc  
t/a R S Woodson Excavating Inc

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF \_\_\_\_\_  
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2005.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SO ORDERED:**

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Board for Contractors

BY: \_\_\_\_\_  
Louise Fontaine Ware, Secretary

E00

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

AMENDED  
REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: January 6, 2005 (revised January 13, 2005)

FILE NUMBER: 2004-04861  
RESPONDENT: R S Woodson Excavating Inc  
LICENSE NUMBER: 2705024349  
EXPIRATION: June 30, 2006

SUBMITTED BY: Renee H. Popielarz  
APPROVED BY: E. Wayne Mozingo

COMMENTS:

The complaint was originally filed against Advanced Concrete Foundations Inc. (file number 2004-01669). File number 2004-01669 was closed and this file was opened against R. S. Woodson Excavating Inc. since R. S. Woodson Excavating Inc. performed the digging, which caused the problem referred to in the complaint.

Ronald Woodson with R. S. Woodson Excavating Inc. indicated that the date of September 9, 2003 in the letter of response should actually be September 29, 2003.

Ronald Woodson states that his company was subcontracted through Advanced Concrete Foundations Inc. to perform the work for Victoria Scott while Advanced Concrete Foundations Inc. states it only helped coordinate between Woodson and Scott, however, Scott was to pay Woodson directly since Advanced Concrete Foundations Inc. was not performing any work for Scott. Scott did not have a contract with either contractor and did not pay either contractor for the work. Advanced Concrete Foundations Inc. indicated it did pay Woodson (not more than \$200.00) because it did not want the incident to disrupt the working relationship already established with Woodson.

\*\*\*\*\*

R. S. Woodson Excavating Inc ("Woodson") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705024349).

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

BACKGROUND:

On October 24, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Victoria Scott ("Scott") regarding Advanced Concrete Foundations Inc. ("Advanced Concrete"). (Exh. C-1)

The week of September 20, 2003, Scott contacted Advanced Concrete regarding a tree coming through the basement at 118 Longwood Drive, Charlottesville, Virginia. (Exh. C-1)

Josh, an employee of Advanced Concrete, told Scott he knew an excavator who could remove the stump. (Exh. C-1)

Advanced Concrete contacted Woodson to excavate a wall on a house. (Exh. R-1)

On September 30, 2003, Woodson began digging an 8 x 8 hole, but busted the main water line. Woodson continued to dig an extra 16 feet and made an 8 x 24 hole at the subject property. (Exh. C-1)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

On September 30, 2003, Estes Plumbing & Drain Service replaced part of the main water line and repair part of the copper pipe inside of the house to the hot water heater at a cost of \$530.00. (Exh. C-3)

In a written response dated June 17, 2004, Ronald Woodson, President of Woodson, stated he did not want to dig until he had instructions from the general contractor regarding the scope of the work. Ronald Woodson also stated, "After

waiting for 3 hours for the arrival of the General Contractor, I asked him why Miss Utility had not been called, and his response was he had forgotten. I questioned him about digging and after looking and confirming that the power was overhead, telephone was clear, cable was clear, I was told to 'dig easy' because of the urgency of this problem." Woodson further stated "The responsibility of Miss Utility was on the owner and the General Contractor as they anticipated this upcoming work having to take place." (Exh. R-1)

In a written response dated June 17, 2004, Ronald Woodson, President of Woodson, further stated he anticipated a possible problem and had the water meter cover off so it was ready for him to close the valve. Ronald Woodson also stated, "I stayed and made numerous phone calls to my plumbing subs to try to get repairs done. We even over dug the water line to make it easier for the plumber's repair." (Exh. R-1)

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

Re: Fred W. Munford, t/a Shore Cut & Drive

File Number: 2005-01151  
License Number: 2705084331

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 26, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Fred W. Munford ("Munford"), t/a Shore Cut & Drive to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received. The Notice was also mailed, via certified mail, to Munford at 15063 Lee Street, Belle Haven, Virginia 23306.

On February 24, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Fred Munford (by phone), Respondent; William and Kimberly Cathell ("the Cathells"), Complainants; Hallie Munford, Witness; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

**RECOMMENDATION**

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

In June 2004, William and Kimberly Cathell ("the Cathells") contracted with Munford to repair or replace trim, and perform painting at the subject property.

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

The contract used in the transaction failed to contain seven of the provisions required by the Board's regulation.

During the IFF, Munford stated he has not revised his contract because his business is not longer in operation.

Munford's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In April 2004, the Board issued Munford's Class C contractor's license with painting and wall covering contracting (PTC), and home improvement contracting (HIC) specialties. The Cathells told Munford the paint on the house was lead based. During July 2004 and August 2004, Munford scraped lead based paint off of the house. In November 2004, Munford testified in court that he was not licensed for lead abatement.

During the IFF, Munford admitted he was not licensed to perform lead abatement and the contract did not specify lead abatement. Based on the record, the house was built and originally painted at the same time. Munford was advised the paint was lead based; therefore, it is reasonable to conclude the lead based paint existed on the entire house, which included the area Munford was contracted to perform work.

Munford's action of practicing in a classification or specialty service for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$500.00 and license revocation be imposed.

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

In June 2004, Metropolitan Laboratories Inc. ("Metropolitan Labs") performed a lead based paint inspection and risk assessment at the subject property. Metropolitan Labs concluded lead based paint and lead hazards were present. Metropolitan Labs testified in court that the soil around the house contained lead from deteriorated lead based paint.

Based on the record, the house was built and originally painted at the same time. Munford was advised the paint was lead based; therefore, it is reasonable to conclude the lead based paint existed on the entire house, which included the area Munford was contracted to perform work.

Munford's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

During July 2004, the cherry picker used by Munford caused damage to the yard at the subject property. After returning from vacation in late July, William Cathell ("W. Cathell")

discovered the cherry picker partially buried in the yard and a portion of the fence was removed. Munford had the cherry picker removed, which caused more damage to the yard. Munford told the Board's agent his equipment caused damage to the subject property.

During the IFF, Munford stated the damage was caused because of weather. Munford also stated he agreed to repair the damage, but did not return to the property after receiving the first Warrant in Debt filed by the Cathells.

Munford's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

After returning from vacation in August 2004, W. Cathell discovered Munford's machinery was gone, and no additional work had been performed. W. Cathell attempted to contact Munford regarding the incomplete work, and was told that work was stopped because Munford was declaring bankruptcy. W. Cathell hired another contractor to inspect the work performed. The contractor estimated that only 5% of the work had been completed.

Munford told the Board's agent the job was delayed because of the weather, but that he intended to finish the work. Munford further told the Board's agent that when he was served with a Warrant in Debt, he stopped performing work.

Munford's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

The Cathells paid Munford \$2,506.66 towards the contract amount of \$3,760.00. Munford never returned any money received for work not performed, or performed only in part.

Munford's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

Count 7: Board Regulation (Effective January 1, 2003)

In November 2004, in Accomack County General District Court, the Cathells obtained a judgment against Munford, in the amount of \$5,788.66. Munford has failed to satisfy the judgment.

During the IFF, Munford stated he has not filed bankruptcy, but his company is no longer operating. Munford also stated he is looking for a second career and does not have the money to satisfy the judgment.

Munford's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend that a monetary penalty of \$2,000.00 and license revocation be imposed.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: December 27, 2004 (revised January 13, 2005)

FILE NUMBER: 2005-01151  
RESPONDENT: Fred W. Munford Jr., t/a Shore Cut & Care  
LICENSE NUMBER: 2705084331  
EXPIRATION: April 30, 2006

SUBMITTED BY: Michael Heaney  
APPROVED BY: David Dorner

COMMENTS:

None.

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Fred W. Munford Jr. ("Munford"), t/a Shore Cut & Care, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705084331).

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

BACKGROUND:

On August 23, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from William and Kimberly Cathell ("the Cathells") regarding Munford. (Exh. C-1)

On June 4, 2004, Munford entered into a written contract, in the amount of \$3,760.00, with the Cathells to repair and/or replace ornamental trim on the exterior over the bathroom, eaves and pigeon stoops, caulk, prime and paint cedar shakes and associated trim at 18412 Wilson Avenue, Parksley, Virginia. (Exh. C-2)

On June 8, 2004, the Cathells paid Munford \$1,253.33 by check. On July 12, 2004, the Cathells paid Munford \$1,253.33 by check. (Exh. C-3)

On July 5, 2004, Munford commenced work. Between July 9, 2004 and August 14, 2004, Munford scraped lead paint from the subject property. (Exh. I-3)

On April 20, 2004, Munford was issued Class C contractor's license number 27050843314 with the painting and wallcovering contracting ("PTC") and home improvement contracting ("HIC") specialties. (Exh. I-1)

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1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Munford in the transaction failed to contain subsections: a., c., d., e., f., h., and i. (Exh. C-2)

On October 25, 2004, Munford admitted the estimate he used as a contract did not have the required items and he would make the necessary corrections. (Exh. I-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

On June 8, 2004, the Cathells told Munford the paint was lead based. (Exh. C-1)

On November 10, 2004, in the Accomack County General District Court, Munford testified that he was not licensed for lead abatement. (Exh. I-4)

Munford practiced in a classification or specialty service for which he is not licensed.

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

In addition to the facts outlined in Count 2:

On June 26, 2004, at the request of the Accomack-Northampton Planning District Commission, Metropolitan Laboratories Inc. conducted a lead based paint inspection and risk assessment of the subject property. (Exh. I-4)

In a report dated August 6, 2004, Metropolitan Laboratories Inc. noted lead based paint and lead hazards were present at the subject property. (Exh. C-7)

On September 13, 2004, A & B Environmental, Inc. provided the Cathells with a written proposal, in the amount of \$7,800.00, to abate lead at the subject property. (Exh. C-5)

On November 10, 2004, in the Accomack County General District Court, Andrea Capps of Metropolitan Laboratories Inc. testified that the soil around the house contained lead from deteriorated lead based paint. (Exh. I-4)

On November 10, 2004, in the Accomack County General District Court, Jay Floyd, an employee for Munford, testified he was told by Munford to work above the weather strip or from the eaves up. (Exh. I-4)

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

Between July 19, 2004 and July 23, 2004, the cherry picker used by Munford caused damage to the yard at the subject property. After returning from vacation on July 30, 2004, William Cathell discovered the cherry picker partially buried in his yard and a portion of the fence was removed. Between August 2, 2004 and August 6, 2004, Munford had the cherry picker towed from the yard, which caused more damage to the yard and an oak tree. (Exh. I-3)

On August 31, 2004, Hortco Greenhouses and Garden Center Inc. ("Hortco") provide the Cathells with a written estimate, in the amount of \$1,670.00, to grade and fill ruts left by heavy equipment used and reassemble the fence at the subject property. (Exh. C-6)

On October 25, 2004, Munford admitted there was damage to the Cathells' property because of his equipment used at the subject property. (Exh. I-2)

On November 10, 2004, in the Accomack County General District Court, Munford testified the Genie Lift that was stuck in the yard and caused damage was his fault. (Exh. I-4)

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

After returning from vacation on August 14, 2004, William Cathell discovered Munford's machinery was gone and no additional work had been performed. (Exh. C-1)

The last day Munford performed work at the subject property was August 14, 2004. (Exh. I-3)

On August 16, 2004, William Cathell attempted to contact Munford regarding completion of the work. On August 16, 2004, Jay Floyd told William Cathell that Munford was declaring bankruptcy and ordered Jay Floyd to stop work. (Exh. C-1)

In an inspection report dated September 6, 2004, West & Son Construction Co. ("West & Son") stated, "My inspection of job site found that the priming and painting has been started in those areas with nothing completed. All other items in job description hasn't been done or started." West & Son further stated, "I estimate that only 5% of job is completed." (Exh. C-4)

On October 25, 2004, Munford admitted there was a delay in the job due to weather. Munford further stated he intended to finish the job, but when he was served with a Warrant in Debt, he stopped all work. (Exh. I-2)

As of November 18, 2004, Munford failed to return to the subject property and complete the work contracted for. (Exh. C-1)

6. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 5:

On October 13, 2004, the Cathells filed a Warrant in Debt, in the amount of \$11,788.66, against Munford for contract, damages, and improper conduct. (Exh. I-6)

Munford failed to refund money received for work not performed or performed only in part.

7. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On November 10, 2004, in the Accomack County General District Court, Civil Division, the Cathells were awarded a \$ 5,788.66 judgment against Munford. The judgment was based on contract, damages, and improper conduct. (Exh. I-6) As of December 15, 2004, Munford failed to satisfy the judgment. (Exh. I-5)