

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
September 9, 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.

William A. Paulette, Board Member, presided. No other Board Members were present.

Douglas Schroder 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

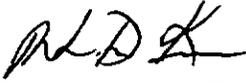
Participants

- | | |
|---|--|
| 1. JTY Builders Inc.
File Number 2002-02933 (Disc) | None |
| 2. JTY Builders Inc.
File Number 2003-01337 (Disc) | Michael Walker - C
Sandy Walker - C |
| 3. Steven McNeil and
JTY Builders Inc.
File Number 2003-02128 (RF) | McNeil - C |
| 4. Tom Burgan and
Cheryl Edmonds, t/a Quality Contractors
File Number 2003-01621 (RF) | None |
| 5. Brendan Melley and
Royal Restorations Inc.
File Number 2003-00893 (RF) | Melley - C |

6. Arthur Adrian and
Thomas Allen Hesse Jr., t/a Outdoor Maintenance Co.
File Number 2003-00963 (RF) Adrian – C
7. Howard Bishop and
Stanley Licalzi, t/a Sundance Construction
File Number 2003-01684 (RF) Bishop – C
8. William Drezek and
Mark Layman, t/a Layman Custom Homes
File Number 2003-00884 (RF) Drezek – C
9. Theo Hartmann and
Kelly R Peregoy, t/a Master Roofing Company
File Number 2003-01538 (RF) Hartmann – C
10. Top Notch Construction LLC
File Number 2004-00156 (Lic)
No decision was made. Judith Davis – A
Stirling Owen - W
11. Hudson Roofing Company
File Number 2002-00203 (Disc) Steve Cocoli – R

The meeting adjourned at 4:20 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**

**RE: JTY BUILDERS, INC.
LICENSE NUMBER 2705-051553**

FILE NUMBER: 2002-02933

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 9, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to JTY Builders, Inc., c/o Jay T. Yancey on July 25, 2003. The following individuals participated at the conference: Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member. Jay T. Yancey, JTY Builders, Inc. did not appear in person or by any other qualified representative.

Summation of Facts

1. On or about October 4, 1999, Robert Anderson (Anderson) entered into a contract with JTY Builders, Inc., in the amount of \$25,900.00, for the construction of a retaining wall at 5057 Boonsboro Road, Lynchburg, Virginia.
2. The contract used by JTY Builders, Inc. in this transaction failed to contain the minimum provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsections (a) when work is to begin and an estimated completion date, (f) disclosure of the cancellation rights of the parties, and (h) the contractor's license number, class and specialty.
3. JTY Builders, Inc. constructed the wall, which subsequently collapsed.
4. On or about April 14, 2000, W. B. Nolen (Nolen), Professional Engineer with Nolen Frisa Associates Consulting Engineers, inspected the wall at Anderson's request.
5. In a letter dated February 9, 2001, Nolen advised Anderson that the wall constructed by JTY Builders, Inc. "really had no value at all" and that the removal of debris would cost more than the wall cost to build.
6. In a letter dated May 15, 2002, Nolen stated that the wall, which was approximately 86' long and varied between 10' 8" and 2' 8" in height, had approximately one-quarter the amount of reinforcement necessary and was approximately 1" out of plumb at the time of his inspection. Nolen also stated that the footing was insufficient and that the taller end of the wall was already tilting and failing.
7. On or about May 20, 2002, Investigator Dale C. Amos, the Board's agent, sent a written request to JTY Builders, Inc. at the license address of record to Route 2, Box 285 A, Lynchburg, Virginia 24501, requesting a written response to the complaint filed with the Board.
8. On or about May 23, 2002, the Board's contacted Jay Yancey (Yancey), President of JTY Builders, Inc. by telephone to discuss the information requested by the May 20, 2002, letter. The Board's agent requested a written response by June 1, 2002. As of July 18, 2002, the Board's agent failed to receive a response from Yancey or JTY Builders Inc.

Conclusion and Recommendation

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

JTY Builders, Inc.'s failure to make use of a legible written contract that contains all provisions specified in the regulation is a violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(5) (Effective May 2, 1999)

JTY Builders, Inc.'s failure to properly construct the retaining wall is negligence and incompetence in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(5). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed, along with license revocation.

Count 3: 18 VAC 50-22-260(B)(12) (Effective September 2001)

JTY Builders Inc.'s failure or refusal, upon request or demand, to respond to an investigator seeking information is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: September 9, 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 2705-051553 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

**RE: JTY BUILDERS, INC.
LICENSE NUMBER 2705-051553**

FILE NUMBER: 2003-01337

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 9, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to JTY Builders, Inc., c/o Jay T. Yancey on July 25, 2003. The following individuals participated at the conference: Michael and Sandy Walker, Complainants; Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member. Jay T. Yancey, JTY Builders, Inc. did not appear in person or by any other qualified representative.

Summation of Facts

1. On November 5, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Michael and Sandy Walker (the Walkers) regarding a contract entered into with JTY Builders, Inc.
2. On April 30, 2001, the Walkers entered into a contract with JTY Builders, Inc., in the amount of \$254,415.00, for the construction of a residence at Lot 19 at Lake Shore Drive, Forest, Virginia 24551.
3. The contract used by JTY Builders, Inc. for this transaction failed to contain the minimum provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsections, (d) a statement that delays caused by such events do not constitute abandonment and are not included in calculating the time frame for payments or performance, (e) a statement of assurance that the contractor will comply with all requirements for building permits, inspections and zoning, (f) disclosure of the cancellation

rights of the parties, and (h) the contractor's license number, expiration date, class of license and classification or specialty service.

4. On or about May 1, 2001, JTY Builders, Inc. began construction. On or about June 2001, JTY Builders, Inc. completed the foundation. In July 2001, JTY Builders, Inc. began the framing. During the summer, JTY Builders, Inc. worked sporadically. On or about November 15, 2001, JTY Builders, Inc. left the job site and never returned. As of November 15, 2001, JTY Builders, Inc. completed the foundation and partial framing only.
5. On or about December 17, 2001, William R. Mack (Mack), a Professional Engineer with Hurt & Proffitt Incorporated, performed an inspection of the work performed by JTY Builders, Inc. Mack found that the garage slab was not properly supported by the soil, as well as the rear foundation of the house.
6. During the construction of the Walkers' house, the framing work performed by JTY Builders, Inc. cost the Walkers an additional \$27,146.00. JTY Builders, Inc. failed to execute written change orders for a modification to the original contract.
7. On or about August 2, 2002, in the Circuit Court of Bedford County, Virginia, the Walkers were awarded a \$10,000.00 judgment against JTY Builders, Inc. The court found that JTY Builders, Inc. engaged in "improper conduct" as defined by the Virginia Contractor Recovery Act (Va. Code 54.1-1118 et. el.) in the construction of the Walkers residence. As of March 28, 2003, neither Yancey nor JTY Builders, Inc. has satisfied the judgment.
8. The Walkers paid JTY Builders, Inc. \$117,728.76 towards the contract price. The Walkers also paid Campbell Payne, a subcontractor, \$11,500.00, who was supposed to be paid by JTY Builders, Inc. When JTY Builders, Inc. left the job, the Walkers paid an additional \$27,146.00 for the repairs to the property, plus an additional \$158,513.00 to L. G. Flint, General Contractor, to complete the house in accordance with the plans submitted to JTY Builders, Inc.

Conclusion and Recommendation

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

Failure by JTY Builders, Inc. to use a contract containing the minimum provisions is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(5) (Effective May 1, 1999)

Failure by JTY Builders, Inc. to professionally perform work contracted for is negligence in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(5). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed, along with license revocation.

Count 3: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

Failure by JTY Builders, Inc. to execute change orders is misconduct in the practice of contracting in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(7) (Effective May 1, 1999)

JTY Builders, Inc. having been found guilty of improper conduct in the practice of his profession by the Circuit Court for the County of Bedford, Virginia, is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(7). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed, along with license revocation.

Count 5: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

The Walkers paid Campbell Payne \$11,500.00, the monies owed him by JTY. The Walkers also paid L.G. Flint, General Contractor \$17,146.00 to make repairs and an additional \$158,513.00 to complete the house in accordance with the plans submitted to JTY. Misapplication of funds by JTY 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, along with license revocation.

Count 6: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Failure by JTY Builders, Inc. to complete work contracted for 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, along with license revocation. There was considerable discussion during the IFF with regard to whether JTY was fired during the meeting with the owner on or about November 15, 2001. However, the owner states he offered JTY the opportunity to come back. JTY refused to do so without additional compensation, which the owner refused to pay because he had met the conditions of the contract. After that time, JTY never returned to the job, and was terminated on or about December 15, 2001, by the owner. In my opinion this conduct constitutes abandonment.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: September 9, 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 2705-051553 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

IN RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION RECOVERY ACT CLAIM OF STEVEN W. MCNEIL & LISA Y. MCNEIL (CLAIMANTS) AND JTY BUILDERS, INC., T/A JTY BUILDERS, INC. (REGULANT)

LICENSE NUMBER: 2705-051553

FILE NUMBER: 2003-02128

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 9, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Steven McNeil and JTY Builders, Inc. on July 25, 2003. The following individuals participated at the conference: Steven McNeil, Claimant; Douglas Schroder, Staff Member; and William Paulette, Presiding Board Member. Jay T. Yancey, JTY Builders, Inc. did not appear in person or by any other qualified representative.

Background

On **July 26, 2002**, in the Circuit Court for the County of Campbell, Steven W. McNeil and Lisa Y. McNeil obtained a **Judgment** against JTY Builders, Inc. and Jay T. Yancey and Melinda O. Yancey, **in the amount of \$37,690.00, plus interest.**

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **February 7, 2003.**

Summation of Facts

1. **Code of Virginia - Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Order does not recite the basis for the award.

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

The claimants **did** contract with the regulant. On page one of the contract the owners listed are P.D. and Lisa McNeil as owners. The contract was signed by Steven W. McNeil. The Board issued Class A License Number 2705051553 to JTY Builders, Inc., t/a JTY Builders, Inc., on **August 9, 1999**. The license will expire on **August 31, 2003**. The claimants entered into a written contract with JTY Builders, Inc., on **June 18, 2001** for the construction of a house.

3. **Code of Virginia - Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia - Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia - Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **July 26, 2002**. The claim was received on **February 7, 2003**.

6. **Code of Virginia - Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with the JTY Builders, Inc., for the construction of a house.

7. **Code of Virginia - Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's

license or registration? Do you operate as a financial or lending institution?
Does your business involve the construction or development of real property?
Claimant answered "No."

8. **Code of Virginia - Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

At the IFF, McNeil stated that debtor's interrogatories were conducted, and that JTY advised there were no assets or cash remaining from that business.

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

The Order does not recite the basis of the award.
In the Affidavit of Facts dated **February 4, 2003**, the claimants assert the regulant received funds for the construction of a house. The regulant did not complete the construction or return the money to the claimant. The regulant did not apply all the funds received from the claimants toward the cost of the claimants' project.

10. **Code of Virginia - Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia - Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be approved for payment in the amount of \$10,000.00. The claimants provided credible documentation which substantiated a loss greater than \$10,000.00. In addition, the payment of the claim is based on the failure of the regulant to complete the house or return any of the \$54,500.00 previously paid. I find these actions fall within the definition of improper and dishonest conduct per Section 54.1-1118.

By: _____

William A. Paulette
Presiding IFF Board Member
Contractor Transaction Recovery Fund

Date: September 9, 2003

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

**RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Tom Burgan (Claimant) and Cheryl P. Edmonds, t/a Quality
Contractors (Regulant)
LICENSE NUMBER 2705 039975**

FILE NUMBER: 2003-01621

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 9, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Tom Burgan, and Cheryl P. Edmonds, t/a Quality Contractors on August 5, 2003. The following individuals participated at the conference: Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member. Neither Burgan, nor anyone on his behalf, appeared at the IFF. In addition, neither Edmonds, nor anyone on her behalf, appeared at the IFF.

Background

On **August 2, 2002**, in City of Charlottesville General District Court, Tom Burgan and Terry Burgan obtained a **Judgment** against Cheryl P. Edmonds t/a Quality Contractors, in the amount of **\$15,000.00, plus interest and \$28.00 costs**.

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **December 11, 2002**.

Summation of Facts

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "court finds defendant abandoned job and what work was done, was conduct constituting gross negligence and numerous code violations so obvious as to be deemed intentional" as the basis for the award.

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

The claimants **did** contract with the regulant.

The Board issued Class A License Number 2705039975 to Cheryl P. Edmonds t/a Quality Contractors, on **June 10, 1997**. The license was permanently revoked on **September 16, 2002**. The claimants entered into a written contract with the regulant on **April 29, 1999** for the construction of an addition to the claimants' residence.

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **August 2, 2002**. The claim was received on **December 11, 2002**.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with the regulant for the construction of an addition to the claimants' residence.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

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

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

The Warrant in Debt recites "court finds defendant abandoned job and what work was done, was conduct constituting gross negligence and numerous code violations so obvious as to be deemed intentional" as the basis for the award.

SECTION 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

SECTION 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be approved for payment in the amount of \$10,000.00. This claim clearly meets the requirements of the Virginia Transaction Recovery Act.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: September 9, 2003

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

BOARD FOR CONTRACTORS

**RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Brendan G. Melley (Claimant) and Richard Bowman, t/a Royal
Restorations, Inc. (Regulant)
LICENSE NUMBER 2705 053021**

FILE NUMBER: 2003-00893

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 9, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Brendan G. Melley, and Richard Bowman, t/a Royal Restorations, Inc. on August 5, 2003. The following individuals participated at the conference: Brendan G. Melley, Claimant; Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member. Neither Bowman, nor anyone on his behalf, appeared at the IFF.

Background

On **March 15, 2002**, in the Alexandria General District Court, Brendan Melley obtained a **Judgment** against Royal Restorations, Inc., **in the amount of \$4,600.00**.

On **March 21, 2002**, in the United States Bankruptcy Court, Eastern District of Virginia, Royal Restorations, Inc., filed a Chapter 7 Petition.

The **claim** in the amount of **\$4,600.00** was received by the Department of Professional and Occupational Regulation on **September 27, 2002**.

Summation of Facts

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

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

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

The claimants **did** contract with the regulant.

The Board issued Class A License Number 2705053021 to Royal Restorations, Inc., t/a Royal Restorations, Inc., on **November 9, 1999**. The license expired on **November 30, 2001**. The claimant entered into a written contract on **November 30, 2001** with Royal Restorations, Inc., for interior home improvements at the claimant's residence.

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **March 15, 2002**. The claim was received on **September 27, 2002**.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Royal Restorations, Inc., for interior home improvements at the claimant's residence.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant filed for bankruptcy protection.

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

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

In the Affidavit of Facts dated **September 21, 2002** the claimant asserts a deposit was given to the regulant prior to starting the construction. The regulant never performed the work or returned the claimant's deposit of \$4,600.00.

SECTION 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "Yes."

SECTION 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be approved for payment in the amount of \$4,600.00. This claim clearly meets the requirements of the Virginia Contractor Transaction Recovery Act. Since the Regulant took money and did not perform the work, I believe his actions amount to improper and dishonest conduct.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: September 9, 2003

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

RE: In the matter of the Virginia Contractor Transaction Recovery Act

**Claim of Arthur Adrian (Claimant) and Thomas Allen Hesse, Jr., t/a Outdoor Maintenance Company (Regulant)
LICENSE NUMBER 2705 047492**

FILE NUMBER: 2003-00963

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 9, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Arthur Adrian, and Thomas Allen Hesse, Jr., t/a Outdoor Maintenance Company on August 5, 2003. The following individuals participated at the conference: Arthur Adrian, Claimant; Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member. Neither Hesse, nor anyone on his behalf, appeared at the IFF.

Background

On **May 22, 2002**, in Spotsylvania County General District Court, Arthur Adrian obtained a **Judgment** against Thomas Allen Hesse, Jr., t/a Outdoor Maintenance Co., **in the amount of \$2,000.00, plus interest and \$42.00 costs.**

The **claim** in the amount of **\$2,931.00** was received by the Department of Professional and Occupational Regulation on **September 30, 2002.**

CLAIM FILE INFORMATION

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "improper or dishonest conduct, by the wrongful taking or conversion of money involving fraud or material misrepresentation" as the basis for the suit.

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

The claimants **did** contract with the regulant.

The Board issued Class A License Number 2705047492 to Thomas Allen Hesse, Jr., t/a Outdoor Maintenance Co., on **March 30, 1999**. The license was permanently revoked on **April 18, 2002**. The claimant entered into a written contract with Outdoor Maintenance Co. on **May 25, 2000** for the construction of a boat ramp.

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did receive pleadings and/or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **May 22, 2002**. The claim was received on **September 30, 2002**.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Outdoor Maintenance Co., for the construction of a boat ramp.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

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

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

The Warrant in Debt recites "improper or dishonest conduct, by the wrongful taking or conversion of money involving fraud or material misrepresentation" as the basis for the suit.

SECTION 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

SECTION 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be denied. § 54.1-1120 of the Code of Virginia states, in part, "4. The claimant shall be (i) an individual whose contract with the regulant involved contracting for the claimant's residence(s) located in the Commonwealth..." This was a boat ramp on a lot that did not have his personal residence on it, and therefore, it does not qualify.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: September 9, 2003

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

**RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Howard Lee Bishop (Claimant) and Stanley Licalzi, t/a Sundance
Construction (Regulant)
LICENSE NUMBER 2705 025076**

FILE NUMBER: 2003-01684

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 9, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Howard Lee Bishop, and Stanley Licalzi, t/a Sundance Construction on August 5, 2003. The following individuals participated at the conference: Howard Lee Bishop, Claimant; Valerie Bishop, Witness;

Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member. Neither Licalzi, nor anyone on his behalf, appeared at the IFF.

Background

On **December 17, 2001**, in Henrico County General District Court, Howard L. Bishop obtained a **Judgment** against Stanley I. Licalzi, **in the amount of \$1,250.00, plus interest and \$30.00 costs.**

The **claim** in the amount of **\$1,417.00** was received by the Department of Professional and Occupational Regulation on **December 16, 2002.**

Summation of Facts

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "unpaid promissory note" as the basis for the suit.

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

The claimant **did** contract with the regulant.

The Board issued Class B License Number 2705025076 to Stanley I. Licalzi t/a Sundance Construction, on **July 29, 1994**. The license was revoked on **December 27, 2002**. The claimant entered into a written contract with Sundance Construction and Seamless Gutter on **April 21, 1999** for the installation of siding on the claimant's residence.

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **December 17, 2001**. The claim was received on **December 16, 2002**.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Sundance Construction and Seamless Gutter for the installation of siding on the claimant's residence.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

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

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

The Warrant in Debt recites "unpaid promissory note" as the basis for the suit. In the Affidavit of Facts dated **December 16, 2002**, the claimant asserts that the regulant agreed to correct/repair items due to poor workmanship on the part of the regulant. The regulant decided not to repair the items as previously agreed upon. The claimant had to hire another contractor to complete the

repair work, at an additional cost of \$1,650.00. The regulant agreed to reimburse the claimant the \$1,650.00 in installments of \$200.00 per month. During the IFF, the claimant reiterated the information he provided in his affidavit, that he received two payments in the amount of \$200.00 each.

SECTION 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

SECTION 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be approved for payment in the amount of \$1,647.00 (\$1,250.00 judgment; \$197.00 court costs; \$200.00 expert witness fee). This claim clearly meets the requirements of the Virginia Contractor Transaction Recovery Act.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: September 9, 2003

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

**RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of William Drezek (Claimant) and Mark C. Layman, t/a Layman Custom
Homes (Regulant)
LICENSE NUMBER 2705 060482**

FILE NUMBER: 2003-00884

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 9, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to William Drezek, and Mark Layman, t/a Layman Custom Homes on August 5, 2003. The following individuals participated at the conference: William Drezek, Claimant; Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member. Neither Layman, nor anyone on his behalf, appeared at the IFF.

Background

On **July 15, 2002**, in the Henrico County General District Court, William D. Drezek, Jr., obtained a **Judgment** against Mark C. Layman t/a Layman Custom Home, **in the amount of \$5,000.00 and \$34.00 costs.**

The **claim** in the amount of **\$5,034.00** was received by the Department of Professional and Occupational Regulation on **September 23, 2002.**

Summation of Facts

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "return of cash down payment" as the basis for the suit. The block designated "Other" has been marked.

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

The claimant **did** contract with the regulant.

The Board issued Class B License Number 2705060482 to Mark Layman t/a Layman Custom Homes, on **February 20, 2001.** The license was permanently revoked on **June 11, 2002.** The claimant entered into a written

contract with Mark Layman on **March 11, 2002** for the construction of a garage at the claimant's residence.

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **July 15, 2002**. The claim was received on **September 23, 2002**.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Mark Layman for the construction of a garage at the claimant's residence.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount

realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted, as the regulant could not be found. The summons was posted on the front door at the residence previously rented by the regulant.

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

The Warrant in Debt recites "return of cash down payment" as the basis for the suit. The block designated "Other" has been marked. In the Affidavit of Facts dated **September 19, 2002**, the claimant asserts the regulant received a deposit of \$5,000.00 prior to starting the project. The regulant never returned to construct the garage and never returned the claimant's money.

SECTION 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

SECTION 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be approved for payment in the amount of \$5,034.00. This claim clearly meets the requirements of the Virginia Contractor Transaction Recovery Act.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: September 9, 2003

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

BOARD FOR CONTRACTORS

**RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Theo Hartmann (Claimant) and Kelly Peregoy, t/a Master Roofing
(Regulant)
LICENSE NUMBER 2705 020053**

FILE NUMBER: 2003-01538

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 9, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Theo Hartmann, and Kelly Peregoy, t/a Master Roofing on August 7, 2003. The following individuals participated at the conference: Delia Mary Hartmann, Claimant; Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member. Neither Peregoy, nor anyone on his behalf, appeared at the IFF.

Background

On **November 21, 2001**, in Chesterfield County General District Court, Theo and Delia M. Hartmann obtained a **Judgment** against Charles Peregoy, Master Roofing Company, **in the amount of \$1,461.25, plus interest and \$30.00 costs.**

The **claim** in the amount of **\$1,500.00** was received by the Department of Professional and Occupational Regulation on **October 15, 2002.** (*note: the claimants have included interest in the total claim amount*)

Summation of Facts

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

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

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

The claimants **did** contract with the regulant.

The Board issued Class B License Number 2705020053 to Kelly R. Peregoy t/a Master Roofing Company, on **March 3, 1993**. The license was permanently revoked on **October 1, 2002**. The claimants entered into a written contract with Master Roofing Co., on **February 4, 2001** for the installation of a roof at the claimants' residence.

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **November 21, 2001**. The claim was received on **October 15, 2002**.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with Master Roofing Co., for the installation of a roof at the claimants' residence.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending

institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

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

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

The Warrant in Debt does not recite the basis for the suit.

In the Affidavit of Facts dated **October 11, 2002**, the claimants assert they had to stop the work on being performed by the regulant on the claimants' roof due to the poor workmanship. The claimant's received a judgment against the regulant for the down payment minus compensation for the installed roof vents and the material used by the claimants to install the roof.

SECTION 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

SECTION 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form **does** include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be approved for payment in the amount of \$1,586.25 (\$1,461.25 judgment plus court costs (\$30.00 Warrant in Debt and \$95.00 Interrogatories). Based on the testimony at the IFF, and the photographs in the file, the workmanship was so poor as to qualify as continued incompetence.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: September 9, 2003

COMMONWEALTH OF VIRGINIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

**RE: HUDSON ROOFING COMPANY
LICENSE NUMBER 2705-028844**

FILE NUMBER: 2002-00203

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 24, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Hudson Roofing Company (Hudson) on April 11, 2003. The following individuals participated at the conference: Richard and Susan

Harpe, Complainants; Jennifer Kazzie, Staff Member; and John N. Neff, presiding Board Member. Steve Cocoli, owner of Hudson, nor anyone on his behalf, attended the IFF.

By letter dated July 23, 2003, Hudson was notified that the IFF would reconvene on September 9, 2003. The following individuals participated at the conference: Steve Cocoli, on behalf of Hudson; Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member.

Summation of Facts

1. On August 2, 2000, Susan Harpe (Harpe) entered into a contract with Hudson Roofing Company (Hudson), in the amount of \$4,595.00, to have the roof replaced on their home located at 2985 Emerald Chase Drive, Herndon, Virginia.
2. During the following year, two leaks developed in the new roof, around the skylights. Hudson employees responded four times to the Harpes' warranty requests and fixed the leaks. The leaks caused water damage to the ceiling and wallpaper inside the Harpe home. Mr. Richard Harpe reported the damage to Hudson and asked Steve Cocoli (Cocoli), President of Hudson, to repair the interior damage.
3. Cocoli told Harpe that his company was not responsible for the interior damage caused by the leaks but he would have someone spot prime and spot paint the water damage around the skylight. An employee of Hudson made an appointment to do the priming and painting, but did not show up and did not call to reschedule.
4. On or about August 6, 2001, Penelope Rood (Rood), Code Enforcement Coordinator III, Fairfax County Department of Public Works and Environmental Services responded to an inquiry by Investigator Phillip Underwood, the Board's Agent, concerning Section 107.1 of the Virginia Uniform Statewide Building Code, that required a permit prior to commencement of a complete roof replacement job. Hudson failed to obtain a permit prior to performing the work.
5. During the IFF on June 24, 2003, the Harpes stated that additional leaks have occurred since the completion of the roof replacement by Hudson and that Hudson did not respond or return to the home to address or correct these additional leaks.
6. During the IFF on September 9, 2003, Cocoli stated that he had responded to all requests by the Harpes to repair the leaks, and that the leaks had been repaired. In addition, Cocoli stated that he has not heard from the Harpes in the past two and one half years.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999) (Hudson's failure to return to the Harpes home to prime and paint the water damaged wall caused by leaks resulting from installation of the replacement roof)

The fact that Hudson did not spot prime and spot paint the water damage around the skylight is a civil issue between Harpe and Hudson, therefore, I recommend that Count 1 be closed with a finding of no violation.

Count 2: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

Hudson's failure to obtain a permit, prior to performing the roof replacement job, is a violation of Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend no sanction be imposed for the violation because the County of Fairfax no longer requires permits for this type of work. In addition, the County of Fairfax is not pursuing any enforcement action for Hudson's failing to obtain the permit. For those reasons, I do find a violation, but, I do not recommend a fine be imposed.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: September 9, 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 2705-028844 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

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

1. Name: William A. Paulette
 2. Title: Member, Board for Contractors
 3. Agency: Department of Professional and Occupational Regulation
 4. Transaction: Informal Fact-Finding Conference on September 9, 2003
 5. Nature of Personal Interest Affected by Transaction: NONE
-

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.

WAP
Signature

9/9/03
Date