

Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
July 29, 2003 (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.

Jennifer Parrish, Board member, presided. Dorothy Wood, Board member, observed. No other Board members were present.

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

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

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

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

Participants

- | | |
|--|-------------------|
| 1. David Parsons
File Number 2004-00462 (Lic) | Parsons – A |
| 2. David Parsons
t/a DP Painting
File Number 2004-00464 (Lic) | Parsons – A |
| 3. Fieldstone Construction Inc.
File Number 2004-000287 (Disc) | No One Appeared |
| 4. Fieldstone Construction Inc.
File Number 2003-02511 (Disc) | No One Appeared |
| 5. Fieldstone Construction Inc.
File Number 2003-03167 (Disc) | Mark Peterson – C |
| 6. Elmo Lawrence
File Number 2003-03383 (RF)
(No Decision Made) | Lawrence – C |
| 7. Jonah Green | Green – R |

t/a Sore Thumb Builders
File Number 2003-00053 (Disc)

Darrin Smith – W

8. Stewart L. Davis
File Number 2002-02257 (Disc)

No One Appeared

9. Raymond A. Horton Jr.
t/a Cherry Hill Contracting
File Number 2003-00019 (Disc)

No One Appeared

10. Thomas D. Underwood
t/a Underwood Construction
File Number 2002-00600 (Disc)

Underwood – R
Todd Thornton – C
(By Phone)

11. Home Consulting Plus
t/a Housing Made Simple
File Number 2002-03721 (Disc)

Patrick Carr – R
Paul Lyles - W
Raymond Johnson – C

12. Michael Clayton Greer
t/a Timberland Construction
File Number 2003-00576 (Disc)

No One Appeared

13. Michael Clayton Greer
t/a Timberland Construction
File Number 2002-03519 (Disc)

No One Appeared

The meeting adjourned at 4:30 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**IN RE: DAVID PARSONS
APPLICATION FOR MASTER ELECTRICIAN'S LICENSE**

FILE NUMBER: 2004-00462

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference by facsimile and hand delivery to David Parsons on July 28, 2003. The following individuals participated at the conference: David Parsons, Applicant; Jennifer Parrish, Staff Member; and Jennifer Parrish, Presiding Board Member.

Summation of Facts

1. David Parsons applied for a Master Electrician's (Tradesman) license on or about June 10, 2003, and disclosed criminal convictions.
2. On or about July 28, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.
3. During the IFF, Mr. Parsons testified that his four felony convictions all occurred during a few week period where he stole money from 4 people as they got out of their car.
4. Mr. Parsons explained that he used poor judgment and was unable to ask anyone to help him back then. He needed the money to eat, as he was unable to find a job. He claimed not to have any problems with either alcohol or drugs. He was convicted of the 4 felonies and sentenced to about 12 years in prison, of which he had to serve 2 ½. While in prison, he attended Piedmont Community College and successfully completed all 4 of the classes that were offered. He is now pursuing an associate's degree and is only 7 classes away from a degree in social sciences.

5. Mr. Parsons was 20 years old at the time of these four crimes. He has had no criminal charges or convictions for the past 14 years.

6. Since his release from prison, he has been continuously employed in the electrical field. He began working with his father, a contractor, for about 3 years after his release. He then worked for a number of other contractors continuously since then.

Prior Criminal Convictions

§ 54.1-204 of the Code of Virginia. Prior convictions not to abridge rights.

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

David B. Parsons (Parsons) was convicted of Robbery, a Felony, on 3 separate occasions, in James City County in 1989, and of Robbery, a Felony, in York County, in 1989. These felonies occurred when Mr. Parsons stole purses from four people as they were getting out of their cars.

2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

The purpose of licensure is to protect the health, safety, and welfare of the public.

Parsons' convictions occurred over 14 years ago, and he has had no further criminal charges or convictions since that time. Based upon his testimony and credibility at the hearing, it does not appear that Mr. Parsons is a danger to the public.

3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;

Based upon the above information, it does not appear that granting Mr. Parson's a license will encourage any criminal activity. He has already been working with contractors doing electrical work for many years.

4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

Due to the age of the crimes and Mr. Parsons actions since that time, I do not see any significant relationship of the crime to his fitness to engage in licensed activity.

5. The extent and nature of the person's past criminal activity;

Parsons was convicted of Robbery, a Felony, on 3 separate occasions, in James City County in 1989, and of Robbery, a Felony, in York County, in 1989.

6. The age of the person at the time of the commission of the crime;

Parsons was approximately 20 years old at the time of the crime.

7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

The last offense, which resulted in Parsons' Felony conviction, occurred on or about November 11, 1988.

8. The conduct and work activity of the person prior to and following the criminal activity; and

During the IFF, Parsons stated he was in the electrical contracting business for all the years since his release in 1992.

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

Mr. Parsons pursued education while incarcerated and continues to pursue his associate's degree. He claims to have no problems with drugs or alcohol, and claims to have the support of his family. He had continued training in the electrical field since his release.

Conclusion and Recommendation

Based upon the record, including the information obtained from the Central Criminal Records Exchange, and in consideration of the criteria outlined in § 54.1-204.B, I recommend David Parsons' application for a Master Electrician's (Tradesman) license be approved.

By: _____

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors

Date: July 29, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: DAVID PARSONS, T/A DP ELECTRIC
APPLICATION FOR CLASS B CONTRACTOR'S LICENSE**

FILE NUMBER: 2004-00464

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference by facsimile and hand delivery to David Parsons on July 28, 2003. The following individuals participated at the conference: David Parsons, Applicant; Jennifer Parrish, Staff Member; and Jennifer Parrish, Presiding Board Member.

Summation of Facts

1. David Parsons applied for a Class B Contractor's license on or about June 10, 2003, and disclosed criminal convictions.
2. On or about July 28, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.

3. During the IFF, Mr. Parsons testified that his four felony convictions all occurred during a three week period where he stole money from 4 people as they got out of their car.

4. Mr. Parsons explained that he used poor judgment and was unable to ask anyone to help him back then. He needed the money to eat, as he was unable to find a job. He claimed not to have any problems with either alcohol or drugs. He was convicted of the 4 felonies and sentenced to about 12 years in prison, of which he had to serve 2 ½. While in prison, he attended Piedmont Community College and successfully completed all 4 of the classes that were offered. He is now pursuing an associate's degree and is only 7 classes away from a degree in social sciences.

5. Mr. Parsons was 20 years old at the time of these four crimes. He has had no criminal charges or convictions for the past 14 years.

6. Since his release from prison, he has been continuously employed in the electrical field. He began working with his father, a contractor, for about 3 years after his release. He then worked for a number of other contractors continuously since then.

Prior Criminal Convictions

§ 54.1-204 of the Code of Virginia. Prior convictions not to abridge rights.

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

David B. Parsons (Parsons) was convicted of Robbery, a Felony, on 3 separate occasions, in James City County in 1989, and of Robbery, a Felony, in York County, in 1989. These felonies occurred when Mr. Parsons stole purses from four people as they were getting out of their cars.

2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

The purpose of licensure is to protect the health, safety, and welfare of the public.

Parsons' convictions occurred over 14 years ago, and he has had no further criminal charges or convictions since that time. Based upon his testimony and credibility at the hearing, it does not appear that Mr. Parsons is a danger to the public.

3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;

Based upon the above information, it does not appear that granting Mr. Parson's a license will encourage any criminal activity. He has already been working with contractors doing electrical work for many years.

4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

Due to the age of the crimes and Mr. Parsons actions since that time, I do not see any significant relationship of the crime to his fitness to engage in licensed activity.

5. The extent and nature of the person's past criminal activity;

Parsons was convicted of Robbery, a Felony, on 3 separate occasions, in James City County in 1989, and of Robbery, a Felony, in York County, in 1989.

6. The age of the person at the time of the commission of the crime;

Parsons was approximately 20 years old at the time of the crime.

7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

The last offense, which resulted in Parsons' Felony conviction, occurred on or about November 11, 1988.

8. The conduct and work activity of the person prior to and following the criminal activity;
and

During the IFF, Parsons stated he was in the electrical contracting business for all the years since his release in 1992.

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

Mr. Parsons pursued education while incarcerated and continues to pursue his associate's degree. He claims to have no problems with drugs or alcohol, and claims to have the support of his family. He had continued training in the electrical field since his release.

Conclusion and Recommendation

Based upon the record, including the information obtained from the Central Criminal Records Exchange, and in consideration of the criteria outlined in § 54.1-204.B, I recommend David Parsons' application for a Class B Contractor's license be approved.

By: _____

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors

Date: July 29, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: FIELDSTONE CONSTRUCTION, INC.
LICENSE NUMBER 2701-018724**

FILE NUMBER: 2004-00287

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Fieldstone Construction, Inc., c/o William Boozer, III, President, on July 11, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

William Boozer III, President, Fieldstone Construction, Inc., did not appear in person or by any other qualified representative.

Summation of Facts

- 1 On May 20, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received information from J. Barrett Jones (Jones) regarding an outstanding judgment against Fieldstone Construction Inc. (Fieldstone).
- 2 On or about June 6, 2002, in the Circuit Court for the County of Albemarle, Virginia, Paul Sandridge Roofing was awarded a \$45,417.50 plus interest judgment against Fieldstone. The judgment was based on Fieldstone's failure to pay Sandridge Roofing money owed for labor provided.
- 3 Fieldstone failed to satisfy the judgment.

DRAFT

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Fieldstone to satisfy a judgment awarded to Paul Sandridge Roofing is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed. I further recommend license revocation.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2701-018724 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: FIELDSTONE CONSTRUCTION, INC.
LICENSE NUMBER 2701-018724**

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Fieldstone Construction, Inc., c/o William Boozer, III, President, on July 11, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

William Boozer III, President, Fieldstone Construction, Inc., did not appear in person or by any other qualified representative.

Summation of Facts

1. On March 19, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received information from Delegate Bradley Marrs (Marrs), attorney representing Pella Virginia, Inc. (Pella), regarding a lawsuit against Fieldstone Construction, Inc. (Fieldstone).
2. On or about April 27, 1999, Mark and Linda Peterson (the Petersons) entered into a cost plus contract with Fieldstone Construction, Inc. (Fieldstone), in the estimated amount of \$105,000.00 but not to exceed \$118,000.00, for the construction of a garage at the Petersons' residence at Slam Gate Road, Albermarle County, Virginia. On August 5, 1999, the Petersons entered into a second cost plus contract with Fieldstone, not to exceed \$611,300.00, for the construction of a new residence at Slam Gate Road, Albermarle County, Virginia.
3. Pella provided Fieldstone approximately \$50,000.00 worth of custom windows for the Petersons' residence.
4. On or about January 26, 2000, Fieldstone sent the Petersons' an invoice in the amount of \$55,957.53. The invoice indicated a cost of \$36,874.00 for materials from Pella. On February 8, 2000, the Petersons paid Fieldstone \$55,957.53 for the labor and materials as invoiced on January 26, 2000. On or about February 25, 2000, Fieldstone sent the Petersons' an invoice in the amount of \$44,770.11. The invoice indicated a cost of \$24,583.49 and \$2,698.07 for materials from Pella. On February 29, 2000, the Petersons paid Fieldstone \$44,365.00 for the labor and materials as invoiced on February 25, 2000.
5. As of February 29, 2000, Fieldstone invoiced the Petersons a total of \$64,155.56 for materials from Pella. The Petersons paid Fieldstone in full for the materials.

6. On April 27, 2000, Fieldstone paid Pella \$20,000.00 for materials supplied for the Petersons' residence.

7. As of July 28, 2000, Fieldstone failed to pay Pella in full for the windows. On or about July 28, 2000, Pella filed a Mechanic's Lien Memorandum against Fieldstone and the Petersons.

8. On or about September 28, 2001, in the Circuit Court of Richmond, Pella was awarded a \$72,755.48, plus interest, attorney's fees, and costs, against Fieldstone. The judgment was based on Fieldstone's failure to pay Pella money owed for materials provided.

9. As of March 19, 2003, Fieldstone failed to satisfy the judgment.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(28)(Effective September 1, 2001)

Failure by Fieldstone to satisfy a judgment awarded to Pella is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore I recommend a monetary penalty of \$2,500.00 be imposed. I further recommend license revocation.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2701-018724 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: FIELDSTONE CONSTRUCTION, INC.
LICENSE NUMBER 2701-018724**

FILE NUMBER: 2003-03167

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Fieldstone Construction, Inc., c/o William Boozer, III, President, on July 11, 2003. The following individuals participated at the conference: Mark Peterson, Complainant; J. Barret Jones, Attorney for the Complainants; Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

William Boozer III, President, Fieldstone Construction, Inc., did not appear in person or by any other qualified representative.

Summation of Facts

1. On May 21, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from J. Barrett Jones, counsel for Mark and Linda Peterson (the Petersons) regarding two contracts the Petersons entered into with Fieldstone Construction, Inc. (Fieldstone).
2. On or about April 27, 1999, the Petersons entered into a cost plus contract with Fieldstone, in the estimated amount of \$105,000.00 but not to exceed \$118,000.00, for the construction of a garage at the Petersons' residence at Slam Gate Road, Albermarle County, Virginia.
3. On August 5, 1999, the Petersons entered into a second cost plus contract with Fieldstone, not to exceed \$611,300.00, for the construction of a new residence at Slam Gate Road, Albermarle County, Virginia.

4. On or about January 26, 2000, Fieldstone sent the Petersons' an invoice in the amount of \$55,957.53. The invoice indicated a cost of \$36,874.00 for materials from Pella Virginia, Inc. (Pella) On February 8, 2000, the Petersons paid Fieldstone \$55,957.53 for the labor and materials as invoiced on January 26, 2000.
5. On or about February 25, 2000, Fieldstone sent the Petersons' an invoice in the amount of \$44,770.11. The invoice indicated a cost of \$24,583.49 and \$2,698.07 for materials from Pella. On February 29, 2000, the Petersons paid Fieldstone \$44,365.00 for the labor and materials as invoiced on February 25, 2000.
6. As of February 29, 2000, Fieldstone invoiced the Petersons a total of \$64,155.56 for materials from Pella. The Petersons paid Fieldstone in full for the materials.
7. On April 27, 2000, Fieldstone paid Pella \$20,000.00 for materials supplied for the Petersons' residence.
8. As of July 28, 2000, Fieldstone failed to pay Pella in full for the windows. On or about July 28, 2000, Pella filed a Mechanic's Lien Memorandum against Fieldstone and the Petersons.
9. On or about September 28, 2001, in the Circuit Court of Richmond, Pella was awarded a \$72,755.48, plus interest, attorney's fees, and costs, against Fieldstone. The judgment was based on Fieldstone's failure to pay Pella money owed for materials provided.
10. In a letter dated June 12, 2002, J. Barrett Jones (Jones), attorney representing the Petersons, requested Fieldstone make payments toward the \$44,155.56 still owed to Pella.
- 11: The Petersons and Pella entered into a Settlement and Release Agreement. The Petersons agreed to pay Pella \$72,000.00 for work performed while Pella was acting as a subcontractor for Fieldstone.
- 12: On or about January 26, 2000, Fieldstone sent the Petersons' an invoice in the amount of \$55,957.53. The invoice indicated a cost of \$3,225.65 for subcontracting work performed by Sandridge Roofing Co. (Sandridge). On February 8, 2000, the Petersons paid Fieldstone \$55,957.53 for the labor and materials as invoiced on January 26, 2000.

13. According to Mr. Peterson, in later invoices he likewise paid Fieldstone for work performed by Sandridge Roofing. The Petersons paid a total of \$61,000 to Fieldstone for work performed by Sandridge.

14. On or about June 6, 2002, in the Circuit Court for the County of Albermarle, Virginia, Sandridge was awarded a \$45,417.50 judgment against Fieldstone. The judgment was based in part on Fieldstone's failure to pay Sandridge for the work done for the Petersons. As of May 20, 2002, Fieldstone failed to satisfy the judgment.

15. Mr. Peterson also stated at the IFF that there were other mechanics liens filed against the property, and that he had to directly make payments to several subcontractors and suppliers at the end of the job.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Retention and misapplication of funds owed to Pella Virginia, Inc. is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed. I further recommend license revocation.

Count 2: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Retention and misapplication of funds owed to Sandridge Roofing Co. is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed. I further recommend license revocation.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2701-018724 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: JOHAN GREEN, T/A SORE THUMB BUILDERS
LICENSE NUMBER 2705-067725**

FILE NUMBER: 2003-00053

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Jonah Green, t/a Sore Thumb Builders on June 11, 2003. The following individuals participated at the conference: Jonah Green, Respondent; Darrin Smith, Witness for Jonah Green; Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

Summation of Facts

1. On or about November 1, 2001, Carolyn Barley (Barley) received an estimate from Jonah Green (Green), t/a Sore Thumb Builders, in the amount of \$12,635.00, to perform kitchen renovations at 585 Main Street, Reedville, Virginia.
2. On or about November 25, 2001, Barley entered into a second verbal agreement with Green, to install crown molding for \$3,950.00, level the upstairs bathroom floor for \$850.00, and install attic stairs for \$250.00 at 585 Main Street, Reedville, Virginia.
3. On or about March 7, 2002, Barley received an estimate from Green, in the amount of \$9,475.00, to renovate a bathroom at 585 Main Street, Reedville, Virginia.
4. On or about November 15, 2001, Green began installing the crown molding and attic stairs.
5. In early 2002, Green began the kitchen work.

6. In total, Barley paid Green a total of \$9,086.00 for the molding work and portions of the other work.
7. Green contends that it took over 6 weeks for him to receive his payment of \$2,900 for the molding. Mr. Green and his witness, the foreman on Barley's job, testified that Barley would make changes to the scope of the work on an almost daily basis.
8. On March 31, 2001, Green testified that Barley finally provided him with her final kitchen plans, and that he had completed all he could up to that point without her final decisions on the plans. He also stated that he did not intend to do any further work until she made further payment to him, because he had already performed work valued in excess of her total payments.
9. On April 7, 2001, Green received a letter from Barley's attorney asking for a full refund. He took that letter to be an indication that he was terminated from the job and went and collected his tools.
10. Green contends that the work he did is valued at \$10,445, and a detailed listing in contained in the file.
11. According to Green, Barley never filed any civil litigation. She did, however, go to the magistrate and swear out a warrant against him and his foreman, Darrin Smith. They were both arrested based upon her warrant, and their names were in the paper as having been arrested. They both explained that the case was dismissed when they appeared in court, but that their reputations have been tarnished in the community.
12. Between January 2002 and March 2002, Barley claims that she made several attempts to contact Green by telephone, in order to discuss the kitchen and bathroom renovations, with negative results. Green denies this, and states that he returned her calls.
13. Barley claims that on or about April 5, 2002, Green left 585 Main Street, Reedville, Virginia, and failed to complete the kitchen and bathroom renovation work, including installation of a door over the cellar stairs, removal of the kitchen floor, installation of tile throughout the kitchen area, trim the kitchen area, patch sheet rock where necessary, splice vinyl siding on the exterior, installation of crown molding, installation of cabinets, the closet floor, stripping the walls down to the bare studs, insulation of the outer walls, re-hang and finish the sheetrock, installation of floor tile and bath surround, installation of bathroom fixtures, installation of radiant heat in the floor and finish the wall in the laundry room to form a closet.
14. Green agrees that he did not complete the work, and maintains that he was terminated and did not get paid for any work that he did not perform.

15. On or about July 10, 2002, Barley applied for and obtained after the fact permit number 02-38B-1-95 to remodel the kitchen and bathroom at 585 Main Street, Reedville, Virginia.

16. On or about July 24, 2002, William M. Knight (Knight), Northumberland County Building Official, advised Investigator Shelby Smith-Hill, the Board's Agent, that Green failed to obtain the necessary permit prior to performing work, in violation of Section 109.1 of the Virginia Uniform Statewide Building Code.

17. In a letter dated August 12, 2002, Green stated that "Sore Thumb Builders was never able to obtain a contractual agreement with Mrs. Barley due to her inability to make concrete decisions regarding this project. We made numerous attempts to get a signed contract; however, due to her continuous changing the scope and nature of the project, we never had an accurate measure of the work we were to perform. It was a mistake on our part to start work without a signed contract."

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8) (Effective September 1, 2001)

Failure by Green to make use of a written contract, clearly specifying the terms and conditions of the work to be performed, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

There is insufficient evidence to support a finding that Green had no justification for failing to complete the work. As stated above, Green explained that he performed work for which he was not paid, and that because Barley had refused to pay for the work, Green was not going to complete the work. Therefore, I recommend this matter be closed with a finding of no violation.

Count 3: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

There is conflicting evidence on this issue of retention of funds between Green and Barley. Green and his witness, Darrin Smith (foreman on the Barley job) give a completely different version of this job. Ms. Barley did not appear at

the IFF, but Mr. Green and Mr. Smith made very credible witnesses and there is insufficient evidence of Green misapplying any funds from this job. According to Green's evidence, the value of his services totaled \$10,445.00, while the total he was paid by Barley was

\$10,086.00. I therefore recommend that this aspect of the file be closed with a finding of no violation.

Count 4: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Failure by Green to obtain a permit prior to commencing work is misconduct in the practice of contracting, in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705-067725 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: STEWART L. DAVIS, T/A STEWART L. DAVIS
LICENSE NUMBER 2705-062120**

FILE NUMBER: 2002-02257

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Stewart L. Davis on June 11, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

Stewart L. Davis, Respondent, did not appear in person or by any other qualified representative.

Summation of Facts

1. On or about September 3, 2001, Michael Hallahan, II (Hallahan) entered into a contract with Stuart L. Davis, t/a Top Gun Handyman Services (Davis) to install a 12 foot by 22 foot concrete patio and patio roof on the real of his home located at 815 Norwood Lane, Earlysville, VA 22936.
2. On January 23, 2002, the licensing records of the Board for Contractors revealed Stewart Davis was issued Class C Contractor's license number 2705062120 on May 23, 2001. The records further revealed no license was issued for Top Gun Handyman Services.
3. The contract used by Davis in this transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (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 frame 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 license number, expiration date, class of license, and classifications or specialty services, and (i) statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.
4. On or about February 5, 2002, Jay Schlothauer (Schlothauer), Building Official for Albemarle County, advised Investigator Philip Underwood, the Board's agent, that Davis failed to obtain a permit prior to performing work at 816 Norwood Lane, Earlysville, Virginia, in violation of Section 109.1 of the Virginia Uniform Statewide Building Code.
5. On or about May 23, 2002, Davis submitted an application to the Albemarle County Building and Zoning Services office for an after the fact building permit for the patio and patio roof constructed at 816 Norwood Lane, Earlysville, Virginia. On May 24, 2002, the permit was denied because the building violated rear setback requirements.

6. On June 14, 2002, the Albemarle County Zoning Office issued a Notice of Violation to Hallahan for failure to obtain a building permit for the construction of the covered patio.

7. Hallahan discovered various problems with the work on the patio, including: 1) concrete floor drains toward the house causing water to puddle near the back door; 2) no footer installed under the load bearing supports for the roof of the patio; and 3) gutters were installed too far from the structure causing water to drain down the side of the house. The contract specified "work comes with my 1 year do it right Top Gun Warranty."

8. Between October 2001 and January 2002, Hallahan left voice mail messages for Davis about these problems. Davis failed to return Hallahan's messages. As of July 8, 2002, Davis failed to make these corrections.

9. On February 1, 2002, Investigator Philip Underwood, the Board's agent, sent a letter to Davis regarding a complaint filed with the Department of Professional and Occupational Regulation. In a response received February 20, 2002, Davis agreed to do "what ever" to get the problem solved. David failed to make corrections.

10. On May 13, 2002, Investigator Philip Underwood, the Board's agent, sent a letter to Davis, which gave Davis until May 23, 2002, to secure the proper permits and inspections, correct the water flow problem with the patio, and make

adjustments to the guttering. On May 23, 2002, Davis agreed to make the corrections the following weekend. As of July 8, 2002, Davis failed to make these corrections.

11. On or about May 23, 2002, Davis submitted an application to the Albemarle County Building and Zoning Services office for an after the fact building permit for the patio and patio roof constructed at 816 Norwood Lane, Earlysville, Virginia. On May 24, 2002, the permit was denied because the building violated rear setback requirements.

12: On June 14, 2002, the Albemarle County Zoning Office issued a Notice of Violation to Hallahan for failure to obtain a building permit and for failure to meet setback requirements. The notice indicated the covered patio was approximately 5' over the rear property line. The notice required the structure be removed by July 1, 2002.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-230(A) (Effective September 1, 2001)

Failure by Davis to operate in the name in which the license was issued is in violation of the Board's 2001 Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Davis' failure to make use of a legible written contract that contains all provisions specified in the regulation is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(25) (Effective September 1, 2001)

Failure by Davis to abate a violation of the Virginia Uniform Statewide Building Code, by obtaining the required permit, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(25). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(30) (Effective September 1, 2001)

Failure by Davis to honor the terms and conditions of a warranty is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(30). Therefore, I recommend a monetary penalty of \$2500.00 be imposed.

Count 5: 18 VAC 50-22-260(B)(5) (Effective September 1, 2001)

There were no appearances at the IFF. Based upon a review of the record, I found insufficient evidence to support a finding that it was the contractor's responsibility to have full knowledge of the appropriate set back and property lines. Therefore, I recommend a finding of no violation.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705-062120 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: RAYMOND A HORTON, JR., T/A CHERRY HILL CONTRACTING
LICENSE NUMBER 2705-068255**

FILE NUMBER: 2003-00019

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Raymond A. Horton, Jr., t/a Cherry Hill Contracting on June 11, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

Raymond A. Horton, Jr., t/a Cherry Hill Contracting, did not appear in person or by any other qualified representative.

Summation of Facts

1. On July 1, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Duane and Sharon Ames (the Ames) regarding a contract entered into with Raymond A. Horton, Jr., (Horton) t/a Cherry Hill Contracting.
2. On or about April 25, 2002, the Ames entered into a contract with Horton, in the amount of \$5,730.00, for the construction of a screen room on an existing deck of the Ames' residence at 7348 Hunton Street, Warrenton, Virginia.

The contract used by Horton failed to include the minimum provisions required by the Board's 2001 Regulation, subsections (a) when the work is to begin and the estimated completion date, (d) an exculpatory clause concerning events beyond the control of the contractor, (e) a statement that the contractor will comply with all requirements for building permits, inspections and zoning, (f) cancellation rights of the parties, (h) contractor's license expiration date and class of license, and (i) a statement proving that any modification of the contract changing cost materials work to be performed, or estimated completion date must be in writing.

3. Upon signing the contract, the Ames paid Horton \$2,865.00 by check.
4. On or about May 13, 2002, Horton began construction. On or about June 6, 2002, Horton gave notice to the Ames that he was unable to complete the Ames construction. Horton provided invoices for materials used on the Ames job and indicated to Ames in writing that he would return the balance of \$2,105.00 within 30 days. Horton failed to return money to the Ames as promised.
5. On or about May 13, 2002, Horton began construction, which involved the enlarging and altering of a deck area into a screened porch at the rear of the Ames property. The Building Official's office of Fauquier County indicated that Section 109.1.1 of the Virginia Uniform Statewide Building Code required a building permit being obtained prior to commencing construction. Horton failed to obtain the required permit prior to commencement of work.
6. On July 10, 2002, a letter requesting a response from Horton regarding the Ames complaint was mailed First Class to Horton at the license address of record of 204 Monroe Street, Warrenton, Virginia 20187. No response was received.
7. On August 7, 2002, in the General District Court of Fauquier County Virginia, Sharon R. Ames obtained a \$2,000.00 judgment against Horton. Horton failed to pay this judgment.
8. On February 21, 2003, a Certified Letter was mailed to Horton, which was returned by the United States Postal Service marked "Unclaimed." The letter was again mailed First Class Proof of Delivery. The Postal Service indicated the letter was delivered on March 22, 2003, at 1:27 PM. There has been no response based on these letters.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Retention of funds by Horton, for which work is not performed, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed. I further recommend license revocation.

Count 2: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Horton to satisfy a judgment issued by the General District Court for the County of Fauquier County, Virginia, in the amount of \$2,000.00, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,000.00 be imposed. I further recommend license revocation.

Count 3: 18 VAC 50-22-260(B)(13) (Effective September 1, 2001)

Failure by Horton to respond to an investigator is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed. I further recommend license revocation.

Count 4: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Failure by Horton to obtain a permit prior to commencing construction is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(6), misconduct in the practice of contracting. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 5: 18 VAC 50-22-260(B)(9)(a)(d)(e)(f)(h)(i) (Effective September 1, 2001)

Failure by Horton to use a contract containing the minimum requirements is in violation of the Board's 2001 Regulation 18 VAC 50-22-260 (B)(9)(a)(d)(e) (f)(h)(i). Therefore I recommend a monetary penalty of \$300.00 be imposed.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705-068255 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

**RE: THOMAS D. UNDERWOOD, T/A UNDERWOOD CONSTRUCTION
LICENSE NUMBER 2705-047385**

FILE NUMBER: 2002-00600

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Thomas D. Underwood, t/a Underwood Construction on June 12, 2003. The following individuals participated at the conference: Thomas D. Underwood, Respondent; Todd Thornton, Complainant (By Phone); Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

Summation of Facts

1. On or about June 1, 2000, Todd Thornton (Thornton) entered into a turn-key contract with Thomas Underwood (Underwood), t/a Underwood Construction, in the amount of \$34,425.00, to install replacement windows and exterior siding, remodel a carport into a

bathroom and bedroom, and construct a screened porch and sidewalk, at 5661 Thornspring Church Road, Dublin, Virginia.

2. The contract used by Underwood failed to contain the minimum provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsections (e) a statement of assurance that the contractor will comply with all local requirements for building permits, inspections and zoning and (h) contractor's license number, class, specialty and expiration date.

3. The contract specified starting job September 18, 2000, and projected completion of November 13, 2000. On or about December 7, 2000, Underwood commenced work. Underwood failed to use written change orders for the modification to the contract.

4. On or about December 6, 2000, Thornton paid Underwood \$9,000.00 by check. On or about January 26, 2001, Thornton paid Underwood another \$9,000.00 by check. On or about March 19, 2001, Thornton paid Underwood another \$9,000.00 by check. As of March 19, 2001, Thornton paid Underwood a total of \$27,000.00 towards the \$34,425.00 contract price.

5. Underwood performed work beginning in December. He stated that one problem that delayed the job was the window issue. The parties are in dispute about the type of windows that were to initially be ordered, but the first windows installed by Underwood were rejected by Mr. Thornton, who claimed they were not what was agreed upon and were crooked. Underwood ordered a second set, which were wrong, and then had to order a third set. During the time he was waiting for the windows to come in, Underwood explained that he could not afford to keep people on the job waiting around, so he had to perform other jobs.

6. On or about October 3, 2001, Underwood signed an agreement to complete the work by November 1, 2001. Underwood worked for a couple of weeks, but according to Thornton, then left the job and never returned. Underwood failed to complete all work on the bedroom and bathroom addition and the adjoining hallway, to install approximately 1/4 of the exterior vinyl siding, outside soffit and window trim and the French doors, and to complete any of the plumbing installation and construction of the screened porch and exterior sidewalk.

7. According to Underwood, after working every day in October, 2001, he was not yet complete. He did not have enough money to pay his workers, so he explained to Mr. Thornton that he was going to do another job and then come back and finish this one. He stated that Mr. Thornton agreed to this. In two weeks, Underwood returned, and found his equipment and materials locked inside Thornton's house. Thornton denies this.

8. Underwood claims that he had a key and went inside to get his tools, but they were not all there. He stated that he left a note for Mr. Thornton and received a call from him telling him to never come back.

9. Underwood failed to return any of the \$27,000.00 to Thornton. Underwood approximates that he spent about \$14,000.00 in materials and another \$6,000.00 in paying his men, without any income to himself. He also agrees, however, that he could not have finished the job for \$7,000.00.

10. Thornton has pursued a civil case against Underwood. He is suing Underwood for \$47,565.00 and the trial date is set for September 12, 2003.

11. On or about January 7, 2001, Thornton received an estimate from Clifton Fitzgerald, t/a Homeworks, in the amount of \$20,490.00, to complete the work. At the IFF, Thornton testified that he has paid a contractor approximately \$10,000 to finish the outside of the house, but had not done any further work at this point.

12. The contract used by Underwood for this transaction referenced installation of a tub, sink, toilet and plumbing and sewer hook-up.

13. On or about August 8, 2002, the licensing records of the Board for Contractors revealed Underwood was issued Class B Contractor's license number 2705-047385, with commercial improvement contracting (CIC) and home improvement contracting (HIC) specialties, on November 23, 1998.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8)(e)(h) (Effective May 1, 1999)

Failure by Underwood to make use of a contract containing the minimum provisions required is in violation of the by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8) subsections (e) and (h). Therefore, I recommend a monetary penalty of \$100.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

Failure by Underwood to use written change orders for the modification of the contract is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(31). Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Failure by Underwood to honor a signed agreement is misconduct in the practice of contracting in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$500.00 be imposed. Based upon the evidence, it is clear that Underwood was not able to honor his signed agreement, and as a regulant of this board, he is the one charged with the specialized knowledge of the work to be performed. Although he explained that he was not able to complete the work within the agreed-upon time, he did intend to return. He claims that when he returned, he was not permitted to complete the work. Even if that turns out to be true, Underwood should have some responsibility for failing to honor his agreement made with full knowledge of existing circumstances.

Count 4: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Failure by Underwood to complete the work contracted for and to comply with the terms in the contract, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of \$500.00. be imposed. For the same reasons stated above, Underwood should share some responsibility in failing to complete this work. Although it may well be that he was refused entry to the job after November, 2001, that was still almost two years after this job had begun.

Count 5: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Failure by Underwood to retain funds for which work was not performed is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

Underwood admits that the job is not complete. His testimony seems to indicate that the value of this job was in excess of his contract price of \$43,425.00 which is probably what has led to all of these problems. In such a situation, it is the contractor who had to take responsibility for his incorrect estimates. In this case, the low estimate led to Underwood constantly pulling off the job to complete other paying jobs, only to return until the next paying job occurred. Although Underwood claims the value of his work performed is at least \$20,000.00 (for materials and labor, excluding himself), he also admitted that the work was nowhere near complete. Many of these issues will be determined by the court in September when the parties have their civil trial. Although typically this board would revoke a contractor's license if found in violation of retention of funds, for all the reasons explained I am not recommending revocation.

Count 6: 18 VAC 50-22-260(B)(23) (Effective May 1, 1999)

Failure by Underwood to practice in a classification or specialty service for which he is not licensed or certified is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(23). Underwood admitted that he contracted to do such work, and claimed he was mistaken in his belief that a contractor did not have to have the classification if it just entailed replacing existing plumbing. Yet, he then admitted that in addition to replacing plumbing, he was also installing a completely new bathroom adjacent to the current one. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705-047385 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

**RE: HOME CONSULTING PLUS, INC. T/A HOUSING MADE SIMPLE
LICENSE NUMBER 2705-060913**

FILE NUMBER: 2002-03721

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Home Consulting Plus, Inc., t/a Housing Made Simple, c/o Patrick Carr on June 12, 2003. The following individuals participated at the conference: Patrick Carr for Housing Made Simple, Respondent: Paul Lyles, Employee of Housing Made Simple; Raymond and Kimberly Johnson, Complainants; Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

Summation of Facts

1. On or about April 8, 2002, Raymond and Kimberley Johnson (the Johnsons) entered into a contract with Home Consulting Plus Inc, t/a Housing Made Simple (Housing Made Simple), in the amount of \$18,603.00, to install a window in the basement level bedroom, remove two closets, relocate the attic stairs, and install a tub in the bathroom at 14510 Dundee Court, Dale City, Virginia.
2. The contract specified "The Contractor shall, upon signing this agreement, provide a schedule outlining the phases of construction and the dates upon which construction will be started and expected completion date." In addition, Housing Made Simple advised the Johnsons that the work would be completed by June 6, 2002.
3. On April 11, 2002, Housing Made Simple told the Johnsons that construction would begin on April 15, 2002. On April 15, 2002, Housing Made Simple failed to show up to begin work as promised. The Johnsons made several attempts to contact Housing Made Simple regarding the commencement

of the work. On May 9, 2002, the Johnsons told Housing Made Simple that they considered canceling the project because of doubts that the project would not be completed by June 6, 2002. On May 10, 2002, Housing Made Simple began the work contracted for.
4. According to the Johnsons, Housing Made Simple performed work on May 10, May 31, and then on June 3, 4, 6 and 7.

5. The parties seem to agree that Housing Made Simple failed to provide the Johnson's with a construction schedule. They did sign a draw schedule.

6. On or about June 27, 2002, the Johnsons and Housing Made Simple ratified a "Punch List." The "Punch List" revealed the following items: repair the hardwood floors, install a radiant heat cover, install a tub vent grill, touch-up paint on the basement ceiling, install tempered glass in the tub area, install a closet shelf and rod, caulk in the bathroom, round the grout at the front corner of the tub, finalize the exhaust fan cover with light, and caulk the top of the door frame in the hall. As of October 4, 2002, Housing Made Simple failed to complete the "Punch List" items.

7. On or about June 4, 2002, Tom Clark (Clark), Prince William County Building Inspector, performed an inspection at the subject property and found the following code violations:

Failure to use tempered glass at the tub, in violation of USBC Section 308.4.5, hazardous locations;

Failure to install two required smoke detectors, in violation of USBC Section 316.1, smoke detectors required; and

Failure to vent the bath exhaust to the soffit, in violation of USBC Section 303.3.

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8. As of October 4, 2002, Housing Made Simple failed to correct the subject code violations.

9. The parties agree that the contractor never performed any of the punch list repairs, but disagree on the reasons. According to the Johnsons, they simply did not ever hear back from the contractor after they made it clear that their home was accessible even when they were not there through their neighbors. According to the contractor, they did not intend to perform any further work on this job until they were paid 90% of the contract price. According to the Johnsons, the "contract price" was unclear because there had been several changes and they had paid for certain items for which they were to be reimbursed. The contractor alleged the final contract price was \$15,379.00 and that he was owed another approximately \$1,100.00 before he would come and complete the punch list items.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

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Failure by Housing Made Simple to supply the Johnsons with a construction schedule is misconduct in the practice of contracting, and is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

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Failure by Housing Made Simple to correct the punch list items is misconduct in the practice of contracting, and is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed. Although there seems to be some dispute between the parties on the amount of money that was owed, the lack of a clear contractual obligation for specific payment amounts binding the Johnsons is the fault of the contractor. After the delays these homeowners had to go through just to get the contractor out to the site, and the further refusal of the contractor to even follow the provisions of its own contract in providing a construction schedule, it should not be permitted to refuse to cure it's obvious defective performance of this contract in the form of the punch list items simply because it believes it was owed \$1,100.00.

Count 3: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

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Failure by Housing Made Simple to correct the code violations cited by the Building Inspector for the County of Prince William, Virginia, is misconduct in the practice of contracting, and is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705-060913 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

**RE: MICHAEL CLAYTON GREER, T/A TIMBERLAND CONSTRUCTION
LICENSE NUMBER 2705-041055**

FILE NUMBER: 2003-00576

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Michael Clayton Greer, t/a Timberland Construction on June 11, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

Michael Clayton Greer, t/a Timberland Construction, did not appear in person or by any other qualified representative.

Summation of Facts

1. On or about February 13, 2001, Gary and Rachel Gorken (the Gorkens) entered into a contract with "Virginia Building & Restoration Corp.," in the amount of \$170,000.00, to perform additions and renovations at 1369 Lakeside Road, Virginia Beach, Virginia.
2. On or about February 15, 2001, the City of Virginia Beach Permits and Inspections issued a building permit for the addition and renovation work to Timberland Construction.
3. On or about December 12, 2001, the licensing records of the Board for Contractors revealed Greer was issued Class B Contractor's license number 270541055 on September 12, 1997, as a sole proprietorship.

4. On or about November 18, 2002, the licensing records of the Board for Contractors revealed Timberland Building Corp. was issued Class B Contractor's license number 2705067273 on November 18, 2002. The licensing records further revealed Michael Clayton Greer as the Responsible Management, Qualified Individual, and Designated Employee of Timberland Building Corp.

5. Michael Clayton Greer, t/a Timberland Construction, submitted a Certificate of License Termination when the license application for Timberland Building Corp was submitted. The license for Timberland Construction was flagged by the Board Administrator pending investigation by the Enforcement Division.

6. On or about August 1, 2002, the Enforcement Division of the Virginia Department of Professional and Occupational Regulation received a memorandum from Investigator Earnest S. Atkins, Enforcement Division, Criminal Investigation Section of the Virginia Department of Professional and Occupational Regulation, which contained information about possible regulatory violations against Michael Clayton Greer (Greer), t/a Timberland Construction.

According to the 2001 Annual Report for Virginia Building & Restoration Corp. submitted to the State Corporation Commission, Greer was the Vice President of Virginia Building & Restoration Corp.

7. On or about January 28, 2002, the licensing records of the Board for Contractors revealed Virginia Building and Restoration Corporation was not licensed at the time the contract was entered into with the Gorkens.

8. On or about March 21, 2002, in the City of Chesapeake General District Court, Traffic Division, Greer was found guilty of driving under the influence, a misdemeanor, in violation of Section 18.2-266 of the Code of Virginia. There is no appeal pending and the time for appeal has lapsed.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(14) (Effective May 1, 1999)

Actions by Greer in assisting an unlicensed/uncertified contractor to violate any provision of Chapter 1 or Chapter 11 of Title 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/uncertified contractor, is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(14). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(22) (Effective September 1, 2001)

Failure by Greer to notify the Board of his March 21, 2002, misdemeanor conviction in the General District Court, Traffic Division, for the City of Chesapeake, Virginia, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(22). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705-041055 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: MICHAEL CLAYTON GREER, T/A TIMBERLAND CONSTRUCTION
LICENSE NUMBER 2705-041055**

FILE NUMBER: 2002-03519

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on July 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Michael Clayton Green, t/a Timberland Construction on June 11, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

Michael Clayton Greer, t/a Timberland Construction, did not appear in person or by any other qualified representative.

Summation of Facts

1. On or about May 22, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a complaint from Joe W. Campbell regarding a contract entered into with Virginia Building & Restoration Corp.
2. On or about August 28, 2001, Joe and Soon Campbell (the Campbells) entered into a contract with "Virginia Building & Restoration Corp.," in the amount of \$50,000.00, to build a room addition to the existing structure at 2041 Kingston Avenue, Norfolk, Virginia. The contract specified, "Timberland Construction Co. and all job locations are fully covered by liability insurance and worker's compensation."
3. Between August 29, 2001 and November 21, 2001, the Campbells paid Virginia Building & Restoration Corp. \$50,640.00 by checks.
4. On or about September 18, 2001, Michael Clayton Greer, t/a Timberland Construction, obtained permit number 01-00009264 for work performed at 2041 Kingston Avenue, Norfolk, Virginia.
5. On or about April 17, 2002, Michael Clayton Greer (Greer) signed a change order for Virginia Building & Restoration Corp.
6. On or about December 19, 2002, Greer told Investigator Shelby Smith-Hill, the Board's agent, that "Virginia Building was the parent company, responsible for the business to include the money, contracts, and administration and that Timberland Construction was responsible for obtaining permits, since it had the license."
7. On or about July 2, 2002, the licensing records of the Board for Contractors revealed Virginia Building & Restoration Corp. does not have a license.
8. On or about July 2, 2002, the licensing records of the Board for Contractors revealed Michael Clayton Greer, t/a Timberland Construction, was issued a Class B Contractor's license number 2705041055, as a sole proprietorship.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(14) (Effective May 1, 1999)

Actions by Greer in assisting an unlicensed/uncertified contractor to violate any provision of Chapter 1 or Chapter 11 of Title 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/uncertified contractor, is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(14). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

By:

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors
Date: July 29, 2003

FINAL ORDER RECOMMENDATION

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 LICENSE NUMBER 2705-041055 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.