

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
July 19, 2005 (3:00 p.m.)**

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

Michael Redifer, Board member, presided. No other Board members were present.

Joseph Haughwout appeared for the Department of Professional and Occupational Regulation.

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

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

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

1. George J. Neher
t/a A Affordable Construction
File Number 2005-01129 (Disc)

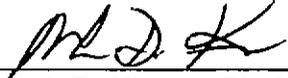
2. George J. Neher
t/a A Affordable Construction
File Number 2005-03942 (Disc)
(No Decision Made)

Neher – R

Neher – R

The meeting adjourned at 4:50 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: George J. Neher, t/a A Affordable Construction

File Number: 2005-01129
License Number: 2705076407

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On April 5, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to George J. Neher ("Neher"), t/a A Affordable 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 returned by the United States Postal Service, and marked as "Unclaimed."

On May 10, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joseph Haughwout, Staff Member; and Michael Redifer, Presiding Board Member. Neither George Neher, Respondent, nor anyone on his behalf appeared at the IFF.

On May 17, 2005, Neher provided additional information to the Board. On June 8, 2005, the Report of Findings was amended to reflect the additional information.

On June 20, 2005, a letter to reconvene the IFF was mailed, via certified mail, to Neher to the address of record. The reconvene letter also included an Amended Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The letter was also mailed, via certified mail, to Neher at 161 S. Budding Ave., Virginia Beach, Virginia 23452. The certified mailings were each signed for and received.

On July 19, 2005, the IFF reconvened at the Department of Professional and Occupational Regulation.

The following individuals participated at the reconvened IFF: George Neher, Respondent; Joseph Haughwout, Staff Member; and Michael Redifer, Presiding Board Member.

RECOMMENDATION

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

The record indicates that on May 4, 2004, Neher provided Hackney and Whitemountain with a proposal to completely renovate the residence at the subject property. The proposal was broken down into two contracts, one for demolition and the other for restoration. On May 13, 2004, Neher contracted with Hackney and Whitemountain to perform the demolition work ("first contract"). Neher commenced demolition shortly thereafter. On May 18, 2004, Neher contracted with Hackney and Whitemountain to perform the new construction ("second contract"). In June 2004, Neher provided Hackney and Whitemountain with a written change order to modify the scope of work and costs of the second contract.

Based on the record, the court determined Neher's actions were fraudulent. However, Neher testified that he was unaware of the existence of the civil judgment and not served. The court documents indicate Neher was served and failed to appear in court.

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

The proposal reflected a price of \$129,650.00. The first contract was for \$9,865.00 and the second contract was for \$30,425.00. Neher only holds a Class C contractor's license.

During the IFF, Neher stated the complainants wanted to get their own permits and do most of the work themselves. Neher stated he thought he was a subcontractor working for Hackney and Whitemountain and therefore not required to work within the limits of his class of license.

Neher's action of practicing in a class of license 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 \$750.00 for each count be imposed, for a total monetary penalty of \$2,250.00 imposed.

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

The first contract failed to contain five of the provisions required by the Board's regulation.

During the IFF, Neher stated he did not think he had to include the provisions in the contract with Hackney because he did not think he was the general contractor. Neher provided a copy of his contract used when he is the general contractor. However, it appears the contract used by Neher is lacking all required subsections.

Neher's failure to include subsections a., d., e., f., and h. in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$350.00 imposed.

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

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

During the IFF, Neher stated he did not think he had to include the provisions in the contract with Hackney because he did not think he was the general contractor. Neher provided a copy of his contract used when he is the general contractor. However, it appears the contract used by Neher is lacking all required subsections.

Neher's failure to include subsection h. in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend no monetary penalty be imposed.

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

The record indicates that in late June 2004 Neher signed a lien waiver and agreed to complete the work on the first contract by July 12, 2004. Neher did not complete work by this date. Hackney and Whitemountain then terminated both contracts with Neher.

During the IFF, Neher stated that he completed all the work except for wrapping three remaining piers. Neher also stated he showed up on the morning of July 12, 2004, to complete the pier work, but the complainants would not let him on the property.

Neher's failure to complete work and comply with the terms of the first contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$750.00 be imposed.

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

The record indicates Whitemountain paid Neher a total of \$24,865.00 towards the contracted amount of \$52,152.00. In July 2004, Hackney and Whitemountain sent Neher a letter terminating the contracts and requesting Neher return the monies he received up front, less any receipts for real labor and materials. The attorney for Hackney and Whitemountain later sent Neher a letter requesting Neher refund Hackney and Whitemountain funds paid for work not completed. In August 2004, Neher responded to this request by stating a refund was not due because the work had been performed.

Neher testified that Whitemountain requested a refund upon termination. Neher provided Whitemountain's attorney a letter explaining where the money was spent regarding the

demolition. Neher stated he has not provided Whitemountain a refund because all the money he received was spent even though she disagreed with expenditures.

Neher presented documentation in support of his claim that the money he received from the complainants was used and therefore, there was no retention of funds.

Therefore, I recommend Count 5 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.16.

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

As indicated in Count 4, Neher failed to complete the pier work, as agreed to in the contract, and in the lien waiver.

Based on the record and testimony presented at the IFF, I find that Neher's failure to complete work, after promising to do so in the lien waiver, constitutes a misrepresentation or false promise in order to obtain a contract and receive payments. I refer specifically to the court's determination that Neher fraudulently induced the complainants into contracting with him, and then breaching those agreements.

Neher's action of making a misrepresentation or false promise in order to obtain a contract and receive payment is a violation of Board Regulation 18 VAC 50-22-260.B.17. Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

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

In November 2004, in Virginia Beach Circuit Court, Hackney and Whitemountain obtained a default judgment against Neher, in the amount of \$27,365.00. According to the record, Neher has failed to satisfy the judgment.

Neher testified that he is not aware of the judgment awarded to Hackney and Whitemountain. Neher stated he was aware the complainants had an attorney and wanted to pursue a civil suit, but that he knows nothing about the judgment. Neher also stated that he was out of the state because of his father's medical conditions. Neher indicated he intends to fight the judgment because all the funds were accounted for.

The judgment order indicates Neher was served and did not appear. Although Neher indicated he intends to appeal the judgment, the order of the court cannot be ignored.

Neher'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 \$2,500.00 and license revocation be imposed.

Count 8: Board Regulation (Effective January 1, 2003)

Neher testified that he is not aware of the judgment awarded to Hackney and Whitemountain. Neher stated he was aware the complainants had an attorney and wanted to pursue a civil suit, but that he knows nothing about the judgment. Neher also stated that he was out of the state because of his father's medical conditions.

I refer specifically to the court's determination that Neher fraudulently induced the complainants into contracting with him, and then breaching those agreements. The judgment also states that the evidence established intentional misconduct by Neher.

Neher's action of having been found to have committed improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction is a violation of Board Regulation 18 VAC 50-22-260.B.7. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____
Michael Redifer
Presiding Board Member

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

AMENDED
REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: March 16, 2005 (revised April 1, 2005 and amended June
8, 2005)

FILE NUMBER: 2005-01129
RESPONDENT: George J. Neher, t/a A Affordable Construction
LICENSE NUMBER: 2705076407
EXPIRATION: May 31, 2005

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

COMMENTS:

None.

George J. Neher ("Neher"), t/a A Affordable Construction, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705076407).

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 19, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Norma Lee Hackney ("Hackney") and Susan Whitemountain ("Whitemountain") regarding Neher. (Exh. C-1 and C-2)

On May 4, 2004, Neher provided Hackney and Whitemountain a written proposal, in the amount of \$129,650.00, to completely renovate a residence at 784 W. Oceanview Avenue, Norfolk, Virginia 23503. A portion of the work listed in the proposal was broken down into two contracts, one for demolition and one for restoration. (Exh. C-3)

On May 13, 2004, Neher entered into a written contract, in the amount of \$9,865.00, with Hackney and Whitemountain to demolish the entire garage and shed completely; demolish front porch base, supports and ceiling; level area for new construction, level remaining surface; and cover and dry in removed area to protect interior from the elements at the subject property. (Exh. C-4 and Neher 1)

On May 17, 2004, Neher commenced demolition of the subject property. (Exh. C-2)

On May 18, 2004, Neher entered into a written contract, in the amount of \$30,425.00, with Hackney and Whitemountain to install footings; frame lumber on crawl pace to match existing floor elevation; floors to be ¾ T & G flooring; walls to be 2"x4" studs, approx. 9' high to match existing; ceilings; all door and window openings per plans, Gable "A" frame style roofs – 6/12 pitch – 12" overhang; and structures to be reinforced with proper footings and piers where needed to bring up to code at the subject property. (Exh. C-5 and Neher 1)

On June 1, 2004, Neher provided a written change order, in the amount of \$11,862.00, to modify the May 17, 2004, contract to include removing front wall of first floor; constructing the first floor as part of living space instead of porch; and constructing porch in front of construction. (Exh. C-6 and Neher 1)

1. Board Regulation (Effective January 1, 2003) (THREE COUNTS)

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 May 2, 2003, Neher was issued Class C contractor's license number 2705076407. (Exh. I-1)

Section 54.1-1100 of the Code of Virginia states "'Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500 . . ."

In a written response dated October 9, 2004, Neher stated, "I was under the impression that I was just a Sub-Contractor on this and that Ms. Hackney and Ms. Whitemountain were the General Contractors and that I did not have to go by the \$7,500.00 limit. They wanted separate contracts for each phase of demolition and reconstruction." (Exh. Neher 1)

Neher practiced in a class of license for which he is not licensed by offering to perform work in the amount of \$129,650.00 on May 4, 2004, and by entering into two contracts above the \$7,500.00 Class C limit.

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:
 - 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.

FACTS:

The May 13, 2004, contract used by Neher in the transaction failed to contain subsections: a., d., e., f., and h. (Exh. C-4)

In a written response dated October 9, 2004, Neher stated, "I was fully wrong on this account. I was under the impression that I was just a Sub-Contractor on this and that Ms. Hackney and Ms. Whitemountain were the General Contractors and that I did not need to give this to them. I also explained in great detail to both women what license and insurance I had." Neher further stated, "I now know I was wrong and have changed my contracts, a copy of which is attached." (Exh. Neher 1)

3. 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 name, address, license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The May 18, 2004, contract used by Neher in the transaction failed to contain subsection: h. (Exh. C-5 and Neher 1)

In a written response dated October 9, 2004, Neher stated, "I was fully wrong on this account. I was under the impression that I was just a Sub-Contractor on this and that Ms. Hackney and Ms. Whitemountain were the General Contractors and that I did not need to give this to them. I also explained in great detail to both women what license and insurance I had." Neher further stated, "I now know I was wrong and have changed my contracts, a copy of which is attached." (Exh. Neher 1)

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:

On June 27, 2004, Neher signed a Waiver and Release of Liens and agreed to complete the work on the May 13, 2004, contract by July 12, 2004, or refund \$15,000 to Whitemountain and Hackney and cancel all contracts. (Exh. C-7 and Neher 1)

As of July 12, 2004, Neher failed to complete the work in accordance with the Waiver and Release of Liens agreement. (Exh. C-2)

On July 12, 2004, Whitemountain and Hackney provided Neher a letter as notice of termination of all contracts. (Exh. C-2 and C-8)

In a letter dated August 3, 2004, Neher verified the status of the project and indicated, "did not get to this phase" for several items. (Exh. C-10 and Neher 1)

In a written response dated October 9, 2004, Neher stated, "Everything written in the first contract was performed long before July 12, 2004." Neher further stated, "I did give in and told them I would go ahead and wrap each pier in concrete for additional support and to keep the brick piers from deteriorating more.. I had all but three finished on July 9. When we came in early on the morning of the July 12, we were not permitted on the property." (Exh. Neher 1)

Neher failed to complete the work contracted for and comply with the terms of the May 13, 2004, contract.

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 to the facts outlined in Count 4:

On May 13, 2004, Whitemountain paid Neher \$5,000.00 by check. On May 18, 2004, Hackney paid Neher \$10,000.00 by check. On June 1, 2004, Whitemountain paid Neher \$4,865.00 by check. On June 4, 2004, Whitemountain paid Neher \$5,000.00 by check. (Exh. C-11)

On July 12, 2004, Whitemountain and Hackney sent Neher a letter as notice of termination of all contracts and requested Neher return the \$25,000.00 paid up front, less any receipts for real labor and materials. (Exh. C-7)

On July 26, 2004, Janee' D. Joslin ("Joslin"), attorney representing Whitemountain and Hackney, sent Neher a letter requesting Neher return, within ten (10) days, the funds paid for work not completed. (Exh. C-9)

In a letter dated August 3, 2004, Neher verified the status of the project and stated, "We feel at this time no refunds are due because of the above work that has been performed." (Exh. C-10 and Neher 1)

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

6. 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:

In addition to the facts outlined in Count 4 and Count 5:

Neher failed to complete the work contracted for on May 13, 2004, contract and honor the Waiver and Release of Liens.

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 12, 2004, in the Virginia Beach Circuit Court, Hackney and Whitemountain were awarded a \$27,365.00 judgment, plus taxable court costs and interest, against Neher. (Exh. I-4)

8. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction.

FACTS:

In addition to the facts outlined in Count 7:

The judgment specified Neher "is in default" and "fraudulently induced the Plaintiffs into entering into agreements with him, and then breached said agreements." The judgment also specified "the evidence presented established intentional misconduct by Defendant." (Exh. I-4)

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

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

1. Name: Michael Redifer
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on July 19, 2005
5. Nature of Personal Interest Affected by Transaction: _____

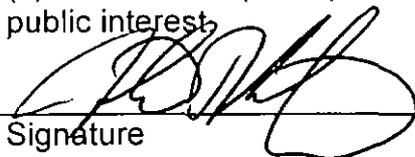
6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

URCDA UPMIA IAEL ILL NFPA NAARSO

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Signature



Date

7-19-05