

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
June 24, 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.

Ruth Ann Wall, Presiding Officer, presided. No 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. Pixie Curry and
Fredrick Reid, t/a Reid's Construction
File Number 2003-01669 (RF) | Curry – C |
| 2. Charles D. Solyan and
Stephen K. Ferguson
t/a Keith Ferguson, General Contractor
File Number 2004-02960 (RF) | Solyan – C
Richard Wallerstein –C's Atty
Charles Holt - W |
| 3. Cleo Freeman and
Discount Roofing Services of Central VA Inc.
File Number 2004-02497 (RF) | David Hawkins – C Atty |
| 4. Roxanne Fischer and
Apple Land Custom Cabinets and Millwork Inc.
File Number 2003-02148 (RF) | Fischer – C
Jerry Baker – R-by phone |
| 5. Paul Leeks and
Scott L. Wells
t/a SW Contracting
File Number 2004-02967 (RF) | None |

6. Edward & Jane Woodworth
Gregory J. Bridges
t/a Round Hill Electric
File Number 2003-01878 (RF)

Woodworth – C
Robin Walters Woodworth -W

7. Richard Bryant and
Benchmark Builders and Custom Renovators Inc.
File Number 2004-03362 (RF)

Bryant – C- by phone
Frank D' Alessandro – R
Sandra D' Alessandro – W
Chris Bryant – W- by phone

8. Robert K. Cash and
John C. Geigle
t/a Complete Home Repairs
File Number 2003-00342 (RF)

Cash – C-by phone

DRAFT

The meeting adjourned at 2:20 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

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

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Pixie E. Curry (Claimant) and Fredrick Reid, t/a Reid's
Construction (Regulant)
LICENSE NUMBER: 2705-062897**

FILE NUMBER: 2003-01669

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Pixie E. Curry, c/o William K. Lewis and Fredrick Reid, t/a Reid's Construction on December 15, 2003. The following individuals participated at the conference: Pixie E. Curry, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. No one appeared on behalf of Fredrick Reid, t/a Reid's Construction.

On June 24, 2004, the IFF was reconvened, following the Board for Contractors decision, at their meeting held on April 13, 2004, to remand this matter back to an IFF. By letters dated May 18, 2004, Pixie Curry and Frederick Reid, t/a Reid's Construction, were notified that the IFF would reconvene on June 24, 2004. The following individuals participated at the conference: Pixie E. Curry, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. No one appeared on behalf of Fredrick Reid, t/a Reid's Construction.

Background

On **June 21, 2002**, in the United States Bankruptcy Court, Eastern District of Virginia, Frederick Reid, filed a Chapter 7 Petition.

On **July 10, 2002**, in City of Richmond, General District Court, Pixie Curry obtained a **Judgment** against Reid's Construction, Inc., **in the amount of \$12,000.00, plus interest and \$30.00 costs.**

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **October 1, 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.

The Warrant in Debt does not recite the basis of 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 claimant **did** contract with the regulant.

The Board issued Class C License Number 2705062897 to Fredrick Reid t/a Reid's Construction, on **May 3, 2001**. The license expired on **May 31, 2003**. The claimant entered into a written contract with Reid's Construction, Inc., for the renovation of a carriage house and shed located at the claimant's address.

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

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

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

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

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

A Judgment was entered on **July 10, 2002**. The claim was received on **October 1, 2002**.

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

The claimant entered into a written contract with Reid's Construction, Inc., for the renovation of a carriage house and shed located at the claimant's address.

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 failed to appear.

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 of the suit. The block designated "Contract" has been marked.

In the Affidavit of Facts dated **July 16, 2002**, the claimant and regulant entered into a contract for the renovation of a carriage house and the construction of an attached shed. The claimant asserts the regulant received two payments toward the construction of the project. The regulant started the project and did not finish. The contract was in the amount \$6,200.00. The claimant received a judgment in the amount of \$12,000.00, plus interest and \$30.00 costs.

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

On April 13, 2004, the Board requested additional documentation of actual out-of-pocket expenses incurred by Currie. The judge made a determination to award a judgment to Currie in the amount of \$12,000.00, based on photos that were taken by the Board relating to Currie's complaint, showing the property damage directly related to the destructive work done by Reid in lieu of the contract. The actual monetary loss incurred by Currie has exceeded the judgment awarded by the judge. Currie has obtained estimates from two other contractors, one at \$18,000.00 and one at \$15,000.00, to correct and complete the work. Currie's recovery claim does not include punitive or exemplary damages or interest.

Based upon additional information presented at the reconvened Recovery Fund IFF and the judgment awarded by the General District Court for the City of Richmond in the amount of \$12,000.00, plus costs, it is recommended the claim be approved for payment in the amount of \$10,000.00. This recovery claim amount abides by the requirements of § 54.1-1123(C), of the Code of Virginia.

Failure by the regulant to complete the project falls within the definition of improper and dishonest conduct per Section 54.1-1118, Code of Virginia.

By: _____

Ruth Ann Wall
Presiding Officer
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 Charles Douglas Solyan (Claimant) and Stephen K. Ferguson t/a
Keith Ferguson General Contractor (Regulant)**

LICENSE NUMBER: 2705 057086

FILE NUMBER: 2004-02960

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 24, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Charles Douglas Solyan and to Stephen K. Ferguson on May 21, 2004. The following individuals participated at the conference: Charles Douglas Solyan, Claimant; Richard Wallerstein, Claimant's Attorney; Charles Holt, Witness; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. No one appeared on behalf of Stephen K. Ferguson t/a Keith Ferguson General Contractor.

Background

On July 23, 2002, in the City of Richmond General District Court, Charles D. Solyan obtained a Judgment against Keith Ferguson, in the amount of \$8,949.51, plus interest and \$34.00 costs.

The claim in the amount of \$8,983.51 was received by the Department of Professional and Occupational Regulation on February 26, 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 "Contact" 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 claimant did contract with the regulant.

The Board issued Class B License Number 2705057086 to Stephen K. Ferguson t/a Keith Ferguson General Contractor, June 30, 2000. The license expired on June 30, 2002. The claimant entered into a written contract with Keith Ferguson on October 18, 2001 for the removal of the existing porch and the construction of a new porch 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 July 23, 2002. The claim was received on February 26, 2003.

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

The claimant entered into a written contract with Keith Ferguson for the removal of the existing porch and the construction of a new porch 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 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 failed to appear.

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 January 14, 2003, the claimant asserts the claimant entered into a contract with the regulant for the removal and construction of a new porch at the claimant's residence. The regulant received several payments from the claimant. The regulant requested additional funds from the claimant. The claimant refused to pay additional money to the regulant. The regulant spent the money and could not continue the work. The regulant has not returned to complete the project.

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

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

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

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record and the information presented at the IFF, I recommend that the claim be approved for payment in the amount of \$10,000.00. The claim amount has been adjusted to include additional costs in the amount of \$32.00 and attorney fees in the amount of \$1,789.47. The warrant in debt does not recite the basis for the suit.

Ferguson took monies designated by the contract to purchase materials, did not pay the vendors and abandoned the job, constituting improper or dishonest conduct as defined in the act.

By: _____

**Ruth Ann Wall
Presiding Officer
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 Cleo Freeman (Claimant) and Discount Roofing Services of Central VA, Inc., t/a Discount Roofing Services of Central VA., Inc., (Regulant)

LICENSE NUMBER: 2705 045720

FILE NUMBER: 2004-02497

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 24, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Cleo Freeman and to Robert Lee Sprouse of Discount Roofing Services of Central VA, Inc., on May 21, 2004. The following individuals participated at the conference: David Hawkins, attorney for Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. No one appeared on behalf of Discount Roofing Services of Central VA, Inc., t/a Discount Roofing Services of Central VA., Inc.

Background

On May 22, 2002, in Lynchburg City General District Court, Cleo Freeman obtained a Judgment against Robert Lee Sprouse d/b/a Discount Roofing, in the amount of \$4,168.00, plus interest and \$30.00 costs.

The claim in the amount of \$4,503.03 was received by the Department of Professional and Occupational Regulation on March 18, 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 "gross negligence and fraud in construction of roof by roofing contractor" 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 2705045720 to Discount Roofing Services of Central VA., Inc., t/a Discount Roofing Services of Central VA, Inc., on July 17, 1998. The license expired on July 31, 2000. The licensing record for the Board for Contractors' lists R. Sprouse as the Responsible Management for Discount Roofing Services of Central VA, Inc. The claimant entered into a written contract with Discount Roofing Services of Central VA, Inc., July 14, 1999 for the removal of the existing roof and installation of a new roof on 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 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 May 22, 2002. The claim was received on March 18, 2003.

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

The claimant entered into a written contract with Discount Roofing Services of Central VA., Inc., for the removal of the existing roof and installation of a new roof on 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 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 failed to appear.

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 "gross negligence and fraud in construction of roof by roofing contractor" 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 include interest or damages.

Conclusion and Recommendation

Based upon the record and the information presented at the IFF, I recommend that the claim be approved for payment in the amount of \$5,141.60. The claim amount has been adjusted to remove interest from the original claim amount of \$4,168.00 and adjusted to include additional court costs in the amount of \$140.00 and attorney fees in the amount of \$833,60. The Warrant in Debt recites "gross negligence and fraud in construction of roof by roofing contractor" as the basis for the suit.

Robert Sprouse, of Discount Roofing Services of Central VA, Inc, used inferior roofing materials and when the roof started to leak and rot, he could not be found to implement the 5-year warranty, constituting improper or dishonest conduct as defined in the act.

By: _____

**Ruth Ann Wall
Presiding Officer
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 Roxanne Fischer (Claimant) and Apple Land Custom Cabinets and
Millwork, Inc., t/a Apple Land Custom Cabinets and Millwork, Inc., (Regulant)**

LICENSE NUMBER: 2705 041485

FILE NUMBER: 2003-02148

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 24, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Roxanne Fischer and to Jerry Baker of Apple Land Custom Cabinets and Millwork, Inc., on May 21, 2004. The following individuals participated at the conference: Roxanne Fischer, Claimant; Jerry Baker, on behalf of Apple Land Custom Cabinets and Millwork, Inc., Regulant (by telephone); Jeffrey Buckley, Staff Member; and Ruth Ann Wall, presiding Officer.

Background

On August 1, 2001, in the United States Bankruptcy Court, Western District of Virginia, Harrisonburg Division, Apple Land Custom Cabinets and Millwork, Inc. filed a Chapter 7 Petition.

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

Summation of Facts

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

Apple Land Custom Cabinets and Millwork, Inc., 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 claimant did contract with the regulant.

The Board issued Class A License Number 2705041485 to Apple Land Custom Cabinets and Millwork, Inc., t/a Apple Land Custom Cabinets and Millwork, Inc., on October 28, 1997. The license expired on October 31, 2001. The claimant entered into a written contract with Apple Land Custom Cabinets and Millwork, Inc., in July of 2000 for the construction of a house.

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

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

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

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

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

The claim was received on February 7, 2003. Judgment was not obtained the regulant filed for bankruptcy protection.

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

The claimant entered into a written contract with Apple Land Custom Cabinets and Millwork, Inc., in July of 2000 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 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 February 25, 2003, the claimant asserts the claimant was to reimburse the regulant for costs paid by the regulant for materials and services on the project. The regulant provided the claimant with an invoice for costs paid by the regulant. The claimant paid the cost invoiced by the regulant. The claimant discovered only \$19,500.00 had been paid to Irongate Steel and none of the other suppliers were paid by the regulant. Due to the resultant's actions, the claimant had a monetary loss of \$83,295.76.

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."

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

Jerry Baker of Apple Land Custom Cabinets and Millwork, Inc., requested and received money from Fischer, knowing that he would be filing bankruptcy within ten days of acceptance of the money. Baker used the money obtained from Fischer to pay unrelated construction bills. I find that this conduct involves the wrongful taking and conversion of money through fraud and material misrepresentation which constitutes improper or dishonest conduct as defined in the statute. Based upon the record and the information presented at the IFF, I recommend that the claim be approved for payment in the amount of \$10,000.00.

By: _____

**Ruth Ann Wall
Presiding Officer
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 PAUL O. LEEKS, III (CLAIMANT) AND SCOTT L.
WELLS, T/A SW CONTRACTING (REGULANT)**

LICENSE NUMBER: 2705 067146

FILE NUMBER: 2004-02967

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 24, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Paul O. Leeks, III and to Scott L. Wells on May 24, 2004. The following individuals participated at the conference: Jeffrey Buckley, Staff Member; and Ruth Ann Wall, presiding Officer. Neither Paul O. Leeks, III (Claimant), nor anyone on his behalf, appeared at the IFF. Neither Scott L. Wells, nor anyone on behalf of SW Contracting (Regulant) appeared at the IFF.

Background

On December 2, 2002, in the Stafford County General District Court, Paul O. Leeks obtained a Judgment against Scott L. Wells, t/a S. W. Contracting, in the amount of \$2,350.00, plus interest and \$36.00 costs.

The claim in the amount of \$2,422.00 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 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 claimant asserts he contracted with the regulant in a notarized statement dated March 19, 2003. A copy of the contract could not be provided.

The Board issued Class C License Number 2705067146 to Scott L. Wells t/a SW Contracting, on April 25, 2002. The license was permanently revoked on December 1, 2003. The claimant asserts he entered into a written contract with Scott L. Wells t/a S. W. Contracting on July 3, 2002 to erect a 6 foot 1x6 gothic fence 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 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 December 2, 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 claimant asserts he entered into a written contract with Scott L. Wells t/a S. W. Contracting on July 3, 2002 to erect a 6 foot 1x6 gothic fence 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 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 could not be found.

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.

In the Affidavit of Facts dated March 19, 2003, the claimant asserts the regulant was to build a 6 foot 1x6 gothic fence. The contract was valid for 60 days from July 3, 2002. The regulant did not construct the fence and has disappeared.

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, I recommend that the claim be approved for payment in the amount of \$2,422.00. (Judgment for \$2,250.00 plus \$36.00 Court Cost on September 27, 2002, and \$36.00 Court Cost on December 27, 2002. The payment of the claim is based on the retention of funds and abandonment, which fall within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: _____

Ruth Ann Wall
Presiding Officer
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 Jane T. & E. P. Woodworth (Claimants) and Gregory J. Bridges t/a
Round Hill Electric (Regulant)**

LICENSE NUMBER: 2705 033228

FILE NUMBER: 2003-01878

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 24, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Jane and Edward Woodworth and to Gregory J. Bridges on May 24, 2004. The following individuals participated at the conference: Jane Woodworth, Claimant; Robin Walters Woodworth, Witness; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, presiding Officer. Neither Bridges, nor anyone on behalf of Round Hill Electric (Regulant) appeared at the IFF.

Background

On September 23, 2002, in the City of Fredericksburg General District Court, Edward P. and Jane T. Woodworth obtained a Judgment against Gregory J. Bridges, in the amount of \$705.62, plus interest and \$55.00 costs.

The claim in the amount of \$760.62 was received by the Department of Professional and Occupational Regulation on January 6, 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 not contract with the regulant. Bruce Woodworth contracted with Bridges and Sons Sales and Service, Inc. Payments were paid from the account of Woodworth Properties.

The Board issued Class C License Number 2705033228 to Gregory J. Bridges t/a Round Hill Electric, on April 22, 1996. The license expired on April 30, 2002. Bruce Woodworth entered into a written contract with Bridges and Sons Sales and Service, Inc. on March 20, 2001 for the wiring of a house located at 309 Fauquier Street, Fredericksburg, Virginia.

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 23, 2002. The claim was received on January 6, 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 did not enter into a written contract with the regulant. Bruce Woodworth contracted with Bridges and Sons Sales and Service, Inc. for electrical wiring at 309 Fauquier Street, Fredericksburg, Virginia. Payments were paid from the account of Woodworth Properties.

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 could not be found.

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.

In the Affidavit of Facts dated January 2, 2003, the claimants assert there were code violations. The regulant did not return to correct the code violations. The claimants requested an itemized list of the extra fixtures, but never received one from the regulant. The claimants made several attempts to contact the regulant to correct the problems. The regulant disconnected the phone and vacated the business location. The claimants hired another electrical contractor to correct the project.

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

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

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

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record and the information presented at the Recovery Fund IFF, it is recommended that the claim be denied in accordance with § 54.1-1120(A)(iii). The complainant, Jane Woodworth did not sign the contract, therefore she did not have a valid contract with the regulant. However, the contract was signed by her son, in her place. Woodworth's son, Bruce E. Woodworth is a Virginia licensed contractor, license #2701 037169 and therefore not illegible to file a claim.

By: _____

Ruth Ann Wall
Presiding Officer
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 RICHARD L. BRYANT (CLAIMANT) AND
BENCHMARK BUILDERS AND CUSTOM RENOVATORS, INC. T/A
BENCHMARK BUILDERS AND CUSTOM RENOVATORS, INC. (REGULANT)

LICENSE NUMBER: 2705 053059

FILE NUMBER: 2004-03362

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 24, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Richard Bryant and Frank D' Alessandro of Benchmark Builders and Custom Renovators, Inc. on May 21, 2004. The following individuals participated at the conference: Frank D' Alessandro, on behalf of Benchmark Builders and Custom Renovators, Regulant; Sandra D' Alessandro, Witness; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. In addition, Richard Bryant, Claimant, participated by telephone and Chris Bryant, Witness, participated by telephone.

Background

On March 12, 2002, in the United States Bankruptcy Court, Western District of Virginia, Frank D'Alessandro, Sr., filed a Chapter 7 Petition.

The claim in the amount of \$2,928.87 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.

Frank D'Alessandro, Sr., filed for bankruptcy protection, therefore judgment was not obtained. Benchmark Builders and Custom Renovators, Inc., was terminated with the SCC on July 31, 2002.

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 A License Number 2705053059 to Benchmark Builders and Custom Renovators, Inc. t/a Benchmark Builders and Custom Renovators, Inc. on October 25, 1999. The license expired on October 31, 2001. Frank D'Alessandro, Sr., was the Responsible Management, Qualified Individual and Designated Employee of Benchmark Builders and Custom Renovators, Inc. The claimant entered into a written contract with Benchmark Builders and Custom Renovators, Inc., on February 15, 2001 for the construction of a garage 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.

The claim was received on March 28, 2003. Frank D'Alessandro, Sr., filed for bankruptcy protection. The SCC terminated the corporation.

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 contract with Benchmark Builders and Custom Renovators, Inc. for the construction of a garage 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 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. Benchmark Builders and Custom Renovators, Inc., was terminated with the SCC on July 31, 2002.

A Proof of Claim was filed with the United States Bankruptcy Court, Western District Virginia.

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 March 21, 2003, the claimant asserts the regulant requested an additional payment in advance from the claimant in order to pay his workers. The claimant gave the regulant the additional funds requested. Several days after the claimant paid the regulant the money, the regulant advised the claimant he was going out of business and would be working for another company. The regulant advised the claimant that he would finish the project. The project was not completed by the regulant and another contractor was hired. The regulant promised to reimburse the claimant the additional cost in completing the garage. The claimant has not received the funds back from the regulant.

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."

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 Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$2,928.87. The payment of the claim is based on the retention of funds and abandonment, which fall within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: _____

Ruth Ann Wall
Presiding Officer
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 ROBERT K. CASH (CLAIMANT) AND JOHN C. GEIGLE T/A COMPLETE HOME REPAIRS (REGULANT)

LICENSE NUMBER: 2705 025575

FILE NUMBER: 2003-00342

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 24, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Robert K. Cash c/o Brian Richardson, Esquire and John C. Geigle, t/a Complete Home Repairs on May 24, 2004. The following individuals participated at the conference: Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. In addition, Robert K. Cash (Claimant) participated by telephone. Neither John C. Geigle nor anyone on behalf of Complete Home Repairs (Regulant) appeared at the IFF.

Background

On **May 15, 2002**, in Highland County General District Court, Robert K. Cash obtained a **Judgment** against Complete Home Repairs, **in the amount of \$2,000.00, plus interest and \$30.00 costs.**

The **claim** in the amount of **\$230.00** was received by the Department of Professional and Occupational Regulation on **December 20, 2002.**

During the IFF, Cash testified that he made an error on the claim form and he stated that he meant to write \$2,030.00.

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 "roof replacement-down payment" as 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 claimant **did** contract with the regulant.

The Board issued Class C License Number 2705025575 to John C. Geigle t/a Complete Home Repairs, on **September 28, 1994**. The license will expire on **September 30, 2004**. The claimant entered into a written contract with Complete Home Repairs on **February 6, 2002** for the replacement of a roof on the claimant's **equipment shed**. (note: no address is listed on the contract)

During the IFF, Cash testified that the equipment shed is located on his property and it is used to store tools.

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 **May 15, 2002**. The claim was received on **December 20, 2002**.

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

The claimant entered into a written contract with Complete Home Repairs for the replacement of a roof on the claimant's **equipment shed**.

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 could not be found.

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 "roof replacement-down payment" as the basis for the suit.

In the Affidavit of Facts dated **July 31, 2002**, the claimant asserts the regulant received a down payment of \$2,000.00 toward the replacement of a roof on the claimant's equipment shed prior to starting the project. The regulant never returned to start the project and never returned the claimant's 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, "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 Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$2,030.00

(Judgment for \$2,000.00 plus \$30.00 Court Cost). Cash testified that he paid the Regulant \$2,000.00. The Regulant never returned to start the job.

The payment of the claim is based on the retention of funds and abandonment, which fall within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

It is noted that the record contains a letter from Cash's previous lawyer, D. Brian Richardson, requesting that the claim form be amended to include \$225.00 in attorney fees. During the IFF, Cash declined to have the claim form amended.

By: _____

Ruth Ann Wall
Presiding Officer
Board for Contractors

Date: _____

DRAFT