

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
June 29, 2004 (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 Redifer, Board member, presided. No other Board members were present.

Jeffrey W. Buckley appeared for the Department of Professional and Occupational Regulation.

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

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

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

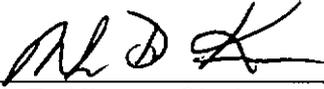
Participants

- | | |
|--|---------------------------------------|
| 1. David & Wendy Ward and
Tol-Mel Inc.
t/a Oasis Pools
File Number 2004-04155 (RF) | David Ward – C |
| 2. David & Donna Dudman and
James L. Phillips
t/a A J James
File Number 2004-04268 (RF) | David Dudman – C
Donna Dudman – C |
| 3. Fred & Brenda Smiley and
Sunrooms by Steppe
File Number 2003-01575 (RF) | Fred Smiley – C
Brenda Smiley -- C |
| 4. Ricky Walton
t/a Walton's Building Contractor
File Number 2004-01548 (Disc) | None |
| 5. Ricky Walton
t/a Walton's Building Contractor
File Number 2003-03255 (Disc) | None |

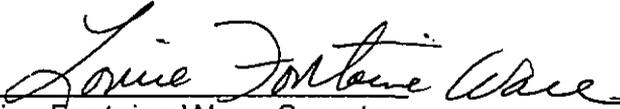
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| 6. Khristi Miller and
Donald C. Cool
t/a Quality Home Improvement
File Number 2004-04175 (RF) | Khristi Miller – C
David Rowan – C Atty |
| 7. Susan Carole Riggs
t/a Windows Unlimited & Custom Remodeling
File Number 2004-01028 (Disc) | None |
| 8. Susan Carole Riggs
t/a Windows Unlimited & Custom Remodeling
File Number 2004-02812 (Disc) | None |
| 9. James & Michele Wedge and
Vincent P. Davis
t/a Designs by Davis
File Number 2004-03275 (RF) | James Wedge – C |

The meeting adjourned at 2:15 p.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of David & Wendy Ward (Claimants) and To-Mel, Inc. t/a Oasis Pools
(Regulant)

LICENSE NUMBER: 2705 009867

FILE NUMBER: 2004-04155

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to David and Wendy Ward and to Tom Vambell of To-Mel Inc., t/a Oasis Pools, on June 2, 2004. The following individuals participated at the conference: Jeffrey Buckley, Staff Member; and Michael D. Redifer, presiding Board Member. No one on behalf of To-Mel, Inc., t/a Oasis Pools, attended the IFF.

Background

On October 1, 2002, in the Chesapeake General District Court, David & Wendy Ward obtained a Judgment against To-Mel, Incorporated t/a Oasis Pools, in the amount of \$6,190.81, plus interest and \$24.00 costs.

The claim in the amount of \$6,274.81 was received by the Department of Professional and Occupational Regulation on March 31, 2003.

Summation of Facts

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

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

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

The claimants did contract with the regulant.

The Board issued Class B License Number 2705009867 to To-Mel, Inc., t/a Oasis Pools, on April 8, 1992. The license was permanently revoked on July 18, 2002. The claimants entered into a written contract with Oasis Pools on April 8, 2002 for the construction of a pool at the claimants' residence.

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

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

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

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

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

A Judgment was entered on October 1, 2002. The claim was received on March 31, 2003.

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

The claimants entered into a written contract with Oasis Pools for the construction of a pool at the claimants' residence.

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

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

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

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

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

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

In the Affidavit of Facts dated March 27, 2003, the claimants assert that the regulant did not complete the project. The regulant received funds from the claimants and did not purchase materials or pay the electrician. The claimant incurred additional expenses materials and labor in completing the pool.

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

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

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

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record and the information presented at the IFF, it is recommended that the claim be approved for payment in the amount of \$6,274.81. The regulant did not complete the project. The regulant received funds from the claimants and did not purchase materials or pay the electrician. It is noted that § 54.1-1120(A) requires a final judgment...for improper or dishonest conduct as defined in the act. Section 54.1-1118 defines improper or dishonest conduct to include only the wrongful and fraudulent taking or conversion of money, property or other things of value or material misrepresentation or deceit.

By: _____

**Michael D. Redifer
Presiding Board Member
Board for Contractors**

Date: _____

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

BOARD FOR CONTRACTORS

IN RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of David & Donna Dudman (Claimants) and James L. Phillips t/a A J James (Regulant)

LICENSE NUMBER: 2705 048436

FILE NUMBER: 2004-04268

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to David and Donna Dudman and to James L. Phillips, t/a A J James, on June 2, 2004. The following individuals participated at the conference: David and Donna Dudman, Claimants; Jeffrey Buckley, Staff Member; and Michael D. Redifer, presiding Board Member. Neither James L. Phillips, nor anyone on behalf of A J James, attended the IFF.

Background

On September 10, 2002, in the Circuit Court of the County of Louisa, David Dudman and Donna Dudman obtained a Judgment against James L. Phillips t/a Blue Heron Homes the amount of \$41,410.87, plus interest and costs.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on March 28, 2003.

Summation of Facts

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

The Judgment recites "Improper and Dishonest Conduct" as the basis of the award.

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

The claimants did contract with the regulant.

The Board issued Class A License Number 2705048436 to James L. Phillips, t/a A J James on April 2, 1999. The license will expire on April 30, 2005. The claimants entered into a contract with A.J. James/Blue Heron Homes for the construction of a house.

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

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

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

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

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

A Judgment was entered on September 10, 2002. The claim was received on March 28, 2003.

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

The claimants entered a contract with A. J. James/Blue Heron Homes for the construction of a house.

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

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

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

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

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

The Judgment recites "Improper and Dishonest Conduct" as the basis of the award.

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

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

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

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record and the information presented at the IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The Judgment recites "Improper and Dishonest Conduct" as the basis of the award.

It is noted that § 54.1-1120(A) requires a final judgment...for improper or dishonest conduct as defined in the act. Section 54.1-1118 defines improper or dishonest conduct to include only the wrongful and fraudulent taking or conversion of money, property or other things of value or material misrepresentation or deceit.

By: _____

**Michael D. Redifer
Presiding Board Member
Board for Contractors**

Date: _____

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

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Fred and Brenda Smiley (Claimants) and Sunrooms By Steppe LLC
t/a Sunrooms By Steppe LLC (Regulant)**

LICENSE NUMBER: 2705 056513

FILE NUMBER: 2003-01575

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Fred and Brenda Smiley and to Mary J. Steppe of Sunrooms By Steppe on June 2, 2004. The following individuals participated at the conference: Fred and Brenda Smiley, Claimants; Jeffrey Buckley, Staff Member; and Michael D. Redifer, presiding Board Member. No one on behalf of Sunrooms by Steppe, t/a Sunrooms by Steppe, LLC attended the IFF.

Background

On **December 19, 2001**, in the United States Bankruptcy Court, Western District of Virginia, Sunrooms By Mary Jane, Inc., fka Sunrooms By Steppe LLC, filed a Chapter 7 Petition.

The **claim** in the amount of **\$12,229.12** was received by the Department of Professional and Occupational Regulation on **October 15, 2002**.

Summation of Facts

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

Sunrooms By Mary Jane, Inc., fka Sunrooms By Steppe LLC, filed for bankruptcy protection, therefore judgment was not obtained.

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

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

The Board issued Class A License Number 2705056513 to Sunrooms By Steppe t/a Sunrooms By Steppe on **July 10, 2000**. The license was permanently revoked on **September 30, 2002**. The claimants entered into a written contract with Sunrooms By Steppe on **September 25, 2001** for the construction of a sunroom on claimants' residence. Mary Jane Steppe signed the contract. The application for license (2705-056513) has on page 2 of 7 the block designated for "Limited Liability Company" marked for the type of license. The Board for Contractors' licensing record has M. Steppe as the Responsible Management and Qualified Individual for Sunrooms By Steppe, which has the firm as a corporation instead of LLC. Verification was made State Corporation Commission that Sunrooms By Steppe was an LLC.

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

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

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

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

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

The claim was received on **October 15, 2002**. Judgment was not obtained due to regulant filing bankruptcy.

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

The claimants entered into a written contract with Sunrooms By Steppe for the construction of a sunroom on claimants' residence.

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

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

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

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

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

Judgment was not obtained.

In the Affidavit of Facts dated **December 16, 2002**, the claimants assert the regulant received funds in the amount \$9,400.00 from the claimants to be applied toward the construction of a sunroom. The regulant never returned to complete the project and did not return the claimants' money.

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

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

A Proof of Claim was filed with the bankruptcy court.

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

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record and the information presented at the IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00 which includes the \$9,400.00 amount of the Proof of Claim, less the \$100.00 reimbursed by the regulant to the claimants, plus \$700.00 for legal fees. The regulant received funds in the amount \$9,400.00 from the claimants to be applied toward the construction of a sunroom. The regulant never returned to complete the project and did not return the claimants' money. The payment of the claim is based on the retention of funds and abandonment, which falls within the definition of improper and dishonest conduct, per §54.1-1118 of the Code of Virginia.

By: _____

**Michael D. Redifer
Presiding Board Member
Board for Contractors**

Date: _____

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

BOARD FOR CONTRACTORS

**RE: RICKY WALTON
T/A WALTON'S BUILDING CONTRACTOR
LICENSE NUMBER: 2705 035370**

FILE NUMBER: 2004-01548

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 29, 2004 at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Ricky Walton, t/a Walton's Building Contractor, on April 15, 2004. The following individuals participated at the conference: Jeffrey Buckley, Staff Member; and Michael D. Redifer, presiding Board Member. Neither Ricky Walton, nor anyone on behalf of Walton's Building Contractor, attended the IFF.

Background

On June 17, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received information during the investigation of File Number 2003-03255 regarding work performed by Ricky Walton (Walton), t/a Walton's Building Contractor.

On May 6, 2002, Ron Geiger Builder, Inc. hired Walton as a subcontractor, in the amount of \$60,000.00, to perform framing and finish carpenter work at 4641 Yellow Mountain Road, Roanoke County, Virginia.

Summation of Facts

On May 27, 2003, a review of the licensing records of the Board for Contractors revealed Walton was issued Class C Contractor's license number 2705035370 on August 21, 1996.

In a written response dated June 17, 2003, Walton stated "I recently built a million dollar home for Dr. Herron here in Garden City . . ."

In a written response dated March 4, 2004, Walton stated "Each job was performed individually, and I was paid weekly. I didn't at any time received more than the limit of \$7,500.00 at one time. The letter from me you refer, the complete home would total around a million dollars . . ."

Conclusion and Recommendation

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

Walton's action of practicing in a classification, specialty service or class of license for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend that a monetary penalty of \$350.00 be imposed.

By:

Michael D. Redifer
Presiding Board Member
Board for Contractors
Date: _____

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 035370 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

**RE: RICKY WALTON
T/A WALTON'S BUILDING CONTRACTOR
LICENSE NUMBER: 2705035370**

FILE NUMBER: 2003-03255

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on March 16, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Ricky Walton, t/a Walton's Building Contractor, on December 16, 2003. The following individuals participated at the conference on March 16, 2004: David and Patricia Lesniak, Complainants; Jennifer Kazzie, Staff Member; and Michael D. Redifer, presiding Board Member.

By letter dated March 30, 2004, Walton was notified that the IFF would re-convene on June 29, 2004. The following individuals participated in the conference on June 29, 2004: Jeffrey Buckley, Staff Member; and Michael D. Redifer, Presiding Board Member. Neither Ricky Walton, nor anyone on behalf of Walton's Building Contractor, attended the June 29, 2004 IFF.

Background

On May 27, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from David Lesniak (Lesniak) regarding a contract entered into with Ricky Walton (Walton), t/a Walton's Building Contractor.

On August 20, 2002, Lesniak received a hand-written estimate from Walton, in the amount of \$34,000.00, to perform dry-in, deck, and interior trim work at 416 Lookout Ridge Lane, Copper Hill, Virginia. On December 20, 2002, Lesniak accepted the estimate and signed the hand-written contract.

In March 2003, Walton commenced work.

On April 2, 2003, Lesniak received a typed contract from Walton for the work being performed. Lesniak signed the typed contract.

Summation of Facts

1. The contract used by Walton in the transaction failed to contain: (a) when the work is to begin and the estimated completion date, (b) statement of the schedule for progress payments, (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 class of license, and classifications 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.
2. On May 27, 2003, a review of the licensing records of the Board for Contractors revealed Walton was issued Class C Contractor's license number 2705035370 on August 21, 1996.
3. Walton 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. During the construction, Lesniak observed several problems with the work performed by Walton, including a weight-bearing wall beam that was installed 4" off. Lesniak brought these problems to the attention of Walton.
5. On May 10, 2003, New Century Builders inspected the work performed by Walton. New Century Builders made the following observations:
 - a. The supporting beam for 1st floor was 6" off center and had to be corrected by adding 4 2x10 to the existing beam
 - b. Found a supporting member with the 1st 2 1/2" notched out
 - c. Move wall at stair case. 2" off center
 - d. We put a headed where needed to be to support 2nd floor trusses
 - e. Floor joist were not butted together 5/8" space
 - f. Need to finish sheathing floor on 2nd floor
 - g. Truss hangers not done correctly. No nails
 - h. 1 truss supporting 2nd level was too short and was headed off with double 2x6, so actually floating in the air.

New Century Builders noted the work done at the subject property was 24% completed. New Century Builders further noted "After carefully checking walls, they were 3/4" out of plumb, because of this the second floor, floor trusses when butted together had a 5/8" gap at the bottom, and where not butted completely together at the top, (1/4") also several window rough openings will have to be changed, because the R.O. height is 1 1/2" to short. Upper floor has a

dip in it some of the cause is the trusses not joining, and the other the lower floor is not level. The plywood is being damaged due to the roof system and upper floor walls not being completed. There are no windows or doors installed or stair case built." (sic)

6. On December 20, 2002, Lesniak paid Walton \$3,000.00 by check, as a deposit. On March 28, 2003, Lesniak paid Walton \$7,500.00 by check. On April 25, 2003, Lesniak paid Walton \$2,000.00 by check. On April 28, 2003, Lesniak paid Walton \$2,000.00 by check.

7. On May 1, 2003, Lesniak terminated Walton and requested Walton return to remove his equipment from the subject property.

8. On May 10, 2003, New Century Builders inspected the work performed by Walton and noted the work done at the subject property was 24% completed. On May 10, 2003, Lesniak received an estimate from New Century Builders, in the amount of \$13,425.00, to repair and complete the work at the subject property.

9. Between July 30, 2003 and September 2, 2003, Lesniak hired Marlen Davis (Davis), t/a Marlen Davis Building Contractor, to repair work performed by Walton. On September 2, 2003, Lesniak received an estimate from Davis, in the amount of \$10,296.00 for labor, to repair work performed by Walton at the subject property. Lesniak paid Davis \$10,296.00.

Conclusion and Recommendation

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

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

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

Walton's failure to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license is a violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend that a monetary penalty of \$350.00 be imposed.

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

Walton's action of performing work which contains deficiencies as outlined in the inspection report by New Century Builders is a violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Walton's failure to return funds paid, for which work is either not performed or performed only in part, is a violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend that a monetary penalty of \$2,500.00 be imposed along with revocation of Walton's license number 2705 035370.

By:

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors
Date: _____

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 035370 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Khristi Miller (Claimant) and Donald C. Cool t/a Quality Home
Improvement (Regulant)**

LICENSE NUMBER: 2705 057815

FILE NUMBER: 2004-04175

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Khristi Miller and to Donald C. Cool, t/a Quality Home Improvement, on May 25, 2004. The following individuals participated at the conference: Khristi Miller, Claimant; David Rowan, attorney for Claimant; Jeffrey Buckley, Staff Member; and Michael D. Redifer, presiding Board Member. Neither Donald C. Cool, nor anyone on behalf of Quality Home Improvement, attended the IFF.

Background

On September 18, 2002, in the Accomack County General District Court, Khristi Miller obtained a Judgment against Don Cool, in the amount of \$12,638.72, plus interest and \$12.00 costs.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on April 3, 2003.

Summation of Facts

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

The Warrant in Debt recites "Construction Contract (Repairs necessary to complete job)" as the basis for the suit.

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

The claimant did contract with the regulant.

The Board issued Class C License Number 2705057815 to Donald C. Cool t/a Quality Home Improvement, on August 2, 2000. The license was permanently revoked on October 10, 2002. The claimant entered into a verbal contract with Don Cool on or about October 10, 2001 for a room addition onto the claimant's house. The contract also included the destruction of an existing garage and construction of a new garage and shed at the claimant's residence.

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

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

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

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

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

A Judgment was entered on September 18, 2002. The claim was received on April 3, 2003.

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

The claimant entered into a verbal contract with Don Cool for room addition onto the claimant's house. The contract also included the destruction of an existing garage and construction of a new garage and shed at the claimant's residence.

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

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

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

Debtor's interrogatories were conducted. The assets revealed were a 1983 S-10 pickup truck and approximately \$400.00 to \$500.00 worth of power tools.

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

The Warrant in Debt recites "Construction Contract (Repairs necessary to complete job)" as the basis for the suit.

The Bill Of Particulars on Cross Bill recite substandard construction, poor and unacceptable workmanship and breach of contract as the basis for the suit.

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

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

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

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record and the information presented at the IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The Bill Of Particulars on the Cross Bill recite substandard construction, poor and unacceptable workmanship, and breach of contract as the basis for the suit, all of which fall within the definition of improper and dishonest conduct, per § 54.1-1118 of the Code of Virginia.

It is noted that § 54.1-1120(A) requires a final judgment....for improper or dishonest conduct as defined in the act. Section 54.1-1118 defines improper or dishonest conduct to include only the wrongful and fraudulent taking or conversion of money, property or other things of value or material misrepresentation or deceit.

By: _____

Michael D. Redifer
Presiding Board Member
Board for Contractors

Date: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: SUSAN CAROLE RIGGS
T/A WINDOWS UNLIMITED & CUSTOM REMODELING
LICENSE NUMBER: 2705 053473

FILE NUMBER: 2004-01028

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on May 5, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Susan Carole Riggs, t/a Windows Unlimited & Custom Remodeling, on March 10, 2004. The following individuals participated at the conference: Nikki Harris, Complainant; Jeffrey Buckley, Staff Member; and Michael Redifer, presiding Board Member. Neither Susan Carole Riggs, nor anyone on behalf of Windows Unlimited & Custom Remodeling attended the May 5, 2004 IFF.

By letter dated May 18, 2004, Susan Carole Riggs, t/a Windows Unlimited & Custom Remodeling was notified that the IFF would reconvene on June 29, 2004. The following individuals participated at the June 29, 2004, conference: Jeffrey Buckley, Staff Member; and Michael D. Redifer, presiding Board Member. Neither Susan Carole Riggs, nor anyone on behalf of Windows Unlimited & Custom Remodeling, attended the June 29, 2004 IFF.

Background

On August 29, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Nikki A. Harris (Harris) regarding a contract entered into with Susan Carole Riggs (Riggs), t/a Windows Unlimited & Custom Remodeling.

On April 21, 2003, Harris entered into a contract with Windows Unlimited & Custom Remodeling in the amount of \$3,500.00, to replace a window, rotted wood, and paint at 2000 Twinflower Court, Virginia Beach, Virginia.

On April 21, 2003, Harris paid Gary Riggs (G. Riggs), Qualified Individual for Windows Unlimited & Custom Remodeling, \$1,500.00 by check. On May 6, 2003, Harris paid G. Riggs \$2,000.00 by check for the remaining balance of the contract.

On June 17, 2003, Harris terminated the contract and requested a full refund. G. Riggs agreed to refund Harris the full amount.

On August 8, 2003, Harris and Riggs executed a promissory note for payments received and work not rendered, which specified Riggs would refund Harris \$3,500.00 within thirty (30) days of execution of the promissory note.

On August 26, 2003, Riggs refunded Harris \$400.00.

Summation of Facts

1. The contract used by Riggs in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (d) a "plain-language" exculpatory clause, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, and (h) contractor's license number, expiration date, class of license/certificate, and classification or specialty services.
2. On October 9, 2003, in the Virginia Beach General District Court, Harris was awarded a \$3,250.00 judgment against Susan Riggs personally.
3. In a response letter dated October 15, 2003, Riggs stated Harris was refunded \$400.00 and Riggs would refund Harris the remaining \$3,100.00.

4. On October 17, 2003, Riggs told Investigator Shelby Smith-Hill, the Board's agent, that Harris and Riggs entered into a payment agreement and that Riggs would make a \$1,000.00 or \$1,500.00 payment by October 21, 2003. Harris denies any payment agreement was made with Riggs. As of October 23, 2003, Riggs failed to make any payments as promised.

5. Riggs failed to satisfy the judgment awarded to Harris.

6. During the May 5, 2004 IFF, Harris testified that on February 18, 2004, Riggs refunded \$1,200.00 to Harris.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective January 1, 2003)

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

Count 2: 18 VAC 50-22-260(B)(28) (Effective January 1, 2003)

Riggs' failure to satisfy the judgment awarded to Harris in the Virginia Beach General District Court is a violation of Board Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend that a monetary penalty of \$2,500.00 be imposed along with revocation of Riggs' license number 2705 53473.

By:

Michael D. Redifer
Presiding Board Member
Board for Contractors
Date: _____

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 053473 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

**RE: SUSAN CAROLE RIGGS
T/A WINDOWS UNLIMITED & CUSTOM REMODELING
LICENSE NUMBER: 2705 053473**

FILE NUMBER: 2004-02812

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Susan Carole Riggs, t/a Windows Unlimited & Custom Remodeling, on March 11, 2004. The following individuals participated at the conference: Jeffrey Buckley, Staff Member; and Michael Redifer, presiding Board Member. Neither Susan Carole Riggs, nor anyone on behalf of Windows Unlimited & Custom Remodeling, attended the IFF.

Summation of Facts

1. On January 21, 2004, the Enforcement Division of the Department of Professional and Occupational Regulation received information from Philip M. Pritchard (Pritchard), an Investigator with the City of Virginia Beach Office of Consumer Affairs, regarding a contract for home repairs entered into by Maria C. Anderson (Anderson) and Susan Carole Riggs (Riggs), t/a Windows Unlimited & Custom Remodeling.
2. On November 7, 2003, Anderson entered into a contract with Windows Unlimited & Custom Remodeling, in the amount of \$850.00, to remove and replace all lost siding, reinsulate the walls as needed, replace rotted wood as needed, replace porch railings, and paint at 1320 Covington Court, Virginia Beach, Virginia.
3. In a letter dated January 30, 2004, Pritchard stated that after the contracted work had been completed, Anderson made final payment in the amount of \$200.00 on January 29, 2004, and the matter was resolved.

4. The contract used by Riggs in the transaction failed to contain subsections: (d) a "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time 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, and (h) contractor's license number, expiration date, class of license, and classifications or specialty services.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective January 1, 2003)

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

By:

Michael D. Redifer
Presiding Board Member
Board for Contractors
Date: _____

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 053473 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

BOARD FOR CONTRACTORS

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of James & Michele Wedge (Claimants) and Vincent P. Davis t/a Designs
By Davis (Regulant)**

LICENSE NUMBER: 2705 065629

FILE NUMBER: 2004-03275

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to James and Michele Wedge and to Vincent P. Davis, t/a Designs by Davis, on June 2, 2004. The following individuals participated at the conference: James Wedge, Claimant; Richard Camaur, attorney for Claimant; Jeffrey Buckley, Staff Member; and Michael D. Redifer, presiding Board Member. Neither Vincent P. Davis, nor anyone on behalf of Designs by Davis, attended the IFF.

Background

On December 2, 2002, in the Stafford County General District Court, James P. Wedge and Michelle L. Wedge obtained a Judgment against Vincent P. Davis, Land Designs by Davis, in the amount of \$9,734.00, plus interest and \$36.00 costs and \$1,913.08.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on April 17, 2003.

Summation of Facts

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

The Warrant in Debt recites "Fraud-Breach of Warranty" as the basis for the suit. The blocks "Contract" and "Other" have been marked.

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

The claimants did contract with the regulant.

The Board issued Class C License Number 2705065629 to Vincent P. Davis t/a Design by Davis, on October 17, 2001. The license was permanently revoked on August 28, 2003. The claimant entered into two written contracts with Land Designs by Davis. The first contract was signed on February 17, 2002 by James P. Wedge only, for the installation of two retaining walls and a french drain at the claimants' residence. The second contract was signed on February 17, 2002 by James P. Wedge and Vincent P. Davis for the installation of a flagstone patio and sod at the claimants' residence.

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

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

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

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

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

A Judgment was entered on December 2, 2002. The claim was received on April 17, 2003.

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

The claimant entered into two written contracts with Land Designs by Davis on February 17, 2002 for landscape improvements at the claimants' residence.

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

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

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

Debtor's interrogatories were conducted. Two work trucks, landscaping tools and \$500.00 cash were revealed during the interrogatories.

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

The Warrant in Debt recites "Fraud-Breach of Warranty" as the basis for the suit. The blocks "Contract" and "Other" have been marked.

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

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

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

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record and the information presented at the IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00, which includes the \$9,734.00 amount of the judgment, \$36.00 for costs and \$230.00 for attorney's fees.

Although the Warrant in Debt recites "Fraud-Breach of Warranty" as the basis for the suit, evidence and testimony presented at the IFF supports a finding of material misrepresentation and incompetence, which falls within the definition of improper and dishonest conduct, per § 54.1-1118 of the Code of Virginia.

By: _____

**Michael D. Redifer
Presiding Board Member
Board for Contractors**

Date: _____

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

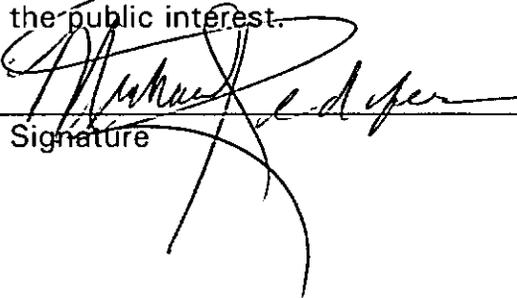
**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

1. Name: Michael Redifer
2. Title: Hearing Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on June 29, 2004
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.


Signature

6-29-2004

Date