

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
June 7, 2007 (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

Joseph Haughwout, Jr and Jesstina Adelman 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 Disciplinary Case/Application

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

Participants

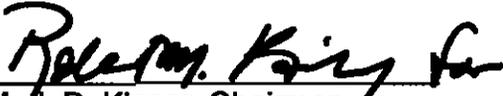
- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| 1. Remodeling Professionals and Craftsmen Inc
File Number 2007-00210 (Disc)
(NO DECISION MADE) | Richard Cruz – R |
| 2 Remodeling Professionals and Craftsmen Inc
File Number 2007-00966 (Disc)
(NO DECISION MADE) | Richard Cruz – R
Darold Davis - W |
| 3 Remodeling Professionals and Craftsmen Inc
File Number 2007-01365 (Disc)
(NO DECISION MADE) | Richard Cruz – R
Joseph Sturdivant – C
Nancy Sturdivant – C
Darold Davis – W |
| 4 Darrel Glyn Tawney
File Number 2006-00293 (Trades)
<i>(continued from 4/26/07, per R's request on 4/16/07)</i>
(NO DECISION MADE) | Tawney – R
(BY TELEPHONE) |
| 5. Lapco Inc
File Number 2007-01572 (Disc)
(NO DECISION MADE) | Allen Gibbs - C
Victoria Gibbs - C |

6 Lapco Inc.
File Number 2007-01727 (Disc)
(NO DECISION MADE)

Joel Wood – C

The meeting adjourned at 1.45 p.m.

BOARD FOR CONTRACTORS


Mark D Kinser, Chairman


Jay DeBoer, Secretary

COPY TESTE:

Custodian of Records

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

Re: Remodeling Professionals and Craftsmen, Inc.

File Number: 2007-00210
License Number. 2705089360

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On May 10, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Remodeling Professionals and Craftsmen, Inc. ("Remodeling") 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 May 30, 2007, the Report of Findings was amended. The Amended Report of Findings was sent, United Parcel Service Next Day Air, to Remodeling to the address of record

On June 7, 2006, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Richard Cruz ("Cruz"), on behalf of Remodeling, Respondent; Joseph Haughwout, Jr. and Jesstina Adelman, Staff Members; 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 Amended Report of Findings:

In July 2005, Bedford and Grace Howard ("the Howard's") entered into a written contract with Remodeling for \$102,000.00 to construct an addition at their residence in Middleburg, Virginia. According to the record, Howard testified that the reason for the addition was to accommodate Bedford Howard, Grace Howard's son, due to the demise of her husband.

Count 1: Board Regulation

The contract used by Remodeling in the transaction failed to contain subsections: a. (when work is to begin) and h. (contractor's license expiration date and classifications or specialty services).

Remodeling became licensed on January 12, 2005, as a Class A contractor; thus, it should have known what its contracts required. It appears Remodeling does not fully understand the requirements of the Board's regulations in relation to the minimum provisions to be included in a contract. The purpose of including these provisions is to protect both the contractor and the consumer, and failure to do so, is poor business practice. Remodeling's failure to include the minimum provisions in its contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$200.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 2. Board Regulation

The contract stipulated that Remodeling agreed to "complete the structure within 150 days from the date the contract [was] signed and the building permit issued." On August 30, 2005, Loudon County issued Remodeling a permit to build the addition onto the Howard's residence, making the estimated date of completion January 27, 2006. However, as of early January 2007, Remodeling had not completed the project.

In September 2005, the foundation was poured; however, completion of the foundation was delayed because of poor workmanship by Remodeling. As evidenced by five inspections performed between early September 2005, and early December 2005, all of which failed. Richard Cruz ("Cruz") hired subcontractors to do the foundation work, which were fired after the inspections failed. According to Cruz, he experienced "manpower" problems during the course of this project, and was unable to find reliable subcontractors. Cruz also blamed the weather and delays in materials.

According to Bedford Howard ("Howard"), Remodeling worked sporadically on the addition, and Cruz promised him multiple times that the project would be completed in thirty days. However, when Howard gave Remodeling additional deadlines, it would only return and perform minor items. During the investigation, Cruz promised the Board's agent he would give the Howard's a completion date, and would complete the project. In late December 2006, Howard fired Remodeling from the project. The following items still remain to be completed: siding, flooring, drywall, HVAC installations, carpet and one bathroom.

In January 2007, Cruz claimed the project was "95% complete." However, the photographs in the record indicate the project was substantially less complete than Cruz stated (see Exh. I-6)

Remodeling agreed to complete the project by a specified date, and clearly failed to meet that obligation. As of January 2007, nearly a year after the estimated completion date, work had not been completed. Cruz lays responsibility for this on external factors. However, I believe the responsibility lies largely with Cruz and his firm's poor construction management. As the general contractor, Cruz is responsible for ensuring that competent and qualified laborers or subcontractors are hired to perform work. Additionally, if Cruz truly intended to have the project completed in a timely manner (even if after the original completion date), he could have taken steps to ensure his workers showed up and worked on a frequent and consistent schedule. It is clear this did not happen. Further, Cruz promised Howard multiple times that he would have the work completed, only to fail to honor those commitments. I believe this shows respondent had no intention of completing the project in a timely manner.

Howard had the addition constructed so that he could take care of his elderly parents. (Note: Howard's father has since passed away.) Remodeling's conduct caused considerable distress to Howard and his family, and greatly impacted the Howard's' living situation. Additionally, Howard paid respondent \$96,000.00 of the \$102,000.00 contract price, and will have to hire other contractors, at an extra cost, to complete the project. Cruz took the Board examination for the BLD classification and has been in the homebuilding business for twenty years. Therefore, Cruz should of asked questions to the appropriate authorities when difficulties arise in his business. The Respondent chose not to take any responsibility for his egregious actions.

Remodeling's actions constitute a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$1,700.00 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 NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

AMENDED REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 18, 2007 (revised April 27, 2007); amended May
30, 2007

FILE NUMBER: 2007-00210
RESPONDENT: Remodeling Professionals and Craftsmen, Inc.
LICENSE NUMBER: 2705089360
EXPIRATION: January 31, 2009

SUBMITTED BY: Investigator Jennifer Counts
APPROVED BY: Assistant Director John Delucca

COMMENTS:

Companion to file numbers 2007-00966 and 2007-01365.

Remodeling Professionals and Craftsmen, Inc. ("Remodeling") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705089360).

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 July 19, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Bedford and Grace Howard ("the Howards") regarding Remodeling and Richard Cruz ("Cruz"). (Exh. C-1)

On July 13, 2005, Remodeling entered into a written contract, in the amount of \$102,000.00, with the Howards to construct an addition at 22132 McQuay Lane, Middleburg, Virginia 20117 (Exh. C-2)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Remodeling in the transaction failed to contain an estimated start date as required by subsection a., and did not contain the license expiration date, and classifications or specialty services, as required by subsection h. (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:

The contract stipulates, "The Contractor agrees to complete the structure within 150 days from the date the contract has been signed and the building permit is issued: time not being of the essence." (Exh. C-2)

On August 30, 2005, Loudon County issued permit no. B50208020110 for the subject project. (Exh. W-1)

In September 2005, work commenced. The foundation was poured, but had to be re-done as it failed several inspections. (Exh. I-2, I-3 and I-4)

Throughout the project Cruz worked sporadically. On several occasions Cruz informed the Howards that he would have the project completed within 30 days and failed to do so. (Exh. I-4)

On August 29, 2006, Investigator Jennifer Counts ("Counts") spoke to Cruz at (540) 341-4242 Cruz informed Counts that he would speak to the Howards by September 1, 2006, and reach an agreement with them regarding a new completion date for the project (Exh. I-5)

On September 6, 2006, Bedford Howard ("Bedford") informed Counts that he had not heard from Cruz regarding a completion date. (Exh. I-5)

In a letter to the Department dated October 27, 2006, Cruz stated, "RPC is still and always committed to fulfill [its] contractual obligation in spite of the delays that have occurred. The Howard's have been very patience with us and we have now acquired a crew to finish the project and do it right. I will do my very best to complete the project before the weather gets [too] cold. I will call the Howard's Monday November 6, 2006 to give them a date to continue the framing and completion." (Exh. R-1)

In an e-mail from Bedford to Counts on December 22, 2006, he stated, "Every time I give them a [deadline] for them not working, they will come through and do some little thing such as put in a window or two.. As of today, they [are] fired as it was two weeks ago, they tried to bring me broken, scratched and damaged doors to install saying it was all new. I refuted and complained and told them if by today they did not bring new materials they are fired." Bedford went on to say Cruz did not deliver new doors and was fired. (Exh. C-4)

In a letter to the Department dated January 2, 2007, Cruz stated, "As always we are still committed to our original agreement to complete this project as contracted. This is a contract were time is not of the essence [otherwise] the price would have been substantially higher. Regretfully it has taken longer than any of us would have desired. Many things cause the delays, manpower changes, weather (rain), [and] delays in materials." (Exh. R-2)

Cruz went on to say the project was approximately 85% complete and he needed to install the insulation, drywall, bathroom fixtures and flooring to complete the project. (Exh. R-2)

In an interview on January 4, 2007, Cruz stated the project is 95% complete and Cruz wants to "wrap it up" within 30 days. (Exh. I-3)

In an interview on January 5, 2007, Bedford informed the Board's agent that Cruz contacted him a few days prior and wanted to complete the project. Bedford said he did not want him to as he had waited long enough (Exh. I-4)

As of January 5, 2007, the siding, flooring, drywall, HVAC, carpet, and the bathroom have not been completed. (Exh. I-4 and I-6)

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

Re: Remodeling Professionals and Craftsmen, Inc.

File Number: 2007-00966
License Number: 2705089360

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On May 10, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Remodeling Professionals and Craftsmen, Inc. ("Remodeling") 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 June 7, 2007, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Richard Cruz ("Cruz"), on behalf of Remodeling, Respondent; Darold L. Davis, Jr. ("Davis"), Witness; Joseph Haughwout, Jr. and Jesstina Adelman, Staff Members; 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 January 2006, Remodeling entered into a written contract with Mark and Carole (Dolehanty) Klingelhoefler ("the Klingelhoefers"), in the amount of \$33,715.00, to replace an existing brick patio and other exterior renovations.

Due to difficulties in obtaining a building permit to construct the front porch, the payment schedule was modified to a new total of \$21,090.00. No change orders were executed to reflect this revision.

Count 1: Board Regulation

The contract used by Remodeling in the transaction failed to contain subsections a and h. These subsections contain vital information to the contract.

Remodeling became licensed on January 12, 2005, as a Class A contractor; thus, it should have known what its contract required. It appears Remodeling does not fully understand the requirements of the Board's regulations in relation to the minimum provisions to be included in a contract. The purpose of including these provisions is to protect both the contractor and the consumer, and failure to do so, is poor business practice. Remodeling's failure to include the minimum provisions in its contract is a violation of Board Regulation 18 VAC 50-22-260 B.9. Therefore, I recommend a monetary penalty of \$200.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 2. Board Regulation

The contract specified Remodeling would complete work within sixty (60) days from the date the contract was signed and the building permit issued. The contract was signed on January 17, 2006, and the permit was issued on April 7, 2006, making the completion date June 6, 2006. In May 2006 and July 2006, Mark Klingelhoefers sent Richard Cruz ("Cruz"), two letters regarding the completion of the project.

Remodeling failed to install the brick veneer for the garage doors, frame the portico and redesign a flower bed. On a systematic basis, Remodeling promised to complete work, however, it never fulfilled that promise. I find this to be an aggravating circumstance.

On May 31, 2007, the Klingelhoefers and Cruz came to a mutual agreement and terminated their contract with Remodeling (Board Exhibit 3). Complainants agreed to pay two of Remodeling's laborers, Oscar Sosa ("Sosa") and Jose Oscar ("Oscar"), directly to complete the portico and brick work. Sosa and Oscar completed the work, and were paid in cash. Therefore, I recommend a monetary penalty of \$1,700.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 3: Board Regulation

Cruz hired a masonry subcontractor, Darold Davis ("Davis"), to complete the front walkway. This included installing a concrete patio and steps. According to Davis, Cruz asked him to purchase the materials to complete the work because

According to Davis, his verbal arrangement with Cruz was for Davis to do whatever Klingelhoefers requested. There was no subcontractor agreement.

By June 2006, the Klingelhoefers had paid Remodeling \$15,817 50. In August 2006 Cruz asked Davis to purchase the materials to complete the work. Davis purchased the materials and invoiced Remodeling \$3,500.00. Remodeling has never paid Davis for the subcontracted work.

Remodeling was paid all monies for the project from the Klingelhoefers; however they failed to insure payment to Davis for his completed work. Remodeling's actions constitute a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$800 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 NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 18, 2007 (revised May 9, 2007)

FILE NUMBER: 2007-00966
RESPONDENT: Remodeling Professionals and Craftsmen, Inc.
LICENSE NUMBER: 2705089360
EXPIRATION: January 31, 2007

SUBMITTED BY: Investigator Jennifer Counts
APPROVED BY: Assistant Director John Delucca

COMMENTS:

Companion to File Nos. 2007-00210 and 2007-01365.

Remodeling Professionals and Craftsmen, Inc. ("Remodeling") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705089360).

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 25, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Mark Klingelhofer ("Klingelhofer") regarding Remodeling and Richard Cruz ("Cruz") (Exh. C-1a)

On January 17, 2006, Remodeling entered into a written contract, in the amount of \$33,715.00, with Klingelhofer to replace the existing brick patio and various other exterior renovations at 4306 Adrienne Drive, Alexandria, Virginia 22309. (Exh. C-2)

1. Board Regulation

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;
 - h Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services;

Historical Notes

Derived from VR220-01-2.1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001

Print Date August 1, 2005

FACTS:

The contract used by Remodeling in the transaction failed to contain an estimated start date, as required by subsection a., and the license expiration date, classification and specialty services, as required by subsection h (Exh. C-2)

2. Board Regulation

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.

Historical Notes

Derived from VR220-01-2.1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Print Date August 1, 2005

FACTS.

The contract stipulated, "The Contractor agrees to complete the structure within 60 days from the date the contract has been signed and the building permit is issued; time not being of the essence" (Exh C-2)

On April 7, 2006, Fairfax County issued the building permit. (Exh. I-6)

In the week of April 7, 2006, work commenced. (Exh. I-2 and I-3)

On May 14, 2006, Klingelhofer sent Remodeling a certified letter stating his concerns regarding the slow progress of the project and the unsafe condition of the property. On May 16, 2006, the certified letter was signed for and received by Margaret Orama. (Exh. C-4)

On July 15, 2006, Klingelhofer sent Remodeling a second letter stating that it was unacceptable to have the project prolonged any longer and that a complaint would be filed with Fairfax County Consumer Protection if significant progress was not made by July 31, 2006. (Exh. C-4)

As of October 24, 2006, Remodeling failed to install the brick veneer on both sides of the garage doors, begin the construction of the portico, and redesign the flower bed. (Exh I-2)

In a written response dated October 27, 2006, Cruz stated, "RPC is still and always committed to fulfill [its] contractual obligation in spite of the delays that have occurred. The Klingelhoefers have been very patience with us and we have now acquired a crew to finish the project and do it right. I will call the Klingelhoefers on Monday November 6, 2006 to give them a date to continue the framing and completion." (Exh. R-1)

In a written response dated January 2, 2007, Cruz stated, "As always we are still committed to our original agreement to complete this project as Contracted. This is a contract [where] time is not of the essence [otherwise] the price would have been substantially higher. Regretfully it has taken longer than any of us would have desired. Many things cause the delays, manpower changes, weather (rain), and delays in materials. We are on track to completing this project in the next 10 to 15 days." (Exh. R-2)

On January 4, 2007, Cruz informed Investigator Jennifer Counts ("Counts"), the Board's agent, that the project would be completed within a week. (Exh. I-3)

As of January 17, 2007, Remodeling failed to install the brick veneer on both sides of the garage doors, start framing the portico, and redesign the flowerbed. (Exh. I-5)

3 Board Regulation

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

Historical Notes

Derived from VR220-01-2 1 §5 7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001.

Print Date: August 1, 2005

FACTS:

Cruz hired sub contractor Darold Davis ("Davis") to perform the mason work (Exh. I-3)

On January 17, 2006, Klingelhoefler paid Remodeling \$8,429.00 by check On April 21, 2006, Klingelhoefler paid Remodeling \$2,116 00 by check. On June 10, 2006, Klingelhoefler paid Remodeling \$5,272.50 by check. (Exh. C-3)

In August 2006, Davis and his crew commenced work at the subject property. Cruz did not have enough materials at the jobsite. Cruz asked Davis to purchase the materials needed and that he would reimburse him. Davis purchased the materials and completed the work. On September 17, 2006, Davis submitted an invoice in the amount of \$3,500.00 to Cruz Cruz never paid him for the job There was no subcontractor agreement as Cruz told Davis to do whatever the complainant wanted (Exh I-4 and W-1)

On January 4, 2007, Cruz admitted to Counts that he still owes Davis money for the work performed. (Exh. I-3)

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

Re: Remodeling Professionals and Craftsmen, Inc.

File Number: 2007-01365
License Number: 2705089360

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On May 10, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Remodeling Professionals and Craftsmen, Inc. ("Remodeling") 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 June 7, 2007, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Richard Cruz ("Cruz"), on behalf of Remodeling, Respondent; Joseph and Nancy Sturdivant Sr. ("the Sturdivants"), Complainants; Darold L. Davis, Jr. ("Davis"), Witness; Joseph Haughwout, Jr. and Jesstina Adelman, Staff Members; 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 December 2005, Remodeling entered into a contract with the Sturdivants, in the amount of \$51,177.00, to build a garage and interior renovations at their residence in Nokesville, Virginia.

Count 1. Board Regulation

The contract used by Remodeling in the transaction failed to contain subsections a. and h. These subsections contain vital information to the contract.

Remodeling became licensed on January 12, 2005, as a Class A Contractor; thus, it should have known what its contracts required. Although this is a technicality, the purpose of including these provisions is to protect both the contractor and the consumer, and failure to do so, is poor business practice. Remodeling's failure to include the minimum provisions in its contract is a violation of Board Regulation 18 VAC 50-22-260 B 9. Therefore, I recommend a monetary penalty of \$200 00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 2: Board Regulation

The contract stipulated that Remodeling agreed to complete the "structure within 150 days from the date the contract [was] signed and the building permit issued; time not being of the essence."

According to the Sturdivants, Richard Cruz ("Cruz"), Responsible Management for Remodeling, attempted to obtain a building permit in March 2006, but could not obtain the permit because the firm did not have the proper classification to perform new construction. Cruz took the state exam to obtain the appropriate classification and passed in May 2006. Fauquier County did not issue the building permit until August 8, 2006, making the completion date on or about January 5, 2007. The permit was obtained almost eight months after the initial contract date.

In May 2006, the footers were dug at the Sturdivant's residence. By August 2006, the footers for the internal wall had been dug and the foundation completed. At this point, Remodeling promised to complete work by the end of August 2006. By early September 2006, the Sturdivants met with Cruz and made a verbal agreement that work would be completed by September 11th. After that date several telephone calls and emails were exchanged between Remodeling and the Sturdivants. Remodeling frequently promised to finish the garage; however, its actions show that it postponed the work almost indefinitely. As of late March 2007, Cruz promised to have the work completed by the end of May 2007.

Cruz claims that manpower and delay in obtaining materials was a major factor in the construction being incomplete. I believe this is not reasonable evidence of setbacks in constructing the garage. The contract stipulated a completion date from when the building permits were issued to within 150 days of that date.

Further, Cruz claims the contract specified time was not of the essence. While this may be true, the contract also provided work would be completed within 150 days after the contract was signed and the building permit obtained. As of the June 07, 2007, the garage has not been completed. Further, Remodeling's repeated promises to complete work earlier created an expectation by the complainants that it would perform the work in a timely manner. It is wholly unreasonable to expect the Sturdivants to wait more than a year for a garage to be completed.

Remodeling's failure to timely complete work created hardships for the Sturdivants. The Sturdivants needed work to be completed no later than September 2006, because their son and girlfriend were set to move in.

The last day of work performed by Remodeling was in mid-March 2007. Remodeling was in default of contract as of December 2006

The Sturdivants had to make numerous attempts to contact Remodeling regarding the work Remodeling regretted that it took much longer than anticipated. The Respondent's conduct in this matter indicates to me that although they had real intention of completing the project; the delays and lack of communication with the Sturdivants is unacceptable and the incomplete work product proves as such.

Remodeling actions constitute a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$1,700 and license revocation be imposed.

Count 3: Board Regulation

In 2006, Cruz hired Darold Davis ("Davis"), as a subcontractor, to perform block work for the detached garage. According to the record, a verbal agreement was made between Glen Marshall, on behalf of Remodeling, and Davis for \$4.00 per block and stucco. In August 2006, Davis began work at subject project, and by mid-August had completed work on subject property.

However, Davis was never paid the \$1,296.00 due to him and thus filed a Mechanic's lien against the Sturdivants' residence. Davis still has not been paid.

Remodeling's actions constitute a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$800.00 and license revocation be imposed.

Count 4: Board Regulation

In addition to the recommendations in Counts 2 and 3:

The contract stipulated that Remodeling "propose[d to] furnish all materials and labor necessary to deliver and build for the Owners. . ." as well as; "furnish[ing] materials . . .to install an approximate 30 x 24 (720 [square feet]) detached garage to include vinyl siding exterior, 4 fluorescent shop lights, three motion sensors, two garage doors [etc]."

Remodeling failed to install the vinyl siding along with the above components.

In concurrence with the above rationale, Remodeling was paid approximately 95% of the contract, but the only service performed was minimal. After a discussion regarding a refund, Remodeling refused to provide the Sturdivants with a refund even though it had defaulted on the contract. The Sturdivants will incur additional costs, on top of the money already paid to

Remodeling, to have the project completed and to pursue civil remedies, if necessary and desired. Remodeling's actions constitute 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 NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 18, 2007 (revised May 9, 2007)

FILE NUMBER: 2007-01365
RESPONDENT: Remodeling Professionals and Craftsmen, Inc.
LICENSE NUMBER: 2705089360
EXPIRATION: January 31, 2007

SUBMITTED BY: Investigator Jennifer Counts
APPROVED BY: Assistant Director John Delucca

COMMENTS:

Companion to File Nos. 2007-00966 and 2007-00210.

Remodeling Professionals and Craftsmen, Inc. ("Remodeling") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705089360).

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 October 2, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Joe and Nancy Sturdivant ("the Sturdivants") regarding Remodeling and Rick Cruz ("Cruz"). (Exh. C-1)

On December 29, 2005, Remodeling entered into a written contract, in the amount of \$51,177 00 to build a detached garage and perform interior renovations at 4022 Langley Lane, Nokesville, Virginia 20181. (Exh. C-2)

On December 29, 2005, the Sturdivants paid Remodeling \$12,794 25 by check. On June 6, 2006, the Sturdivants paid Remodeling \$12,795.00 by check. On July 13, 2006, the

Sturdivants paid Remodeling \$12,795.00 by check. On July 21, 2006, the Sturdivants paid Remodeling \$10,235.40 by check (Exh. C-3)

1 Board Regulation

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;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services;

Historical Notes

Derived from VR220-01-2.1 §5 7, eff March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Prnt Date: August 1, 2005

FACTS:

The contract used by Remodeling in the transaction failed to contain an estimated start date, as required by subsection a , and the license expiration date, classification and specialty services, as required by subsection h. (Exh. C-2)

2. Board Regulation

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.

Historical Notes

Derived from VR220-01-2 1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001.

Prnt Date. August 1, 2005

FACTS:

The contract stipulates, "The Contractor agrees to complete the structure within 150 days from the date the contract has been signed and the building permit is issued; time not being of the essence." (Exh. C-2)

On or about May 23, 2006, Remodeling dug the footers. (Exh. C-1)

In late July 2006 or early August 2006, Remodeling installed sheathing and the roof. In early August 2006, Remodeling dug the footers for the internal wall. (Exh. C-1)

On August 8, 2006, Fauquier County issued building permit number S06-21444. (Exh. I-3)

In mid August 2006, Remodeling verbally promised the Sturdivants that it would finish the work by the end of August 2006. (Exh. C-1)

In early September 2006, Remodeling verbally promised the Sturdivants that it would finish the laundry room by September 11, 2006. (Exh. C-1)

Between September 11, 2006 and September 21, 2006, the Sturdivants made several attempts to contact Remodeling, via phone and email, regarding the status of the project. The Sturdivants (Exh. C-4)

On October 10, 2006, Joe Sturdivant sent Remodeling an email requesting a schedule, in writing, with a completion date on or before November 15, 2006. (Exh. C-4)

On October 17, 2006, the footing inspection was approved. (Exh. I-3)

On October 24, 2006, a footer was poured. (Exh. C-4)

On October 27, 2006, Cruz sent the Sturdivants an email stating, "Joe and Nancy yes we are continuing work on your garage. We poured the footer and will now build the block walls so we can pour concrete." (Exh. C-4)

On November 1, 2006, Cruz sent the Sturdivants an email stating, "Joe, we will be pouring soon." Cruz also stated, "I will do all I can to get it closed in by Nov 15, but not worried about the Dec. date." (Exh. C-4)

On November 15, 2006, the ground was prepped for the concrete pad. (Exh. C-6)

In late November 2006 or early December 2006, Cruz told the Sturdivants that Oscar Amada would complete the interior work. (Exh. I-4)

On December 18, 2006, the Sturdivants received a call stating that the scheduled date to pour the pad had to be cancelled due to a death in the family, but Cruz would call back on December 21, 2006. (Exh. C-6)

On December 27, 2006, the Sturdivants sent Remodeling an email inquiring about when the garage would be finished. (Exh. C-7)

In a written response dated January 2, 2007, Cruz stated, "We [Remodeling] have had several events that contributed to the delays one being manpower problems And second delays in obtaining materials " Cruz also stated, "At this time the foundation has been poured the frame is up, the roof is built The shingles have been completed, the structure is completely built and under Roof. I would say the garage is 75% complete." Cruz further stated, "As always we are still committed to our original agreement to complete this project as Contracted This is a contract were (sic) time is not of the essence otherwise the price Would have been substantially higher. From the beginning there was no sense of Urgency on Mr. Sturdivant behalf. Regretfully It has taken longer than any of us would Have desired." (Exh. R-1)

As of January 3, 2007, Fauquier County had not performed any other inspections since the footing inspection in October 2006. (Exh. I-3)

On January 4, 2007, Cruz told Counts that he attempted to call the complainant and left several messages, but has not heard from them Cruz also stated he worked on the project sporadically and has not completed the project because he has had "manpower problems" and cannot find reliable help. (Exh. I-4)

On January 11, 2007, the Sturdivants sent Remodeling an email inquiring about its intent to complete the garage (Exh. C-7)

As of January 16, 2007, Remodeling did not respond to the Sturdivants' email. (Exh C-7)

The week prior to March 28, 2007, Remodeling poured the slab foundation for the garage. (Exh. C-8)

In a letter dated March 28, 2007, Cruz promised the Sturdivants that the windows and side doors would be installed next week Cruz also promised that, after the windows and doors were installed, Remodeling would inspect the wood sheathing and treat or replace damaged pieces, put the siding and gutters, and complete the rough-in electrical wiring. Cruz also agreed to install the siding on the home and the asphalt driveway at no cost to the Sturdivants and have the garage, siding, and driveway completed no later than the end of May 2007 (Exh C-8)

3. Board Regulation

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting

Historical Notes

Derived from VR220-01-2 1 §5.7, eff. March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Prnt Date August 1, 2005

FACTS:

Cruz hired Darold Davis ("Davis") to perform block work for the garage at the subject property. (Exh. I-5)

In August 2006, Davis started the block work at the subject property. Davis and Glen Marshall, acting superintendent on the job, verbally agreed to \$4.00 per block and stucco. (Exh. I-5)

On August 16, 2006, after Davis completed the work, he provided Cruz with an invoice in the amount of \$1,296.00. (Exh. I-5 and W-1)

On September 25, 2006, Davis filed a Memorandum of Mechanic's lien ("lien") against the subject property, in the amount of \$1,296.00, for building the block foundation for the garage. (Exh. W-2)

As of January 5, 2007, Remodeling has not paid Davis for the work performed at the subject property. (Exh. I-5)

4. Board Regulation

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.

Historical Notes

Derived from VR220-01-2-1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Print Date August 1, 2005

FACTS:

In addition to the facts outlined in Counts 2 and 3:

The contract specified, "Furnish materials and labor to install an approximate 30 x 24 (720 sf) detached garage to include vinyl siding exterior " (Exh. C-2)

The contract also specified the Sturdivants would pay \$10,235.40 at commencement of vinyl exterior (Exh C-2)

As of January 16, 2007, Remodeling failed to install the vinyl exterior on the garage. (Exh. C-7)

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

Re: Darrel Glyn Tawney

File Number: 2006-00293
License Number: 2710025861

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 23, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Darrel Glyn Tawney ("Tawney") to the address of record. The certified mail was returned by the United States Postal Service ("USPS"), marked "Not Deliverable as Addressed, Unable to Forward." The Notice was also mailed, via certified mail, to Tawney at 112 Woodland Avenue, Narrows, Virginia 24142. The certified mail was received

The Notices included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter.

On April 16, 2007, Tawney requested a continuance of the Informal Fact-Finding Conference ("IFF"), which was granted.

On April 18, 2007, a letter rescheduling the IFF was mailed, via certified mail, to Tawney at its address of record. The letter along with a copy of the Notice, was also mailed, to an alternate address at P.O. Box 321 Newport, Virginia 24128. The certified mail was returned from the USPS, labeled as "Unable to Forward"

On June 7, 2007, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Darrel G. Tawney ("Tawney"), Respondent (by Telephone); Joseph Haughwout Jr. and Jesstina Adelman, Staff Members; 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 January 2005, Tawney entered into a verbal agreement with David Lindsay ("Lindsay") to complete a room addition, roof installation, exterior deck, and electrical work at the subject property in Newport, Virginia. Lindsay subsequently paid Tawney a total of \$26,410.40 toward the project. Worthy of note, during the time of this transaction and prior, Tawney went through many personal hardships; the death of three close family members.

Count 1. Board Regulation

According to the record, Tawney is only licensed as a Master Electrician, but not as a contractor. However, Tawney held himself out as a contractor, solicited contracting work from Lindsay, performed contracting, and received payments for his work.

In his written response to the Board's agent, Tawney claimed he represented himself to Lindsay as a licensed electrician with knowledge of construction. That he could only perform electrical work, but Lindsay would need to obtain the permits in order for him to work by the hour. Tawney further stated, "I do regret that people perceived me as a contractor as I would not knowingly do anything to jeopardize my license."

Tawney's statements are contradicted by the evidence in the record which clearly shows he was operating as an unlicensed contractor. As such, his explanation is disingenuous and not credible. Given the fact that this transaction took place in a small town; where Lindsay would have known or had opportunity to have known is if

Tawney's actions are a violation of Board Regulation 18 VAC 50-30-190 1. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 2: Board Regulation

As indicated above, Tawney represented himself to Lindsay as a dual licensed building and electrical contractor, including providing Lindsay with a business card that indicated he performed construction services. On this basis, Lindsay hired Tawney to perform electrical and construction work at the subject property.

During the IFF, it is clear Tawney was aware that he was not licensed to perform contracting work. However, Tawney was not intentionally trying to avoid accountability; but

made an honest mistake in holding himself out as a contractor. At this time the Respondent was trying to reorient himself in the work he loves to do

Tawney's actions are a violation of Board Regulation 18 VAC 50-30-190.8. Therefore, I recommend a monetary penalty of \$250 00 remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 3: Board Regulation

During the project, Tawney hired Tommy Dunn ("Dunn"), an unlicensed contractor, to perform carpentry work at the subject property. Dunn acknowledged he performed work and was paid approximately \$3,800 00.

Tawney's actions are a violation of Board Regulation 18 VAC 50-30-190.9 Therefore, I recommend a monetary penalty of \$250.00 remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 4: Board Regulation **RECORD LEFT OPEN FOR 110 BUSINESS DAYS FROM 6/7/07**

During the project, Tawney partially installed a temporary meter box, and then left the project without removing it As of August 2006, more than a year after Tawney left the project, the temporary meter box was still in place. As indicated by the photograph in the record, the meter box is freestanding on Lindsay's deck (Exhibit I-3).

Tawney's actions are careless but certainly not gross negligence in the practice of a trade Therefore, I recommend Count 4 of this file be closed with a finding of no violation of 18 VAC 50-30-190.4.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: October 6, 2006 (revised March 22, 2007)

FILE NUMBER: 2006-00293
RESPONDENT: Darrell Glyn Tawney
LICENSE NUMBER: 2710025861
EXPIRATION: May 31, 2007

SUBMITTED BY: Dale Amos
APPROVED BY: Janet Creamer

COMMENTS:

None.

Darrell Glyn Tawney ("Tawney") was at all times material to this matter a licensed tradesman in Virginia (No. 2710025861).

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 July 18, 2005, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from David S. Lindsay ("Lindsay") regarding Tawney and D & S Electric. (Exh. C-1)

On January 28, 2005, Tawney entered into a verbal agreement with Lindsay to complete a room addition, roof installation, exterior deck and electrical work at 152 L & M Lane, Newport, Virginia 24128. (Exh. C-1 and I-7)

On January 28, 2005, Lindsey paid Tawney \$750 00 by check. (Exh. C-2)

On January 28, 2005, Tawney commenced work. (Exh. I-7)

On February 4, 2005, Lindsay paid Tawney \$1,000.00 by check. On February 14, 2005, Lindsay paid Tawney \$650.00 by check. On February 16, 2005, Lindsay paid Tawney \$326.59 by check. On March 5, 2005, Lindsay paid Tawney \$3,264.81 by check. On March 6, 2005, Lindsay paid Tawney \$1,500.00 by check. On March 11, 2005, Lindsay paid Tawney \$2,424.00 by check. On March 18, 2005, Lindsay paid Tawney \$2,100.00 by check. On March 24, 2005, Lindsay paid Tawney \$2,100.00 by check. On March 29, 2005, Lindsay paid Tawney \$2,250.00 by check. On April 6, 2005, Lindsay paid Tawney \$2,500.00 by check. On April 15, 2005, Lindsay paid Tawney \$2,790.00 by check. On April 29, 2005, Lindsay paid Tawney \$1,500.00 by check. On May 6, 2005, Lindsay paid Tawney \$1,075.00. On May 13, 2005, Lindsay paid Tawney \$2,000.00 by check. (Exh. C-2)

On October 19, 1995, Tawney was issued tradesman license number 2710025861 with the Master Electrician specialty. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board

FACTS:

Section 54.1-1103 of the Code of Virginia states, "No person shall engage in, or offer to engage in, contracting work in the Commonwealth unless he has been licensed under the provisions of this chapter "

Tawney is not a licensed contractor in Virginia. (Exh. I-4)

In a written response dated October 24, 2005, Tawney stated he told Lindsay he could do his electrical work, but because he was not a contractor Lindsay would have to obtain the permits needed for him to work by the hour. He represented himself to Lindsay as licensed electrician with knowledge of construction. Tawney further stated, "I do regret that people perceived me as a contractor as I would not knowingly do anything to jeopardize my license." (Exh. R-1)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce

FACTS:

In addition to the facts outlined in Count 1:

In January 2005, Tawney represented himself to Lindsay as a dual licensed building and electrical contractor. Based on these claims, Lindsay hired Tawney to perform electrical and construction work at the subject property. (Exh. C-1 and I-7) Tawney provided Lindsay with a business card reflecting "Big D Enterprises, Stabling and Construction Services." (Exh C-4)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of § 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual

FACTS:

Section 54.1-1103 of the Code of Virginia states, "No person shall engage in, or offer to engage in, contracting work in the Commonwealth unless he has been licensed under the provisions of this chapter."

In April 2005, Tawney hired Tommy Dunn ("Dunn"), a subcontractor, to perform carpentry work. Dunn enclosed a bedroom and bath addition and installed a roof and exterior deck. (Exh. I-8)

Tawney paid Dunn approximately \$3,800 00 for work performed at Lindsay's residence. (Exh. I-8)

In a letter dated June 25, 2005, Tawney stated he told Lindsay he could get a "home improvement licensed crew and helpers" to work on the addition. (Exh. R-1)

Dunn is not a licensed contractor in Virginia. (Exh I-5)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190 Prohibited acts.

Any of the following are cause for disciplinary action:

4. Gross negligence in the practice of a trade or backflow prevention device work;

FACTS:

During the project, Tawney partially installed a temporary meter box. (Exh. I-3)

In June 2005, Tawney left the job site. (Exh. C-1 and I-7)

As of June 2005, Tawney had not removed the temporary meter box. (Exh. I-7)

On August 28, 2006, Investigator Dale C. Amos, the Board's agent, photographed a free standing temporary meter box on the deck portion of Lindsay's residence. (Exh. I-3)

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

Re: Lapco Inc., t/a Shoreline Pool Builders

File Number. 2007-01572
License Number. 2705064616

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On April 24, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Lapco Inc , t/a Shoreline Pool Builders ("Shoreline"), 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, marked "Unclaimed "

On June 7, 2007, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Allen and Victoria Gibbs ("the Gibbs"), Complainants; Joseph Haughwout and Jesstina Adelman, Staff Members; and Ruth Ann Wall, Presiding Officer. Neither Shoreline, 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:

In July 2006, Shoreline entered into a contract with the Gibbs, in the amount of \$29,950.00, to construct a swimming pool at the subject property in Virginia Beach, Virginia.

Count 1: Board Regulation

According to the record, Shoreline began digging the hole for the pool in early September 2006. Shoreline performed only two days of work, and then did not return. The Gibbss testified they made numerous calls and sent e-mails to Shoreline requesting completion of the work. They also made personal visits to Shoreline's business address. In early October 2006, an employee on behalf of Shoreline advised the Gibbss that the equipment to complete the pool would be delivered to their property; however, no equipment was delivered. Shoreline later told the Gibbss that its business had come to a halt because of "accounts receivable problems." The Gibbss finally demanded Shoreline return to the project by October 25, 2006, or they would hire someone else to complete the work.

Shoreline failed to return, and the Gibbses hired another contractor Shoreline's abandonment of the project is a violation of Board Regulation 18 VAC 50-22-260.B.14.

Respondent's conduct in this matter shows they had no intention of completing the project. It performed only a minimal amount of work, was largely unresponsive to complainant's attempts to have it resume work, and, when it did respond, made false promises that materials would be delivered and the work would resume. Shoreline's conduct is very serious and deserves the appropriate sanction. Therefore, I recommend a monetary penalty of \$1,900.00 and license revocation be imposed.

Count 2: Board Regulation

In addition to my recommendation in Count 1:

The Gibbses paid Shoreline \$17,870.00 toward the contract price of \$29,950.00 (approximately 60%). After respondent failed to return, the Gibbses requested a refund of their money. In November 2006, the Gibbses filed a civil suit against respondent in an attempt to get their money back Shoreline'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.

In my view, Shoreline's actions are tantamount to criminal fraud. The Gibbses paid more than half the contract's amount and only have a hole in the ground to show for it An appropriate sanction should be imposed. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

Count 3. Board Regulation

In December 2006, in Virginia Beach General District Court, the Gibbses were awarded a \$15,000.00 judgment against Shoreline The Gibbses testified the judgment has not been satisfied.

Shoreline'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.

Count 4: Board Regulation

According to the record, the Board's agent attempted to contact respondent by both mail and by telephone, including an attempt by certified mail that was not claimed. Shoreline failed to respond.

Shoreline's failure to respond to the investigator is a serious violation of the Board's regulations, as it impairs the Board's ability to fully investigate complaints. It is the obligation of a licensee to fully cooperate with the Board when it attempts to investigate complaints. The facts of this case indicate that Shoreline elected not to respond to the investigator's

attempts to contact it, and thereby not comply with the Board's regulations, which I find to be an aggravating circumstance.

Shoreline's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,300.00 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 NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) 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: January 23, 2007 (Revised April 19, 2007)

FILE NUMBER: 2007-01572
RESPONDENT: LAPCO Inc , t/a Shoreline Pool Builders
LICENSE NUMBER: 2705064616
EXPIRATION: August 31, 2007

SUBMITTED BY: Michael Heaney
APPROVED BY: David Dorner

COMMENTS:

None.

LAPCO Inc., t/a Shoreline Pool Builders ("Shoreline"), was at all times material to this matter a licensed Class A contractor in Virginia (No 2705064616)

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 October 13, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Victoria C Gibbs and Allen Gibbs (the "Gibbses") regarding Shoreline. (Exh. C-1)

On July 25, 2006, Shoreline entered into a written contract, in the amount of \$29,950 00, with the Gibbses for the construction of a swimming pool at 1713 Riner Court, Virginia Beach, Virginia (Exh C-2)

1. Board Regulation

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).

Historical Notes

Derived from VR220-01-2-1 §5 7, eff March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Print Date February 1, 2006

FACTS:

On September 7, 2006, Shoreline began digging the hole for the pool. (Exh. C-1 and I-1)

The last day Shoreline performed work at the subject property was September 8, 2006. (Exh C-1 and I-1)

Beginning September 9, 2006, through October 25, 2006, the Gibbsses telephoned Shoreline daily, sent e-mails, and visited Shoreline's office, requesting completion of the contracted work. (Exh. I-1)

On October 3, 2006, the Gibbsses sent Shoreline an e-mail, requesting a timeline for the completion of the contracted work. (Exh. C-4)

On October 5, 2006, the Gibbsses received a phone call from a Shoreline employee named Mike ("Mike"), who stated that the equipment to complete the pool would be delivered to their property the following day (Exh. C-1)

On October 13, 2006, the Gibbsses went to Shoreline's address at 2125 McComas Way, Virginia Beach, and spoke to Mike. Mike stated that the company was having "accounts receivable" problems and that for the previous two weeks, business had basically come to a halt. When the Gibbsses asked if he knew if or when the pool would be completed, he answered "no". (Exh. C-1)

On October 18, 2006, the Gibbsses notified Shoreline, in writing, to return to the job by October 25, 2006, or they would terminate the contract and hire another contractor to complete the construction of the pool. (Exh. C-5)

As of October 25, 2006, Shoreline failed to complete the work specified in the contract, with the exception of the excavation. (Exh C-1 and I-1)

On October 25, 2006, the Gibbses hired another contractor to complete the work Shoreline failed to perform (Exh. C-6)

2. Board Regulation

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.

Historical Notes:

Derived from VR220-01-2 1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001

Print Date February 1, 2006

FACTS:

In addition to the facts outlined in Count 1:

On July 25, 2006, the Gibbses paid Shoreline \$500.00 by check as the contractual deposit. (Exh. C-3)

On September 7, 2006, the Gibbses paid Shoreline \$17,370.00 by check as the contractual first payment. (Exh. C-3)

As of January 4, 2007, Shoreline failed to refund money received for work not performed or performed only in part (Exh. I-1)

On November 6, 2006, the Gibbses filed a Warrant in Debt against Shoreline in the Civil Division of the City of Virginia Beach General District Court ("Court"). (Exh. I-2)

3. Board Regulation

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

B. The following are prohibited acts:

28 Failure to satisfy any judgments

Historical Notes:

Derived from VR220-01-2.1 §5.7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001

Print Date: February 1, 2006

FACTS:

On December 6, 2006, the Gibbises were awarded a \$15,000.00 judgment against Shoreline by the Court. (Exh. I-2)

As of January 22, 2007, Shoreline failed to satisfy the judgment. (Exh. I-2)

4. Board Regulation

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

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor

Historical Notes:

Derived from VR220-01-2.1 §5.7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001

Print Date: February 1, 2006

FACTS:

On October 30, 2006, Investigator Michael Heaney ("Heaney") sent written requests, via certified and regular mail, to Shoreline at the address of record requesting a written response and supporting documents to the complaint.. Heaney requested that the response be received by November 13, 2006. (Exh. I-3)

On November 14, 2006, the written request sent by certified mail to Shoreline's address of record was returned to Heaney by the United States Postal Service ("USPS") as unclaimed. (Exh. I-4)

On November 20, 2006, and December 27, 2006, Heaney left telephone messages at Shoreline's two known telephone numbers of (757)721-0288 and (757) 630-4688, requesting a response to the complaint (Exh. I-5)

The written request sent to Shoreline, via regular mail, was not returned. (Exh. I-5)

As of January 22, 2007, Shoreline failed to respond to the investigator seeking information in the investigation of a complaint filed with the Board. (Exh. I-5)

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

Re: Lapco Inc., t/a Shoreline Pool Builders

File Number: 2007-01727
License Number: 2705064616

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On April 24, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Lapco Inc., t/a Shoreline Pool Builders ("Shoreline"), 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, marked "Unclaimed."

On June 7, 2007, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joel Wood ("Wood"), Complainant; Joseph Haughwout, Jr. and Jesstina Adelman, Staff Members; and Ruth Ann Wall, Presiding Officer. Neither Shoreline, 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:

In June 2006, Shoreline entered into a contract with Joel Wood ("Wood"), in the amount of \$23,750.00, to construct a swimming pool at the subject property in Virginia Beach, Virginia. During the project, the parties agreed to a change order, in the amount of \$2,130.10, for additional concrete work.

Count 1. Board Regulation

The contract provided the work would be completed by July 31, 2006. Shoreline began work around mid-July 2006. As of late August 2006, Shoreline had not completed work. Wood made attempts to contact Shoreline regarding completion of the work. Only after Wood sent a certified letter and had Shoreline's franchisor contact it, did respondent return to perform further work. In mid-September 2006, Shoreline completed additional concrete

work This was the last time it performed work at the subject property After this point, Wood made numerous attempts to get Shoreline to complete the project. In early November 2006, Wood ultimately terminated the contract because Shoreline had not returned. Wood hired another contractor to complete the project. Shoreline's abandonment of the project is a violation of Board Regulation 18 VAC 50-22-260.B.14.

The facts of this case clearly show Shoreline had no intention of completing the project. It committed to completing the project by July 31, 2006, failed to meet that deadline, and was largely unresponsive to Wood's attempts to get it to complete the project. Respondent's conduct in this matter is very serious and demands an appropriate sanction.

Therefore, I recommend a monetary penalty of \$1,900.00 and license revocation be imposed.

Count 2: Board Regulation

In addition to my recommendation in Count 1:

Wood paid Shoreline \$24,717.60 toward the total contract price, including the change order, of \$25,880.10 (approximately 96%). However, Shoreline completed substantially less than this proportion of work. Despite Wood's requests that it refund his money, respondent did not return money for incomplete work. Shoreline'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 3: Board Regulation

The Board's agent attempted to contact respondent by mail and by telephone in order to obtain a response to Wood's complaint; however, Shoreline failed to respond to the Board's agent's attempts to contact it.

Shoreline's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,900.00 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 NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) 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: March 19, 2007 (Revised April 19, 2007)

FILE NUMBER: 2007-01727
RESPONDENT: LAPCO Inc., t/a Shoreline Pool Builders
LICENSE NUMBER: 2705064616
EXPIRATION: August 31, 2007

SUBMITTED BY: Michael Heaney
APPROVED BY: Valerie J. Matney

COMMENTS:

None

LAPCO Inc., t/a Shoreline Pool Builders ("Shoreline"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705064616).

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 October 24, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Joel P. Wood ("Wood") regarding Shoreline. (Exh C-1)

On June 12, 2006, Shoreline entered into a written contract, in the amount of \$23,750.00, with Wood for the construction of a swimming pool at 2560 Sandpiper Road, Virginia Beach, Virginia (Exh C-2)

On September 19, 2006, Shoreline entered into a written change order, in the amount of \$2,130.10, with Wood for additional concrete work for the swimming pool construction at the subject property (Exh C-3)

1. Board Regulation

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).

Historical Notes

Derived from VR220-01-2 1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001.

Print Date, February 1, 2006

FACTS:

On July 13, 2006, Shoreline commenced work (Exh. I-1)

The contract specified work was to be completed by July 31, 2006. (Exh. C-2)

On August 23, 2006, Wood sent a certified letter to Shoreline that stated Shoreline had breached the contract and that the job had been abandoned for more than thirty (30) days. Wood also stated in the letter that he had tried to contact both Shoreline's president, Lou Pisciotta, and salesperson Bob Bell by phone and e-mail, and that he left messages which were not returned. Wood informed Shoreline that they had one week from the date Shoreline received the letter to complete the contracted work. (Exh. C-1)

After receiving Wood's letter and a call from Pacific Pools (Shoreline is an authorized dealer for Pacific Pools), Shoreline contacted Wood and did perform some additional work on the pool. (Exh. C-1)

On September 19, 2006, Wood and Shoreline executed an amendment to the contract for additional concrete work that was completed on September 15, 2006. (Exh. C-1 and C-3)

The last day Shoreline performed work at the subject property was on September 15, 2006. (Exh. I-1)

Beginning on September 16, 2006, through November 2, 2006, Wood telephoned Shoreline approximately twice a week requesting completion of the contracted work. (Exh I-1)

On October 9, 2006, Wood requested Shoreline by fax, email, and letter to complete the contracted work. (Exh. C-5)

On November 2, 2006, Wood terminated the contract with Shoreline and requested a refund settlement (Exh. C-6)

As of November 2, 2006, Shoreline failed to complete the following construction related specifications as itemized in the contract.

- #13 Backfill and rough grade pool area.
- #15 Start up, water balance and complete indoctrination of equipment and pool operation.
- #16 Owners Manual and Safety Information as written by the national Spa and Pool Institute.

(Exh. C-2 and I-1)

As of November 2, 2006, Shoreline failed to complete or provide the following pool accessories specifications as itemized in the contract:

- #1 Test Kit & Manual, Cleaning Equipment.
- #4 Ladder.
- #12 Rope and Float.
- #32 Safety Mesh Pool Cover.

(Exh. C-2 and I-1)

In December 2006, Wood hired another contractor to complete the work Shoreline failed to perform (Exh. I-1)

2. Board Regulation

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.

Historical Notes

Derived from VR220-01-2 1 §5.7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Print Date February 1, 2006

FACTS:

In addition to the facts outlined in Count 1:

Between June 12, 2006, and September 19, 2006, Wood paid Shoreline \$24,717.60 by four (4) check payments. (Exh C-4)

As of February 6, 2007, Shoreline failed to refund money received for work not performed or performed only in part (Exh. I-1)

3. Board Regulation

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

B The following are prohibited acts:

- 13 Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

Historical Notes

Derived from VR220-01-2-1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Print Date February 1, 2006

FACTS:

On February 12, 2007, Investigator Michael Heaney ("Heaney") sent written requests, via certified and regular mail, to Shoreline at the address of record requesting a written response and supporting documents to the complaint. Heaney requested that the response be received by February 26, 2007. (Exh. I-2 and I-6)

On March 5, 2007, Heaney left a telephone message at Shoreline's known telephone number of (757) 630-4688, requesting a response to the complaint. Shoreline's other known telephone number of (757) 721-0288 was not in service. (Exh. I-6)

On March 7, 2007, the written request sent by certified mail to the address of record was returned to Heaney by the United States Postal Service ("USPS") as unclaimed, after a notice was left for Shoreline (Exh. I-3 and I-4)

The written request sent to Shoreline, via regular mail, was not returned (Exh. I-6)

As of March 16, 2007, Shoreline failed to respond to the investigator seeking information in the investigation of a complaint filed with the Board. (Exh. I-6)

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

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

1. Name: Ruth Ann Wall
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on June 07, 2007
5. Nature of Personal Interest Affected by Transaction. _____

6. I declare that:

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

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

Ruth Ann Wall
Signature

6-7-07
Date