Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
October 21, 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.

Kenneth W. Hart, 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. Robert G. Farmer Jr. t/a Diamond Decks File Number 2002-02050 (Disc)	None
2. Wayne Edward Garrity t/a Mr. Rooter Plumbing File Number 2003-00489 (Disc)	None
3. Isayah Binyah Israyl t/a I B I Construction Co. File Number 2003-00876 (Disc)	Earl McCatty - C
4. Mark Dikun t/a Commonwealth Construction Company File Number 2003-02296 (Disc)	Aubrey Zellner - C
5. Mark Dikun t/a Commonwealth Construction Company File Number 2003-01660 (Disc)	None
6. William B. Robertson File Number 2003-00222 (Disc)	None

7. George Little File Number 2002-03619 (Disc)	Little – R Sarah Campbell – R Atty Charles McGehee – C Brenda McGehee - C
8. Charles Martin Arnold t/a CMA Contractors File Number 2002-00591 (Disc)	None
9. Mary Ann Ulrich t/a Comfort Home Improvements File Number 2003-01055 (Disc)	None
10. Mary Ann Ulrich t/a Comfort Home Improvements File Number 2003-01906 (Disc)	None

The meeting adjourned at 3:05 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: ROBERT G. FARMER, JR.
T/A DIAMOND DECKS
LICENSE NUMBER 2705 050818

FILE NUMBER: 2002-02050

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 21, 2003, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Robert G. Farmer, Jr. on May 15, 2003 and by Amended Notice on September 17, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Kenneth W. Hart, Presiding Board Member. Neither Farmer, nor anyone on his behalf, appeared at the IFF.

Summation of Facts

1. On or about December 13, 2000, Marjorie A. Jones (Jones) entered into a contract with Robert G. Farmer Jr. (Farmer), trading as Diamond Decks, in the amount of $2,000.00, to construct a new landing and stairs to an existing deck at her residence at 20289 Ordinary Place, Ashburn, Virginia.

2. The contract used by Farmer in the 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; (d) a plain language exculpatory clause; (e) a statement of assurance that the contractor will comply with local requirements for building permits, inspections, and zoning; (f) disclosure of cancellation rights of the parties; (h) the contractor's license expiration date, class of license, and classifications or specialty services; and (i) a statement that 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, in violation of the above-cited regulations.

3. On or about October 19, 2001, Charles Barger (Barger), Loudoun County Building Inspector, conducted an inspection of the work Farmer performed at Jones' residence at 20289 Ordinary Place, Ashburn, Virginia. This inspection was conducted pursuant to §114.4 of the Virginia Uniform Statewide Building Code (VUSBC), 1996 Edition with 2000 Amendments. Barger found that the work Farmer performed failed the inspection, because the landing was not level or supported, and the steps and handrails did not meet code requirements. Farmer was informed of the violations in October, 2001. As of June 21, 2002, Farmer failed to complete the work per the contract or correct the violations.

4. On or about June 4, 2002, a review of the licensing records of the Board for Contractors revealed Robert G. Farmer Jr., trading as Diamond Decks was issued Class C Contractor's license number 2705-050818, as a sole proprietor. The licensing records further revealed the address of record was 130-3 Fay Street, Winchester, Virginia 22602.

5. On or about June 10, 2002, Investigator Doneen A. Whitaker, the Board's Agent, made a written request to Farmer at the license address of record of 130-3 Fay Street, Winchester, Virginia 22602 by United Parcel Service (UPS) Next Day Air, requesting a written response to the complaint Jones filed with the Board and supporting documentation. The Board's Agent requested that Farmer submit his response and the requested documentation by June 25, 2002. On or about June 11, 2002, the Board's Agent's request was delivered by UPS to Farmer's license address of record. Farmer failed to respond to the complaint or submit the requested documentation.

Conclusion and Recommendation

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

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

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

Farmer's failure to complete the work per the contract or correct the violations found by the Loudoun County Building Inspector 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 III: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Farmer's failure to correct items found by the Loudoun County Building Inspector is misconduct in the practice of contracting in violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $500.00 and license revocation be imposed.

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

Farmer's failure to respond to the complaint or submit the requested documentation is a violation of Board Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend a monetary penalty of $500.00 be imposed.

By:

_____

Kenneth W. Hart
Presiding IFF Board Member
Board for Contractors
Date: October 21, 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 2705-050818 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

BOARD FOR CONTRACTORS

RE: WAYNE EDWARD GARRITY
T/A MR. ROOTER PLUMBING
LICENSE NUMBER 2705-036371

FILE NUMBER: 2003-00489

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Wayne Edward Garrity, t/a Mr. Rooter Plumbing (Garrity) on September 19, 2003. By letter dated October 15, 2003, an Amended IFF Memorandum was sent to Garrity. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Kenneth W. Hart, Presiding Board Member. Neither Garrity, nor anyone on his behalf, appeared at the IFF.

Summation of Facts

1. On or about March 2001, Robert Nappi (Nappi) entered into a contract with "All State Plumbing Inc. D/B/A Mr. Rooter Plumbing," to repair a broken sewer line at 4137 Anderson Road, Triangle, Virginia. The contract specified a one-year warranty on the sewer work.

2. On or about December 27, 2002, a review of the licensing records of the Board for Contractors did not reveal a contractor's license for All State Plumbing Inc.

3. On or about December 27, 2002, a review of the licensing records of the Board for Contractors revealed Wayne Garrity (Garrity), t/a Mr. Rooter Plumbing, was issued Class C Contractor's license number 2705036371 on November 25, 1996. The records further revealed there were no changes in the business or trade name.

4. Wayne E. Garrity, t/a Mr. Rooter Plumbing, performed the repair work.

5. Garrity failed to operate in the name in which the license was issued.

6. Between May 2001 and January 2002, the subject property was unoccupied.

7. On or about January 4, 2002, Sharon L. Tamimi (Tamimi) purchased the home from Nappi. Within one month of moving into the home, Tamimi experienced plumbing problems, such as slow drains and sewer backups. Tamimi discovered that the sewer line was blocked in several places and broken in the same area that was replaced by Garrity in March 2001. Tamimi could not use the commodes and showers in her home.

8. The contract used by Garrity 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 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 number, expiration date, class of license, and classifications or specialty services, and (i) statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

9. On or about September 13, 2002, Eric M. Mays (Mays), Building Official Prince William County Virginia, sent a Notice of Violation to Garrity for the following violations:

> Failure to obtain a plumbing permit prior to the commencement of work, in violation of Section 109.1of the Virginia Uniform Statewide Building Code (USBC), and
> Failure to get an inspection, in violation of Section 114.4 of the USBC.

The Notice of Violation directed Garrity to make corrections within 10 days of the receipt of the Notice of Violation. As of December 27, 2002, Garrity failed to make the corrections and abate the Notice of Violation.

10. Tamimi contacted Garrity to repair the sewer line per the one year warranty. Garrity refused to return to make any warranty corrections.

11. On August 22, 2002, Nappi assigned all of his rights and remedies under the contract he had with Mr. Rooter Plumbing Company in the spring of 2001 to the current owner, Tamimi.

12. On or about August 28, 2002, Investigator Philip Underwood, the Board's agent, sent an allegation letter to Garrity, including a copy of the complaint and a request for a written response to the complaint filed with the Board, via first class mail to the address of record with the Board of 5230 Washington Blvd., P.O. Box 8703, Baltimore, Maryland 21240. As of December 27, 2002, the Board's agent did not receive a response from Garrity.

13. On or about October 28, 2002, the Board's agent called Garrity at (703) 691-3080 and left a voice mail message requesting Garrity contact the Board's agent at (804) 367-2025 in reference to this complaint. As of December 27, 2002, the Board's agent did not receive a response from Garrity.

14. On or about October 30, 2002, the Board's agent sent a second letter of allegation to Garrity, including a copy of the complaint and a request for a written response to the complaint filed with the Board, via certified mail to the address of record with the Board of 5230 Washington Blvd., P.O. Box 8703, Baltimore, Maryland, 21240. On or about

December 9, 2002, the letter was returned and marked "unclaimed." As of December 27, 2002, the Board's agent did not receive a response from Garrity.

15. On or about November 27, 2002, the Board's agent called Garrity a second time at (703) 691-3080. A receptionist answered the telephone as "Allstate Plumbing Mr. Rooter Plumbing." The receptionist transferred the call to Garrity's voice mail and the Board's agent left a message requesting Garrity contact the Board's agent at (804) 367-2025 in reference to this complaint. As of December 27, 2002, the Board's agent did not receive a response from Garrity.

Conclusion and Recommendation

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

Garrity's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of $800.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(8) (Effective May 1, 1999)

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

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

Garrity's failure to make corrections requested by a Prince William County Building Official and to abate the Notice of Violation is misconduct in the practice of contracting in violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $1,000.00 be imposed.

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

Garrity's failure to honor the terms and conditions of a warranty after an assignment from the previous owner is misconduct in the practice of contracting in violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $1,000.00 and license revocation be imposed.

Count 5: 18 VAC 50-22-260(B)(13) (Effective September 1, 2001)

Garrity'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 $2,000.00 and license revocation be imposed.

By:

_____

Kenneth W. Hart
Presiding IFF Board Member
Board for Contractors
Date: October 21, 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 2705-036371 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: ISAYAH BINYAH ISRAYL
T/A I B I CONSTRUCTION CO
LICENSE NUMBER 2705 066659

FILE NUMBER: 2003-00876

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Isayah Binyah Israyl, t/a I B I Construction Co. (Israyl) on September 17, 2003. The following individuals participated at the conference: Earl McCatty, Complainant; Jennifer Kazzie, Staff Member; and Kenneth W. Hart, Presiding Board Member. Neither Israyl, nor anyone on his behalf, appeared at the IFF.

Background

On September 20, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Earl L. McCatty (McCatty) regarding a contract entered into with Isayah Binyah Israyl (Israyl), t/a I B I Construction Co.

On or about April 22, 2002, McCatty entered into a contract with Israyl, in the amount of $24,000.00, for the construction of a family room, sunroom, half bath, closet, back porch, carport, new entry door to the house from the carport, and driveway extension at 5601 Cupula Drive, Richmond, Virginia.

Summation of Facts

1. The contract used by Israyl failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22.260(B)(9), subsections (a) when work is to begin, (c) a listing of specified materials and work to be performed, which is specifically requested by the consumer, (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 number, license 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.

2. On or about April 22, 2002, McCatty paid Israyl $8,000.00 by check.

3. Between May 3, 2002, and July 16, 2002, McCatty paid Israyl a total of $15,055.00 by checks. As of July 16, 2002, McCatty paid Israyl a total of $23,055.00 towards the $24,000.00 contract price.

4. On or about April 22, 2002, Israyl started construction. Israyl performed plumbing work at the job site.

5. On September 20, 2002, a review of the licensing records of the Board for Contractors revealed Isayah Binyah Israyl, t/a I B I Construction Co., was issued Class C Contractor's license number 2705066659 on January 8, 2002, with the roofing contracting (ROC) and home improvements (HIC) specialties.

6. Israyl practiced in a specialty service for which he is not licensed by performing the plumbing work.

7. Israyl 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.

8. The contract specified "This job should take about 9 weeks." On or about July 2002, Israyl left the job site.

9. On or about September 4, 2002, McCatty obtained an estimate from another contractor, in the amount of $22,000.00, to complete the work that Israyl was hired to perform.

10. As of September 20, 2002, Israyl failed to return to construct the sunroom, complete the carport, install the entry door from the carport, and complete all electrical and plumbing work. McCatty left numerous telephone messages for Israyl inquiring when the work would be finished. Israyl told McCatty that he was busy working on other jobs to make money to buy the materials for McCatty's project.

11. Israyl failed to return money received for work not performed or performed only in part.

12. On or about October 20, 2002, Israyl agreed to provide Investigator Janet Creamer, the Board's agent, with copies of receipts for the labor and materials performed at McCatty's residence, as well as the name of the plumber who performed the plumbing work at the site. Israyl failed to provide the documents as agreed.

Conclusion and Recommendation

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

Israyl's failure to make use of a legible written contract that contains all provisions specified in the regulation is a violation of Board Regulation18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of $800.00 be imposed.

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

Israyl's actions of practicing in a 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 3: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Israyl's actions of practicing in a specialty service 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 4: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Israyl's failure to complete the work contracted for 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 5: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Israyl's failure to return money received for work not performed or performed only in part is a violation of Board Regulation 18 VAC 50-22-260(16). Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

Count 6: 18 VAC 50-22-260(B)(12) (Effective September 1, 2001)

Israyl's refusing or failing, upon request, to produce to the board, or any of its agents, the requested documents is a violation of Board Regulation 18 VAC 50-22-260(12). Therefore, I recommend a monetary penalty of $1,000.00 and license revocation be imposed.

By:

_____

Kenneth W. Hart
Presiding IFF Board Member
Board for Contractors
Date: October 21, 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 066659 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: MARK DIKUN

T/A COMMONWEALTH CONSTRUCTION COMPANY
LICENSE NUMBER 2705 059267

FILE NUMBER: 2003-02296

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Mark Dikun, t/a Commonwealth Construction Company (Dikun) on September 23, 2003. The following individuals participated at the conference: ; Aubrey Zellner, Complainant; Jennifer Kazzie, Staff Member; and Kenneth W. Hart, Presiding Board Member. Neither Dikun, nor anyone on his behalf, appeared at the IFF.

Background

On February 26, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Aubrey Zellner (Zellner) regarding a contract entered into with Mark Dikun, t/a Commonwealth Construction Company (CCC).

On June 12, 2002, Zellner entered into a contract with CCC, in the amount of $11,500.00, for the renovation of the basement at Zellner's house at 9767 Uppermill Loop, Bristow, Virginia.

On August 28, 2002, Zellner signed a written change order, in the amount of $1,769.00, for the construction of a bar area at Zellner's house at 9767 Uppermill Loop, Bristow, Virginia. The change order also specified a completion date of September 30, 2002, for both the basement and bar area projects.

Summation of Facts

1. The contract used by CCC failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (f) disclosure of the cancellation rights of the parties and (h) contractor's license expiration date, class of license, and specialty service. CCC failed to make use of a legible contract that contains all provisions specified in the regulation.

2. Between June 13, 2002, and August 26, 2002, Zellner paid CCC a total of $12,769.00 by checks.

3. On February 28, 2003, a review of the licensing records of the Board for Contractors revealed Mark Dikun, t/a Commonwealth Construction Company, was issued Class C Contractor's license number 2705059267 on January 9, 2001.

4. CCC 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.

5. The contract specified CCC "shall at its own expense obtain all permits necessary for the work to be performed."

6. On or about June 25, 2002, CCC commenced the work. CCC completed the framing of the bathroom, installed some drywall, installed wiring for cable and a computer, installed recessed lights, constructed a platform to run the plumbing above the floor for the drain, and constructed a frame for the shower.

7. Susie Keirut, Secretary with Prince William County Building Code Enforcement, advised Investigator Carolyn D. Wright, the Board's agent, that CCC failed to obtain electrical, plumbing, and mechanical permits prior to commencement of work at 9767 Uppermill Loop, Bristow, Virginia, as required by Section 109.1 of the Uniform Statewide Building Code. During the IFF, Zellner (the Complainant), stated that he obtained the building permit as the homeowner.

8. On July 16, 2002, Prince William County rejected the CABO Combination Concealment Inspection for incomplete work. CCC told Zellner the inspection had passed.

9. After July 16, 2002, CCC installed drywall on the walls and ceilings without installing the rough-in plumbing for the bathroom, and air conditioning heating ducts. CCC failed to make corrections and obtain an approved inspection before installing the drywall. As a result, holes had to be punched into the drywall to ensure fire stopping had been installed correctly and to install the air conditioning and heating ducts.

10. After mid-August 2002, CCC failed to return to complete the work contracted for, including, but not limited to: completion of the framing of the walls and the bulkhead; installation of six (6) new doors, sink, toilet, mirror, lights, towel rods, vent for the bathroom,

cabinets, cabinet lighting, counter tops, water line and filter for the icemaker, outlets, and switches; paint all walls; and tape and mud walls and ceilings.

11. Between September 2002 and December 2002, Zellner attempted to contact CCC by telephone and e-mail regarding completion of the work. CCC failed to respond to Zellner's calls and e-mails.

12. On December 2, 2002, Zellner sent CCC a formal demand letter, via registered mail. Zellner requested CCC refund a total of $7,019.00 within 10 days of receipt of the letter, return the key for the basement sliding door, and return the wood cabinet door and wood stair hand railing. On December 6, 2002, CCC signed for the letter. CCC failed to respond to the demand letter.

13. As of February 26, 2003, CCC failed to complete the work contracted for.

14. As of February 26, 2003, CCC failed to return money received for work not performed or performed in part.

15. The contract specified CCC "shall furnish a plan and scale drawing showing the shape, size dimensions, and construction and equipment specifications for home improvements . . ." As of February 23, 2003, CCC failed to comply with the terms of the contract and provide Zellner the plan and scale drawing.

16. On March 19, 2003, Investigator Carolyn D. Wright, the Board's agent, sent a certified letter to CCC at 4020 Cressida Place, P.O. Box 237, Haymarket, Virginia 20168, requesting a written response and supporting documents regarding the subject complaint. The Board's agent requested a response by April 4, 2003.

17. On April 8, 2003, the Board's agent received a voice mail message from Mark Dikun, regarding the Board's agent's certified letter and the subject complaint.

18. On April 9, 2003, the Board's agent called Dikun at (703) 926-3715, the number Dikun provided to the Board's agent in a voice mail message. The Board's agent left Dikun a message. In the message, the Board's agent asked Dikun if he was going to send in a written response and documents as requested. As of April 28, 2003, the Board's agent has not received a written response or documents as requested.

Conclusion and Recommendation

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

Dikun's failure to make use of a legible written contract which contains all provisions specified is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of $500.00 be imposed.

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

Dikun's actions of practicing in a 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 3: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Dikun's failure to obtain electrical, plumbing, and mechanical permits prior to commencement of work is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $2,000.00 and license revocation be imposed.

Count 4: 18 VAC 50-22-260(B)(5) (Effective September 1, 2001)

Dikun's failure to make corrections and obtain an approved inspection before installing the drywall constitutes negligence and/or incompetence in the practice of contracting in violation of Board Regulation 18 VAC 50-22-260(B)(5). Therefore, I recommend a monetary penalty of $2,000.00 and license revocation be imposed.

Count 5: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Dikun's failure to complete the work contracted for 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 6: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Dikun's failure to return money received for work not performed or performed only in part is a violation of Board Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of $2,000.00 and license revocation be imposed.

Count 7: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Dikun's failure to comply with the terms in the contract is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of $1,000.00 be imposed.

Count 8: 18 VAC 50-22-260(B)(13) (Effective January 1, 2003)

Dikun'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 $2,000.00 and license revocation be imposed.

By:

_____

Kenneth W. Hart
Presiding IFF Board Member
Board for Contractors
Date: October 21, 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 059267 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: MARK DIKUN
T/A COMMONWEALTH CONSTRUCTION COMPANY
LICENSE NUMBER 2705 059267

FILE NUMBER: 2003-01660

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Mark Dikun, t/a Commonwealth Construction Company (Dikun) on September 24, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Kenneth W. Hart, Presiding Board Member. Neither Dikun, nor anyone on his behalf, appeared at the IFF.

Background

On December 10, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Glenn L. Clayton II (Clayton), attorney representing Thomas and Cheryl Kerr (the Kerrs), regarding a contract entered into with Mark Dikun, t/a Commonwealth Construction Company (Dikun).

On March 1, 2002, the Kerrs entered into a contract with Dikun, in the amount of $2,425.00, to repair the roof and install gutters at the Kerrs' residence at 5348 Black Oak Drive, Fairfax, Virginia.

Summation of Facts

1. The contract used by Dikun failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (f) disclosure of the cancellation rights of the parties and (h) contractor's license expiration date, class of license, and specialty service.

2. On March 1, 2002, the Kerrs paid Dikun $1,212.50 by check, as a deposit. As of March 7, 2003, Dikun failed to perform any work or deliver any materials.

3. On July 26, 2002, Clayton sent a letter to Dikun demanding Dikun return the $1,212.50 deposit to the Kerrs by August 5, 2002 for failing to perform the work.

4. As of March 20, 2003, Dikun failed to return the Kerrs' deposit.

5. On April 29, 2003, in the Fairfax County General District Court, the Kerrs were awarded a $1,210.50 judgment against Dikun for nonperformance on the March 1, 2002, contract. As of September 24, 2003, Dikun failed to satisfy the judgment.

Conclusion and Recommendation

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

Dikun's failure to make use of a legible written contract which contains all provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of $1,500.00 be imposed.

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

Dikun's failure to complete work contracted for 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 3: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Dikun's failure to return the Kerr's deposit for work not performed is a violation of Board Regulation 18 VAC 50-22-260(B)(16). I recommend a monetary penalty of $2,000.00 and license revocation be imposed.

Count 4: 18 VAC 50-22-260(B)(28) (Effective January 1, 2003)

Dikun's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260(B)(28). I recommend a monetary penalty of $2,000.00 and license revocation be imposed.

By:

_____

Kenneth W. Hart
Presiding IFF Board Member
Board for Contractors
Date: October 21, 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 059267 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: **WILLIAM B. ROBERTSON**
LICENSE NUMBER 2701 023209

FILE NUMBER: 2003-00222

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to William B. Robertson (Robertson) on September 24, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Kenneth W. Hart, Presiding Board Member. Neither Robertson, nor anyone on his behalf, appeared at the IFF.

Background

On July 18, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Lonnie Weaver (Weaver) regarding a contract entered into with William B. Robertson (Robertson).

On September 6, 2001, Weaver received a written contract from Robertson, in the amount of $26,700.00, for the addition of a garage and sunroom at 1123 Jamestown Road, Rocky Mount, Virginia.

In September 2001, Robertson commenced work. Weaver did not sign the agreement until November 8, 2001. On April 25, 2002, Robertson left the job without completing the project.

On August 7, 2002, an agreement between Weaver and Robertson was drafted for the completion of the addition. The agreement was not signed by either party.

Summation of Facts

1. The contract used by Robertson for this transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (e) a statement of assurance that the contractor will comply with all requirements for building permits, inspections and zoning, (h) the expiration date of the contractor's license, class of license and 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.

2. The contract specified "Approximate Starting Date 9-10-01" and "Approximate Completion Date 10-30-01." As of March 13, 2003, Robertson failed to compete the work contracted for.

3. Weaver paid Robertson in excess of $36,000.00. The additional costs were for additional construction, and labor charges.

4. Robertson failed to execute written change orders for these modifications to the original contract.

5. On or about October 15, 2002, Robertson left the job site and failed to return to complete the following items: finish grading, waterproofing the building, and obtaining a certificate of occupancy as required by the contract.

6. Between October 28, 2002 and November 18, 2002, Weaver made several attempts to contact Robertson to request Robertson complete the work. Robertson failed to respond to Weaver.

7. As of March 13, 2003, Robertson failed to complete the work contracted for and failed to return money received for work not performed or performed only in part.

8. On January 29, 2003, Investigator Dale C. Amos, the Board's agent, sent a written request, via certified mail, to Robertson at the address of record of 50 Mountainview Avenue, Rocky Mount, Virginia 24151, requesting a written response and supporting documents regarding the complaint filed with the Board. The Board's agent requested a response be received by February 10, 2003. On February 14, 2003, the certified letter was returned to the Board's agent by the Untied States Postal Service and was marked "unclaimed."

Conclusion and Recommendation

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

Robertson's failure to make use of a legible written contract that contains all provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of $800.00 be imposed.

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

Robertson's failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, is a violation of Board Regulation 18 VAC 50-22-260(B)(31). Therefore, I recommend a monetary penalty of $250.00 be imposed. The agreement, which was drafted, contained clear and concise information but was signed by neither party.

Count 3: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Robertson's failure to complete work contracted for 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 4: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Robertson's failure to return money received for work not performed or performed only in part is a violation of Board Regulation 18 VAC 50-22-260(B)(16). I recommend a monetary penalty of $2,500.00 and license revocation be imposed. Robertson was paid in advance, even though he was not entitled, therefore, there was a definite retention of funds on this cost plus contract.

Count 5: 18 VAC 50-22-260(B)(13) (Effective January 1, 2003)

Robertson'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). I recommend a monetary penalty of $2,000.00 be imposed.

By:

_____

Kenneth W. Hart
Presiding IFF Board Member
Board for Contractors
Date: October 21, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2701 023209 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

In Re:

George Little, t/a George Little

Beaverdam, VA 23015

File Number 2002-03619
License Number 2705059126

CONSENT ORDER

Respondent George Little, t/a George Little ("George Little") was at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705059126).

As a result of this status, George Little recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated. These matters were considered on October 21, 2003 in an Informal Fact Finding Conference ("IFF") pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended. This IFF was held in Richmond, Virginia and was attended by George Little, Respondent, and his attorney Sarah P. Campbell, Esquire. Additionally, Charles and Brenda McGehee, Complainants, attended. Board Member Kenneth W. Hart presided at the IFF.

The Board's duly designated representative has found sufficient evidence to believe that:

Background

On or about June 15, 2001, Brenda McGehee (McGehee) entered into a contract with George Little (Little), in the amount of $4,850.00, to tear down and rebuild rear brick steps; install an elliptical brick patio in the backyard; install a new brick walkway from the new elliptical patio and tie it into an existing brick walkway underneath an existing breezeway; and install downspout drainage and foundation drainage pipe through brickwork to rip-rap on McGehee's property at 4206 Oxford Circle East, Richmond, Virginia.

On or about July 5, 2001, McGehee and Little executed a change order for an increase in the size of the elliptical brick patio by 151 square feet. The change order resulted in an additional cost of $2,100.00. On or about August 3, 2001, McGehee and Little executed a second change order for a material change from using new brick for the new brick walkway to using old reclaimed brick for the new brick walkway. The second change order resulted in an additional cost of $458.00, for a total contract price of $7,408.00. The August 3, 2001, change order also specified that [the color of the] mortar [installed on the new reclaimed brick walkway] to match [the existing mortar on the existing brick breezeway].

On or about April 10, 2002, McGehee entered into a verbal agreement with Little to repoint (reset a few loose bricks and re-spread mortar over them) a few of the bricks on the front steps of the subject property. On April 12, 2002, McGehee paid Little $235.00 for this additional work.

Summation of Facts

1. The contract used by Little in the transaction failed to contain a minimum provision required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsection (a) when the work is to begin and the estimated completion date.

2. On or about April 10, 2002, Little started the repointing work. On or about April 11, 2002, Little completed the work. Little failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed prior to commencement of the repointing work.

The Board and George Little, as evidenced by the signatures affixed below, enter into this Consent Order. George Little knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

Further, by signing this Consent Order, George Little acknowledges an understanding of the charges. George Little hereby admits to the violation(s) of the Board's Regulations and consents to the following term(s) by the Board:

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

Little's failure to make use of a legible written contract that contained a provision specified in the regulation regarding the contract entered into on June 15, 2001, is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of $100.00 be imposed.

The Board waives the imposition of the $100 monetary penalty for Count I provided Little successfully completes remedial education by attending the Board's Basic Contracting License class and passing the examination. If Little fails to successfully complete remedial education within six months of the effective date of this order, then the monetary penalty will be automatically imposed.

Count 2: 18 VAC 50-22-260(B)(8) (Effective September 1, 2001)

Little's failure to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed regarding the verbal agreement entered into on April 10, 2002, is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of $100.00 be imposed.

The Board waives the imposition of the $100 monetary penalty for Count 2 provided Little successfully completes remedial education by attending the Board's Basic Contracting License class and passing the examination. If Little fails to successfully complete remedial education within six months of the effective date of this order, then the monetary penalty will be automatically imposed.

The above monetary penalties, costs or sanctions are to be paid/performed within thirty days of the effective date of this consent order. George Little acknowledges the monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, George Little will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

George Little acknowledges that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of George Little's license until such time as there is compliance with all terms of this Order. George Little understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

_____ _____
George Little Date
t/a George Little

_____
Printed Name and Title of Person Signing on behalf of Entity

REVIEWED AND APPROVED:

_____ _____
Sarah P. Campbell, Esquire Date

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____, 2003.

_____
Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2003.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

COPY TESTE:

_____

Custodian of the Records

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: CHARLES MARTIN ARNOLD
T/A CMA CONTRACTORS
LICENSE NUMBER 2705 060717

FILE NUMBER: 2002-00591

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Charles Martin Arnold, t/a CMA Contractors (Arnold) on September 17, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Kenneth W. Hart, Presiding Board Member. Neither Arnold, nor anyone on his behalf, appeared at the IFF.

Summation of Facts

1. On or about May 14, 2001, Dorothy Austin (Austin) entered into a contract with Charles Martin Arnold (Arnold), t/a CMA Contractors, in the amount of $17,050.00, to build a 16' x 40' addition to the Love, Faith, Deliverance, Holiness Church at 20530 Bayside Road, Greenbush, Virginia.

2. The contract used by Arnold in the transaction failed to 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, (d) a plain language exculpatory clause, (f) disclosure of cancellation rights, (h) contractor's 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.

3. On or about May 18, 2001, Austin paid Arnold $8,745.00 as a down payment.

4. On or about August 8, 2001, Arnold commenced work by removing the roof from part of the church.

5. On or about August 18, 2001, Arnold left the job site without completing the work as contracted.

6. In a letter dated August 8, 2001, David A. Fluhart (Fluhart), Director of County of Accomack Department of Building, Planning and Zoning, advised Austin that the checks submitted by Arnold for the cost of the permit were returned for insufficient funds.

7. Liens were put on the church because Arnold wrote bad checks for the project.

8. As of August 27, 2001, Arnold failed to complete: framing, exterior sheathing, roofing, siding, interior drywall, trim and windows installation. Arnold failed to return any of the $8,745.00 paid by Austin.

Conclusion and Recommendation

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

Arnold's failure to make use of a legible written contract that contains all provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of $900.00 be imposed.

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

Arnold's failure to complete work contracted for is in violation of the abandonment provision of Board Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of $2,000.00 and license revocation be imposed.

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

Arnold's failure to return any of the $8,745.00 paid for which work was not performed constitutes misapplication of funds in violation of Board Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of $2,000.00 and license revocation be imposed.

By:

_____

Kenneth W. Hart
Presiding IFF Board Member
Board for Contractors
Date: October 21, 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 060717 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: **MARY ANN ULRICH**
T/A COMFORT HOME IMPROVEMENTS
LICENSE NUMBER 2705 051567

FILE NUMBER: 2003-01055

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Mary Ann Ulrich, t/a Comfort Home Improvements (Ulrich) on September 22, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Kenneth W. Hart, presiding Board Member. Neither Ulrich, nor anyone on her behalf, appeared at the IFF.

Background

On October 8, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Stephen P. Borders (Borders), Greene County Building Official, regarding a contract between Kathleen P. Lambert (Lambert) and Comfort Home Improvements, Inc.

On October 10, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Lambert regarding a contract entered into with Comfort Home Improvements, Inc.

On or about May 29, 2002, Lambert entered into a contract with "Comfort Home Improvements, Inc.," in the amount of $15,150.50, to remodel the basement of her house at 752 W. Daffodil Road, Ruckersville, Virginia.

On or about January 24, 2003, a review of the licensing records of the Board for Contractors revealed Mary Ann Ulrich, t/a Comfort Home Improvements, was issued Class C Contractor's license number 2705051567 on July 22, 1999, as a sole proprietor.

Summation of Facts

1. Ulrich failed to operate in the name in which the license was issued.

2. The contract used by Ulrich in the transaction failed to contain the minimum provisions 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 expiration date and 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.

3. Ulrich 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.

4. On May 29, 2002, Lambert paid Ulrich $4,797.66 by check.

5. On or about July 8, 2002, Ulrich began the renovations.

6. On July 20, 2002, Lambert paid Ulrich $2,398.83 by check. On July 22, 2002, Lambert paid Ulrich $2,398.83 by check. On August 14, 2002, Lambert paid Ulrich $2,398.83 by check.

7. On or about August 31, 2002, Ulrich ceased work on the job. Ulrich failed to install the partitions, tub, shower, plumbing fixtures, kitchen and bathroom cabinets and counter tops, toilet, kitchen and bathroom sinks, light fixtures, doors, window and door trim, two smoke detectors, closet mirrored doors and shelving, glass blocks in the bathroom wall, stair banister, shoe molding, ceiling vents, switch plates, and failed to complete the electrical, plumbing, and duct work.

8. On or about September 15, 2002, Lambert sent Ulrich a certified letter regarding the completion of the renovations. The certified letter was returned "unclaimed."

9. As of January 24, 2003, Ulrich failed to complete the work under the contract or return money received for work not performed or performed only in part.

10. In a letter dated September 23, 2002, Stephen P. Borders (Borders), Greene County Building Official, notified Ulrich of the following Code Violations, in violation of Section 120.1.2 of the USBC, Notice of Unsafe Structure, at the subject property:

- failure to replace guardrail on the basement steps,
- the porcelain lamp holders are above the drop ceiling, and
- the necessary ventilation ducts are still enclosed above the ceiling.

11. In a letter dated October 9, 2002, Borders stated the subject house was in violation of the following sections of the Virginia Uniform Statewide Building Code:

- CABO 315.3, guardrail details,
- CABO 316.1, smoke detectors above basement ceiling, and
- CABO 1401.1, installation of heating and cooling equipment.

12. As of January 24, 2003, Ulrich failed to respond to these letters or to correct the Code Violations.

13. On November 5, 2002, Investigator Carolyn Wright, the Board's agent, called (434) 973-1415, the number for Ulrich shown on the subject contract. The Board's agent received a message that the number was changed to (540) 942-4211.

14. The Board's agent called (540) 942-4211 and heard the following recording" "You have reached Comfort Home Improvements." The Board's agent left a message requesting a response to the subject complaint. On November 15, 2002, the Board's agent left another message requesting a response to the subject complaint. As of January 24, 2003, the Board's agent did not receive a response from Ulrich.

15. On November 21, 2002, the Board's agent visited 3675 Dobleann Drive, Charlottesville, Virginia, the address of record for Comfort. The Board's agent observed that no one was there and the door was padlocked. Charles Mott (Mott), the real estate agent next door, told the Board's agent that Comfort had moved out. On November 25, 2002, Charlie Pietsch, Comfort's landlord, told the Board's agent that Comfort "disappeared" in October 2002.

16. On December 4, 2002, the Board's agent mailed a certified letter to Ulrich at 250 E. Redwood Lodge Lane, #4, Waynesboro, Virginia. On December 30, 2002, the certified letter was returned by the post office, which was marked "Unclaimed". On January 24, 2003, Susan Triber, Supervisor at the Waynesboro, Virginia post office, stated that the subject address was a legitimate address.

Conclusion and Recommendation

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

Ulrich's failure to operate in the name in which the license is issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of $500.00 be imposed.

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

Ulrich's failure to make use of a legible written contract that contains all provisions specified in the regulation is a violation Board Regulation18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of $800.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Ulrich'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 $1,500.00 and license revocation be imposed.

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

Ulrich's failure to complete the work contracted for is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of $2,000.00 and license revocation be imposed.

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

Ulrich's failure to return money received for work not performed or performed only in part is a violation of Board Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

Count 6: 18 VAC 50-22-260(B)(25) (Effective September 1, 2001)

Ulrich's failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended, is a violation of Board Regulation 18 VAC 50-22-260(B)(25). Therefore, I recommend a monetary penalty of $2,000.00 be imposed.

Count 7: 18 VAC 50-22-260(B)(13) (Effective September 1, 2001)

Ulrich'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 $2,500.00 and license revocation be imposed.

By:

_____

Kenneth W. Hart
Presiding IFF Board Member
Board for Contractors
Date: October 21, 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 051567 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: MARY ANN ULRICH
T/A COMFORT HOME IMPROVEMENTS
LICENSE NUMBER 2705 051567

FILE NUMBER: 2003-01906

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Mary Ann Ulrich, t/a Comfort Home Improvements (Ulrich) on September 22, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Kenneth W. Hart, Presiding Board Member. Neither Ulrich, nor anyone on her behalf, appeared at the IFF.

Background

On January 10, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Robert J. Lindsey (Lindsey) regarding a contract entered into with Comfort Home Improvements Inc.

On August 17, 2002, Lindsey entered into a contract with "Comfort Home Improvements Inc.," in the amount of $19,006.35 for a basement renovation at Lindsey's residence at 1053 Somerychase Court, Charlottesville, Virginia 22911. Mary Ann Ulrich signed the contract for Comfort Home Improvements. The contract indicated license number 2705051567.

As of November 1, 2002, Lindsey paid Comfort Home Improvements Inc. a total of $19,838.21.

On January 10, 2003, a review of the licensing records of the Board for Contractors revealed Mary Ann Ulrich, t/a Comfort Home Improvements, was issued Class C Contractor's license number 2705051567 on July 22,1999, as a sole proprietorship.

Summation of Facts

1. Ulrich failed to operate in the name in which the license was issued.

2. The contract used by Ulrich in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (d) a "plain language" exculpatory clause, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, (h) the contractor's license expiration date, 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.

3. Ulrich 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.

4. The contract specified framing, insulation, drywall, electrical, plumbing, mechanical, flooring, and painting as part of the renovation work.

5. The contract specified "Comfort shall obtain and pay for permits, as noted, for the execution of the work. This contract is subject to issuance of such permits and other required approvals by local building inspectors based on the contract."

6. Between August 17, 2002 and October 25, 2002, Ulrich performed the renovation work on Lindsey's unfinished basement, including installation of a bathroom.

7. On January 7, 2003, Lindsey obtained plumbing permit number P03-35AR from the Albemarle County Building Inspections Department.

8. On January 9, 2003, Lindsey obtained building permit number 2003-22AR from the Albemarle County Building Inspections Department.

9. On January 10, 2003, a review of the licensing records of the Board for Contractors revealed Ulrich was issued C Contractor's license number 2705051567, with the home improvement contracting ("HIC") specialty.

10. Ulrich failed to obtain a permit prior to commencement of work, in violation of Section 109.1 of the Virginia Uniform Statewide Building Code.

11, The contract specified "Cut off one sprinkler line located in closet and rotate the remaining sprinklers in basement." Ulrich provided an allowance of $510.00 for the sprinkler work.

12. On October 25, 2002, Ulrich left the project without completing the sprinkler work.

13. In March 2003, Lindsey hired Piedmont Sprinkler Company, in the amount of $786.00, to complete the sprinkler work.

Conclusion and Recommendation

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

Ulrich's failure to operate in the name in which the license is issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend a monetary penalty of $500.00 be imposed.

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

Ulrich's failure to make use of a legible written contract that contains all provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of $600.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Ulrich's actions of practicing in a 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 $800.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Ulrich's actions of practicing in a specialty service 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 and license revocation be imposed.

Count 5: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Ulrich's failure to obtain a permit prior to commencement of work, in violation of Section 109.1 of the Virginia Uniform Statewide Building Code is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $2,000.00 be imposed.

Count 6: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Ulrich's failure to complete work contracted for 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.

By:

_____

Kenneth W. Hart
Presiding IFF Board Member
Board for Contractors
Date: October 21, 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 051567 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: Kenneth W. Hart

2. Title: Member

3. Agency: Board for Contractors

4. Transaction: Informal Fact-Finding Conferences on October 21, 2003

5. Nature of Personal Interest Affected by Transaction: _____

_____

6. I declare that:

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

_____

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

Kenneth W. Hart — Signature

Oct 21, 2003 — Date