

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
October 14, 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.

Michael D. Redifer, Board member, presided. 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

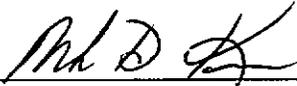
C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
W=Witness
Atty = Attorney

Participants

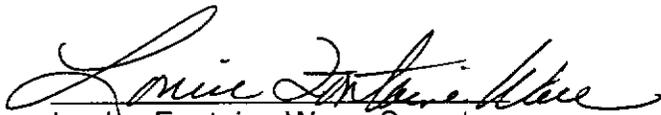
- | | |
|---|---|
| 1. Javier Zavaleta t/a Remodel America File Number 2000-03586 (Disc) | Zavaleta – R |
| 2. Javier Zavaleta t/a Remodel America File Number 2003-00632 (Disc) | Zavaleta – R Tim Burda – C |
| 3. A & E International LLC t/a A & E Construction Company File Number 2003-01385 (Disc) | Scott Easter, CEO for A & E International LLC - R Michael & Giulia Gustafson – C's |
| 4. M & K Sales Consulting Inc. File Number 2003-00425 (Disc) | None |
| 5. Kenneth Dwayne Blankenship t/a Homeworks Improvement | Scott Bauman - C |

The meeting adjourned at 3:00 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: JAVIER E. ZAVALETA, T/A REMODEL AMERICA
LICENSE NUMBER 2705-020004

FILE NUMBER: 2000-03586

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 14, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Javier Zavaleta, t/a Remodel America on September 10, 2003. The following individuals participated at the conference: Javier Zavaleta, t/a Remodel America, Respondent; David Dorner, Investigator; Jennifer Kazzie, Staff Member; and Michael D. Redifer, Presiding Board Member.

File Number 2003-00774 (Disc)

6. Kenneth Dwayne Blankenship
t/a Homeworks Improvement
File Number 2003-01354 (Disc)

Scott Bauman - C

7. Bennett Flooring Service
File Number 2004-00701 (Lic)

John Hayden Bennett – A
Jeannine Bennett - W

8. William Bryan Cordle
t/a Bryan Construction
File Number 2004-00703 (Lic)
No IFF held.

9. Mark Wayne Oliver
File Number 2004-00709 (Trades)
No decision was made.

Oliver – A
Michelle Blankenship –W
Joyce Oliver - W

10. Mark Wayne Oliver
File Number 2004-01103 (Lic)
No decision was made.

Oliver – A
Michelle Blankenship –W
Joyce Oliver - W

11. Glen Aaron Osvold
File Number 2004-00708 (Trades)

Osvold – A

Summation of Facts

1. On or about March 30, 2000, Donald E. Williams (Williams) entered into a contract with Remodel America, Inc. for the removal and replacement of 10 windows at his home located at 5965 New England Woods Drive, Burke, Virginia, in the amount of \$4,200.00. Williams paid a deposit of \$2,100.00 at contract signing.
2. The contract used in the transaction reflects the name Remodel America, Inc. The licensing records for the Board for Contractors dated September 12, 2001, reveal the license is issued as Remodel America (RA), a sole proprietorship. RA failed to operate in the name in which the license is issued.
3. The contract used in the transaction does not contain the minimum provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsections a) when the work is to begin and the estimated completion date, b) statement of the total cost of the contract and any schedule for progress payments, c) a listing of specified materials and work to be performed, d) a plain language exculpatory clause, e) statement of assurance regarding local requirements for building permits, inspections and zoning, f) disclosure of cancellation rights, h) the contractor's name, address, license number, expiration date, class of license/certificate, and classification or specialty services, and i) a 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. RA failed to perform on the contract, and by letter dated June 27, 2000, Williams voided the contract and demanded the return of the deposit funds. RA has refused to comply.
5. During the IFF, evidence was submitted that a settlement agreement had been reached with the complainant, as a result of an arbitration proceeding.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-230(A) (Effective May 1, 1999)

Zavaleta's failure to operate under the name in which the license is issued is in violation of the Board's 1999 Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of \$350.00 be imposed.

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

Zavaleta's failure to fulfill the March 30, 2000, contract to remove and replace 10 windows at the Williams property, and the failure to account for the deposit funds received, is in violation of the retention of funds provision 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 revocation of Zavaleta's license. I recommend the sanctions be waived if Zavaleta provides evidence of settlement acceptable to the Board.

Count 3: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Zavaleta's unjustified failure to complete any work on the March 30, 2000, contract, is in violation of the Board's May 1999 Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed, and revocation of Zavaleta's license. I recommend the sanctions be waived if Zavaleta provides evidence of settlement acceptable to the Board.

Count 4: 18 VAC 50-22-260(B)(8) (Effective May 1, 1999)

Zavaleta's failure to make use of a legible written contract that contains all provisions specified in the regulation 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.

By:

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors
Date: October 14, 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 2705-020004 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

**RE: JAVIER E. ZAVALETA, T/A REMODEL AMERICA
LICENSE NUMBER 2705-020004**

FILE NUMBER: 2003-00632

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 14, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Javier E. Zavaleta, t/a Remodel America on September 10, 2003, and by Reschedule Notice on October 2, 2003. The following individuals participated at the conference: Javier Zavaleta, t/a Remodel America, Respondent; Tim Burda, Complainant; David Dorner, Investigator; Jennifer Kazzie, Staff Member; and Michael Redifer, Presiding Board Member.

Summation of Facts

1. On August 29, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complainant from Tim and Michele Burda (the Burdas) regarding a contract entered into with "Remodel America, Inc."
2. On or about April 13, 2002, the Burdas entered into a contract with "Remodel America, Inc.," in the amount of \$500.00, to paint the exterior trim, front and rear doors, garage door and railing at their residence at 10316 Steamboat Landing Lane, Burke, Virginia 22015.
3. On or about April 13, 2002, the Burdas entered into a second contract with "Remodel America, Inc.," in the amount of \$3,900.00 (if a second coat is required for walls add \$100.00 per area), to paint the foyer, living room, dinning room, family room, stair well to 2nd floor, hallway, master bedroom, two additional bedrooms, den, master bath, hall bath, and kitchen/eat-in area at their residence at 10316 Steamboat Landing Lane, Burke, Virginia 22015. The Burdas also agreed with Zavaleta to apply a second coat of eggshell to the walls.
4. On or about April 13, 2002, the Burdas entered into a third contract with "Remodel America, Inc.," in the amount of \$1,000.00, to power wash the deck area and seal with either Bear or CWF sealant, remove the existing privacy lattice wall, and remove and replace the handrail in same area at their residence at 10316 Steamboat Landing Lane, Burke, Virginia 22015.

5. Javier E. Zavaleta signed the three contracts as the President of Remodel America, Inc.
6. On or about August 29, 2002, a review of the licensing records of the Board for Contractors revealed Javier E. Zavaleta (Zavaleta), t/a Remodel America, was issued Class A Contractor's license number 2705020004 on March 15, 1993, as a sole proprietorship.
7. On or about January 22, 2003, a review of the Virginia State Corporation Commission (SCC) records revealed Remodel America, Inc. was granted a certificate of incorporation on January 7, 1997. The SCC records further revealed Javier E. Zavaleta was the registered agent and President of Remodel America, Inc.
8. Zavaleta failed to operate in the name in which the license was issued.
9. The contracts used by Zavaleta failed to contain all the minimum provisions as required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) when work is to begin and the estimated completion date, (d) a "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance, (e) a statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning, (f) disclosure of the cancellation rights of the parties, (h) contractor's license/certificate number, expiration date, class of license/certificate, and classification or specialty services, and (i) statement providing that any modification to the contract, which changed the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.
10. The contracts specified Zavaleta would perform the following:
 - Scrape, sand, and remove all loose caulk and paint.
 - Prime and prep all areas to be made paint ready by repairing all holes in wall and/or ceiling; remove wallpaper and repair walls in foyer and bath.
 - Paint the bathrooms and kitchen area with a semi-gloss paint.
 - Paint remainder walls with an eggshell paint.
 - Paint ceilings with a flat paint and paint doors and trim with a semi-gloss paint.
12. The contracts also specified Zavaleta would cover all surfaces, workers would clean up and remove debris generated by the project, all work would be performed in a workmanlike professional manner, and all work carried a one-year warranty on labor.
13. On or about April 22, 2002, Zavaleta began work. On or about May 10, 2002, Zavaleta left the project.
14. On or about May 17, 2002, the Burdas met with Zavaleta at their home and pointed out the following workmanship problems:

Workers failed to power wash entire deck as contracted.
Workers applied colored sealant to sections of the deck instead of clear sealant.
Several areas of the deck had no sealant applied.
No precautions were taken to protect the vinyl siding on the house from the application of stain and/or sealant to the decking boards, which resulted in the permanent staining of approximately 30 panels of siding and 2 door caps.
Deck stain was splashed on the concrete stoop at rear door and the electrical box.
Many of the exterior surfaces that were painted were already cracking and chipping.
Front door was painted three times and is blistering.
Workers painted over the brass door knob and deadbolt lock when it should not have been.
Exterior paint on interior of doors and walls; numerous nail pops, holes, cracks, and uneven surfaces.
Some of the interior vinyl windows were painted, which should not have been painted.
Windows were closed while still wet which messed up the paint.
Metal HVAC registers that were not previously painted were painted when they should not have been.
The entire hallway and stairwell were painted with a flat paint instead of the required eggshell.
Many of the electrical cover plates are missing and were never put back on.
Dimmer switch on wall next to front door is broken.
Three curtain rods damaged; blind in bedroom damaged.
Paint smeared on interior brickwork around fireplace.
Wallpaper not completely removed from bathroom.
Furniture not covered resulting in dust and/or paint damage.

15. Zavaleta failed to comply with terms of the contract.

16. On or about May 29, 2002, the Burdas obtained a written estimate from Unicorp, in the amount of \$1,000.00, to replace the damaged vinyl siding.

17. On or about May 2002, the Burdas obtained a written estimate from Eagle Painting, in the amount of \$6,075.00, to repair and repaint the interior and exterior, as well as applying sealant to the deck of the Burdas' home.

18. On or about October 6, 2002, the Burdas obtained a written estimate from NDB, in the amount of \$171.27, to replace the damaged blind in the master bedroom.

19. On or about October 6, 2002, the Burdas obtained a written estimate from Home Depot, in the amount of \$94.08, to replace wall switches, curtain rods and lattice work.

20. On or about December 9, 2002, Zavaleta told Investigator David C. Dorner, the Board's agent, that he couldn't get everything perfect and this was the best he could do and he was not willing to do anymore repair work. Zavaleta told the Board's agent that Zavaleta had repaired a number of nail pops and bumps in the wall, but he just couldn't get them all and that's not what he was paid for; he was not paid to do a perfect job. If the Burdas

wanted to get a perfect job it would cost them. Zavaleta also told the Board's agent that he never removed the toilet to paint or remove wall paper.

21. On or about December 9, 2002, Zavaleta told Investigator David C. Dorner, the Board's agent, that Zavaleta did not personally perform any of the work at the Burdas' home. Zavaleta also told the Board's agent that he did not use any subcontractors and the work was completed by three of his employees: Washington Castanero, Juan Rivas, and Jose Ramirez.

22. On or about January 9, 2003, Zavaleta testified in the Fairfax General District Court that the work performed at the Burdas' residence was performed by subcontractors.

23. On or about January 22, 2003, the Board's agent spoke to Zavaleta about Zavaleta's testimony in the Fairfax General District Court on January 9, 2003, that subcontractors performed the work at the Burdas' residence. Zavaleta told the Board's agent that he did testify that the work at the Burdas' was performed by subcontractors. Zavaleta also told the Board's agent that Washington Castanero, Juan Rivas, and Jose Ramirez only did work for Zavaleta and that Zavaleta considered them as subcontractors for tax purposes only.

24. Zavaleta provided false and misleading information to the Board's agent during the investigation of a complaint filed with the Board.

25. On or about January 9, 2003, in the General District Court for the County of Fairfax, the Burdas were awarded a \$3,900.00 judgment against Javier Zavaleta, t/a Remodel America for breach of contract. As of March 17, 2003, Zavaleta failed to satisfy the judgment.

26. In a letter dated March 12, 2003, Zavaleta stated that he was under the impression that there were offsetting amounts when the judgment was brought against Remodel America. Zavaleta also stated that he thought the \$3,900.00 judgment was just canceled out since the Burdas owed him \$3,900.00. Zavaleta also stated that he was shocked when he learned from the bank that his account had been garnished.

Conclusion and Recommendation

Count 1: Code of Virginia § 5.2.3. (Effective March 31, 1995)

Zavaleta's failure as President of Remodel America, to obtain a new license after a certificate of incorporation was issued by the SCC on or about January 7, 1997, is in violation of the Board's 1995 Regulation § 5.2.3. Therefore, I recommend a monetary penalty of \$350.00 be imposed.

Count 2: 18 VAC 50-22-230(A) (Effective September 1, 2001)

Zavaleta's failure 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 \$350.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Zavaleta's failure to use a written contract containing the minimum requirements is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of \$500.00.

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

Zavaleta's failure to complete work contracted for and to comply with the terms of 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 \$1,500.00 be imposed.

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

Zavaleta's failure to do the work in a professional manner is negligence and incompetence in the practice of contracting in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(5). Therefore, I recommend a monetary penalty of \$750.00 be imposed.

Count 6: 18 VAC 50-22-260(B)(13) (Effective September 1, 2001)

By providing false and misleading information to the Board's agent regarding the persons performing the work, Zavaleta is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

Count 7: 18 VAC 50-22-260(B)(28) (Effective January 1, 2003)

Zavaleta's failure to satisfy a judgment issued by the General District Court for the County of Fairfax in the amount of \$3,900.00 is in violation of the Board's 2003 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed, along with revocation of Zavaleta's license.

By:

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors
Date: October 14, 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 2705-020004 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

**RE: A & E INTERNATIONAL, LLC
T/A A & E CONSTRUCTION COMPANY
LICENSE NUMBER 2705-049748**

FILE NUMBER: 2003-01385

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 14, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to A & E International, LLC, t/a A & E Construction Company on September 9, 2003. An Amended Informal Fact-Finding Conference Memorandum was sent to A & E International LLC on September 23, 2003.

The following individuals participated at the conference: Scott Easter, C.E.O. of A & E International, LLC, t/a A & E Construction Company; Michael and Giulia Gustafson, Complainants; Jennifer Kazzie, Staff Member; and Michael D. Redifer, Presiding Board Member.

Summation of Facts

1. On November 21, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Michael Gustafson (Gustafson) regarding a contract entered into with Husain B. Alam (Alam), President of A & E International, LLC.

2. On August 17, 2001, Gustafson entered into a cost plus fixed fee contract with Alam, in the estimated amount of \$286,995.00, for the construction of a residence at 5875 Poor Mountain Road, Salem, Virginia 24153.

3. The contract used by Alam in this transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(8), subsections (d) a statement that delays caused by events beyond the control of the contractor does not constitute abandonment and are not included in calculating time frames for payment or performance, (h) the contractor's

classification or specialty service, and (i) a 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. The contract specified "substantial completion" within 240 days of excavation.

5. On or about September 7, 2001, A & E Construction Company began excavation. On or about July 24, 2002, the Certificate of Occupancy was issued. (NOTE: Certificate of Occupancy was issued approximately 320 days after excavation began.)

6. On or about July 2, 2002, Alam faxed Gustafson a letter stating that a temporary certificate of occupancy had been issued for their house and requested final payment.

7. On or about July 8, 2002, the Roanoke County Building Official issued a temporary certificate of occupancy for Gustafson's residence.

8. At the IFF, Easter testified that the temporary occupancy permit had been requested, but was held up due to non payment of a county fee.

Conclusion and Recommendation

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

Alam's failure as President of A & E International, t/a A & E Construction Company, to use a contract that contained the minimum provisions required by 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)(6) (Effective May 1, 1999)

Alam's failure as President of A & E International, t/a A & E Construction Company, to substantially complete the house within 240 days of excavation 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 \$1,000.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(13) (Effective May 1, 1999)

Alam's action as President of A & E International, t/a A & E Construction Company, on or about July 2, 2002 of advising Gustafson that a temporary certificate of occupancy had been issued, when in fact it had not been issued due to nonpayment of a county fee. The temporary certificate of occupancy was issued on or about July 8, 2002. Therefore, I find violation of Regulation 18 VAC 50-22-260(B)(13), but recommend no penalty.

By:

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors
Date: October 14, 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 2705-049748 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

**RE: M & K SALES CONSULTING, INC.
LICENSE NUMBER 2705 063827**

FILE NUMBER: 2003-00425

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 14, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to M & K Sales Consulting, Inc. (M & K) on September 9, 2003. The following individuals participated at the conference: Jennifer Kazzie; Staff Member; and Michael D. Redifer, Presiding Board Member. No one from M & K Sales Consulting, Inc. appeared at the IFF.

Background

On or about April 2002, Christopher and Cheryl Esposito (the Espositos) entered into a verbal agreement with M & K Sales Consulting Inc. (M & K), in the amount of \$5,800.00, to paint the inside of the home at 7644 Comanche Drive, Richmond, Virginia.

Summation of Facts

1. On or about April 22, 2002, M & K commenced work on the project. M & K failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed.
2. In a letter dated September 8, 2002, Kathy Gordon (Gordon), President of M & K, told Investigator Becky C. Angelilli, the Board's Agent, that "under this contractor's license I am

allowed to perform numerous jobs up to \$70,000. I have every right to enter into a painting contract, as this is one of the jobs we perform most."

3. On or about August 14, 2002, a review of the licensing records of the Board for Contractors revealed M & K Sales Consulting Inc. was issued Class B Contractor's license number 2705063827, with an electronic/communication service contracting ("ESC") specialty, on July 17, 2001.
4. On or about September 20, 2002, Michael Gordon, former President of M & K, told the Board's Agent that he left M & K in December of 2001 and he no longer has any association with the company.
5. On or about August 14, 2002, a review of the licensing records of the Board for Contractors revealed Michael Gordon was still listed as President and designated employee of M & K.
6. On or about September 19, 2002, a review of the licensing records of the Board for Contractors revealed Michael Gordon was still listed as the qualified individual of the company until September 9, 2002.

Conclusion and Recommendation

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

M & K's failure to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of \$350.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

M & K's actions of practicing in a classification, specialty service, or class of license for which the contractor is not licensed is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 3: 18 VAC 50-22-220(A) (Effective September 1, 2001)

M & K's failure to report a change in the officers of a corporation to the Board in writing within 90 days of the change is a violation of Board Regulation 18 VAC 50-22-220(A). I recommend a monetary penalty of \$350.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 4: 18 VAC 50-22-220(B) (Effective September 1, 2001)

M & K's failure to report a change of designated employee on a form provided by the Board within 90 days of the change is a violation of Board Regulation 18 VAC 50-22-220(B). I recommend a monetary penalty of \$350.00 imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 5: 18 VAC 50-22-220(C) (Effective September 1, 2001)

M & K's failure to report a change of qualified individual on a form provided by the board within 45 days of the change is a violation of Board Regulation 18 VAC 50-22-220(C). I recommend a monetary penalty of \$350.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors
Date: October 14, 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 063827 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

**RE: KENNETH DWAYNE BLANKENSHIP
T/A HOMEWORKS IMPROVEMENT
LICENSE NUMBER 2705 049863**

FILE NUMBER: 2003-00774

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 7, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Kenneth Dwayne Blankenship, t/a Homeworks Improvement (Blankenship) on April 7, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Michael D. Redifer, Presiding Board Member. Neither Blankenship, nor anyone on his behalf, appeared at the IFF.

On September 11, 2003, Blankenship was notified that the IFF would re-convene on October 14, 2003. The following individuals participated in the conference: Scott Bauman, Complainant; Jennifer Kazzie, Staff Member; and Michael D. Redifer, Presiding Board Member. Neither Blankenship, nor anyone on his behalf, appeared at the IFF.

Background

On or about June 13, 2002, Scott Bauman (Bauman) entered into a contract with Kenneth Dwayne Blankenship (Blankenship), t/a Homework Improvements, in the amount of \$7,000.00, for the installation of a roof at his place of business at 1401 Plantation Road, Roanoke, Virginia.

Summation of Facts

1. On or about June 13, 2002, Bauman paid Blankenship \$3,500.00 by check to commence the work.
2. After June 13, 2002, Blankenship never returned to commence the work or refunded any of the money received to start the work. Bauman made numerous phone calls to Blankenship to request Blankenship return to start the job. Blankenship did not return as requested or per the contract. Blankenship did not refund money received for work not performed.
3. Bauman testified at the IFF that no refund has yet been received nor has any work been performed.

Conclusion and Recommendation

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

Blankenship's intentional and unjustified failure to complete work contracted for and/or to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 2: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Blankenship's retention of funds paid, for which work was not performed, is a violation of Board Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By:

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors
Date: October 14, 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 049863 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

**RE: KENNETH DWAYNE BLANKENSHIP
T/A HOMEWORKS IMPROVEMENT
LICENSE NUMBER 2705 049863**

FILE NUMBER: 2003-01354

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 14, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Kenneth Dwayne Blankenship, t/a Homeworks Improvement (Blankenship) on September 11, 2003. The following individuals participated at the conference: Scott Bauman, Complainant; Jennifer Kazzie; and Michael D. Redifer, Presiding Board Member. Neither Blankenship, nor anyone on his behalf, appeared at the IFF.

Background

On or about September 12, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Scott Bauman (Bauman) regarding a contract entered into with Kenneth Dwayne Blankenship (Blankenship), t/a Homeworks Improvement. Based on this complaint, File number 2003-00774 was docketed against Blankenship.

During the investigation of File Number 2003-00774, Investigator Dale C. Amos, the Board's agent, discovered that on April 25, 2002, Bauman entered into three separate contracts with Blankenship, in the total amount of \$21,000.00, to replace a roof at commercial property owned by Bauman at 1019 Campbell Avenue, Roanoke, Virginia 24019.

On February 4, 2003, a review of the licensing records of the Board for Contractors revealed Blankenship was issued Class C license number 2705049863 on June 7, 1999.

Summation of Facts

1. On or about April 25, 2002, Blankenship commenced work.
2. Blankenship failed to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license.
3. On March 24, 2003, Susie Worley (Worley), Assistant with the Roanoke City Building Inspections Office, advised Investigator Dale C. Amos, the Board's agent, that Blankenship failed to obtain a required building permit for the replacement of a commercial roof, in violation of Section 109.0 of the Virginia Uniform Statewide Building Code.
4. The contracts specified "all work and materials are guaranteed for 10 years."
5. On or about June 7, 2002, Blankenship completed the work. After Blankenship completed the job, Bauman noticed a leak in the roof. Bauman made repeated phone calls to Blankenship in an effort to have the roof repaired. As of January 17, 2003, Blankenship failed to return to repair the roof leaks and honor the warranty.
6. On February 14, 2003, Investigator Dale C. Amos, the Board's agent, made a written request to Blankenship, via certified mail, at the address of record of 133 Spring Drive, Collinsville, Virginia 24078, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by February 28, 2003. The letter was returned by the United States Postal Service marked "unclaimed".
7. On April 3, 2003, the Board's agent visited 133 Spring Drive, Collinsville, Virginia. No one was present at the time of the visit.
8. Bauman testified at the IFF that the roof still has not been repaired.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Blankenship's actions of practicing in a classification, specialty service, or class of license for which the contractor is not licensed is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

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

Blankenship's failure to obtain the required building permit is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(30) (Effective September 1, 2001)

Blankenship's failure to honor the terms and conditions of a warranty is a violation of Board Regulation 18 VAC 50-22-260(B)(30). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(13) (Effective January 1, 2003)

Blankenship's failure to respond to an investigator seeking information in the investigation of a complaint filed with the board is a violation of Board Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

By:

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors
Date: October 14, 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 049863 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

**IN RE: JOHN H. BENNETT
T/A BENNETT FLOORING SERVICE
APPLICATION**

FILE NUMBER: 2004-00701

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 14, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to John H. Bennett, t/a Bennett Flooring Service (Bennett) on September 9, 2003. The following individuals participated at the conference: John H. Bennett; Applicant; Jeannine Bennett, Witness; Jennifer Kazzie, Staff Member; and Michael D. Redifer, Presiding Board Member.

Summation of Facts

1. Bennett applied for a Class C Contractor's license on or about May 29, 2003, and disclosed criminal conviction(s).
2. On or about August 4, 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, Bennett submitted evidence of his 100% compliance with the terms of his probation, which includes periodic testing for alcohol and drugs, as well as restitution payments. Although Bennett has approximately nine years of probation remaining, based on his good behavior, his probation officer has advised Bennett he could be released early if he accelerates his restitution schedule.

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;

Bennett was convicted of (DUI) Driving under the Influence, Aggravated Assault, Poss/Manuf/Dis. Etc – Marijuana, a Felony (3 Counts); Posses/Manuf/Sell/Purchase – Cocaine, a Felony; and False Report of a Crime.

It is unclear in the Georgia record whether the DUI, Aggravated Assault, and the False Report of a Crime are misdemeanors or felonies. Bennett testified that he was not aware of the Aggravated Assault and False Report convictions but he has an attorney who is researching the matter.

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. Bennett's convictions were for acts committed over six years ago and all stemmed from the same set of circumstances. Bennett no longer has any association with individuals with whom he was acquainted at the time. Therefore, I do not feel that he 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 Bennett a license will encourage any criminal activity.

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 Bennett's actions since that time, I do not see any significant relationship of the crimes to his fitness to engage in licensed activity.

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

Bennett was convicted of (DUI) Driving under the Influence, Aggravated Assault, Poss/Manuf/Dis. Etc – Marijuana, a Felony (3 Counts); Posses/Manuf/Sell/Purchase – Cocaine, a Felony; and False Report of a Crime.

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

Bennett was approximately twenty-three (23) years of age at the time of the crimes.

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

The offenses occurred in 1997.

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

During the IFF, Bennett stated he was in the United States Navy prior to the convictions and upon his discharge, he returned to work as a car detailer. Following his convictions, Bennett moved to Virginia and began his involvement in the flooring industry.

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

Bennett served six (6) months in an Adult Detention Center. By letter dated May 21, 2003, Bennett indicates that prior to the year 2000, he had accomplished many things. He went back to school and earned his Associate of Arts Degree, got married, and secured a good position in the flooring department at Home Depot, where he won many awards. Upon his release from the Detention Center, Bennett stated that he was welcomed back at Home Depot and was even asked to open the "new" Princess Anne Store that was being developed. He went on to teach all of the flooring classes at Home Depot and then became a Pro Contractor Account Specialist. He went on to become a flooring estimator for a subcontractor of Home Depot. Further, Bennett states that he is finishing up his B.A. in Business Administration at Saint Leo University.

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 Bennett's application be approved.

By: _____

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors

Date: October 14, 2003

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

**IN RE: GLEN AARON OSVOLD
APPLICATION**

FILE NUMBER: 2004-00708

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 14, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Glen Aaron Osvold (Osvold) on September 9, 2003. The following individuals participated at the conference: Glen Aaron Osvold, Applicant; Jennifer Kazzie, Staff Member; and Michael D. Redifer, Presiding Board Member.

Summation of Facts

1. Osvold applied for a Tradesman license on or about March 25, 2003, and disclosed criminal conviction(s).
2. On or about August 5, 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.

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;

Osvold was convicted of Larceny, a Felony; Burglary, a Felony; Possess Handgun or Concealed Weapon by Felon, a Felony; Concealed Weapon, a Misdemeanor; Trespass, a Misdemeanor, and DUI, a Misdemeanor.

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. Osvold accepted responsibility for the Larceny and Burglary convictions and has made full restitution. The remaining convictions were the result of errors in judgment and associating with the wrong people. Considering the most recent conviction was over seven years ago, I do not feel that Osvold would present 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 Osvold 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 convictions, and Osvold's actions since that time, I do not see any significant relationship of the crimes to his fitness to engage in licensed activity. Osvold submitted a letter of reference from a prior employer which attests to his work ethic.

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

Osvold was convicted of Larceny, a Felony; Burglary, a Felony; Possess Handgun or Concealed Weapon by Felon, a Felony; Concealed Weapon, a Misdemeanor; Trespass, a Misdemeanor, and DUI, a Misdemeanor.

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

Osvold was approximately twenty-two (22) years of age at the time of the crime of Larceny.

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

The last offense of DUI occurred on or about October 12, 1996.

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

During the IFF, Osvold stated that he has been doing electrical work for over ten years and the criminal convictions occurred during this time period.

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

Osvold was not incarcerated for the convictions.

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 Osvold's application be approved.

By: _____

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors

Date: October 14, 2003