

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
September 28, 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.

Charles Falwell, Board member, presided. No other Board members were present.

Joe Haughwout 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. Walter D. Moore III
t/a Moore Paving Inc.
File Number 2004-00045 (Disc)
(No Decision) | Clytaemnastra Jeffries – C
Lawrence Jeffries, Jr. – W |
| 2. Roger Simmons
t/a Simmons Renovations
File Number 2004-03957 (Disc) | Paula Stull – C |
| 3. American Investments Real Estate Corporation
t/a Kibra Construction
File Number 2004-02345 (Disc) | Alexander Matthews – R
Maggie Luu – C
Tri Luu – W |
| 4. American Investments Real Estate Corporation
t/a Kibra Construction
File Number 2004-01082 (Disc) | Alexander Matthews – R |
| 5. James E. Chason III and
Vincent P. Davis
t/a Designs by Davis
File Number 2004-01041 (RF) | Chason – C
Mary Jane Chason – W |

6. Jeremy J. Funk
t/a F & M Paving
File Number 2004-01861 (Disc)

Janet Sours – W
Duane Sours – W

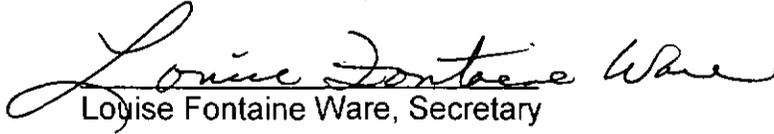
7. Paul A. Evans
File Number 2004-00599 (Disc)

Evans – R
Ruby Miller – C
Sherry Dean – W

The meeting adjourned at 3:15 p.m.

BOARD FOR CONTRACTORS


Mark D. Kinser, Chairman


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Roger Simmons, t/a Simmons Renovations

File Number: 2004-03957
License Number: 2705080552

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 18, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Roger Simmons ("Simmons"), t/a Simmons Renovations to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On September 28, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Paula Stull; Complainant; Joe Haughwout, Staff Member; and Charles Falwell, Presiding Board Member. Neither Simmons nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

Simmons's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. The contract used by Simmons used the company name "F & S Siding and Renovations". The license was issued under the trade name F & S Rentovation. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

Simmons's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. The contract used in the transaction failed to include six of the required provisions. Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

Simmons's failure to honor the terms and conditions of a warranty is a violation of Board Regulation 18 VAC 50-22-260.B.30. In December 2003, Simmons provided Stull with a warranty for the roof if it leaked, for up to a year. In March 2004, Stull noticed that the roof had been leaking, and contacted Simmons. Simmons has not repaired the roof. During the IFF, Stull presented the Motion for Judgment against Simmons. Stull stated she was awarded the judgment against Simmons for fraud and violation of the Virginia Consumer Protection Act. Therefore, I recommend that a monetary penalty of \$1,500.00 and license revocation be imposed.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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 THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: June 30, 2004 (revised August 10, 2004)

FILE NUMBER: 2004-03957
RESPONDENT: Roger Simmons, t/a Simmons Renovations
LICENSE NUMBER: 2705080552
EXPIRATION: 11/30/2005

SUBMITTED BY: Becky C. Angelilli
APPROVED BY: E. Wayne Mozingo

COMMENTS:

Roger Simmons ("Simmons"), t/a Simmons Renovations, was at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705080552).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On March 25, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Paula A. Stull ("Stull") regarding Simmons. (Exh. C-1)

On November 12, 2003, Stull entered into a written contract with F & S Siding & Renovations, in the amount of \$3,225.00, to remove and replace shingles at 5800 White Oak Road, Sandston, Virginia. The contract was signed by Roger Simmons. (Exh. C-2)

On November 3, 2003, Roger Simmons, t/a F & S Renovation, was issued Class C Contractor's license number 2705080552. On February 27, 2004, the trade name was changed to F & S Renovation. On March 2, 2004, the trade name was changed to Simmons Renovations. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

Simmons failed to operate in the name in which the license was issued.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
- a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Simmons in the transaction failed to contain subsections: (a), (d), (e), (f), (h), and (i). (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

30. Failure to honor the terms and conditions of a warranty.

FACTS:

On December 5, 2003, Simmons completed the work. (Exh. C-1)

On December 5, 2003, Simmons provided Stull with a written agreement in reference to the roof that "guaranteed if leaking will replace roof up to a year." (Exh. C-3)

On March 10, 2004, Stull noticed water in the kitchen cabinets and behind the wood stove, water spots on the ceiling, and wet insulation, floor boards, and joists under the house. Stull also noticed the attic, rafters, and sheathing was soaked. (Exh. C-1)

On March 10, 2004, Stull contacted Simmons regarding the leaking roof. (Exh. C-1)

As of March 21, 2004, Simmons failed to make repairs to the leaking roof.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: American Investments Real Estate Corporation, t/a Kibra Construction

File Number: 2004-02345
License Number: 2705056570

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 12, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to American Investments Real Estate Corporation, t/a Kibra Construction ("Kibra") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On September 28, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Alexander Matthews, Responsible Management for Kibra, Respondent; Maggie Luu; Complainant; Tri Luu, Witness; Joe Haughwout, Staff Member; and Charles Falwell, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

Kibra's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. The contract used in the transaction failed to contain five of the required provisions. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

Kibra's failure to abate a violation of the Virginia Uniform Statewide Building Code is a violation of Board Regulation 18 VAC 50-22-260.B.25. In May 2003, Matthews applied for a building permit with Arlington County; however Matthews paid for the permit with a bad check. In June 2003, a Stop Work Order was issued because Kibra was performing work without a permit. In September 2003, Luu obtained the builder permit for work

performed at the subject property. Therefore, I recommend that a monetary penalty of \$750.00 and remedial education be imposed.

The Board's Basic Contractor Licensing Course (remedial education) must be successfully completed by a member of the Responsible Management for the firm within six (6) months of the entry of this order.

Count 3: Board Regulation (Effective January 1, 2003)

Kibra's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. In May 2003, Kibra began work at the subject property. Kibra last performed work at the subject property in late June or mid July 2003. Luu made several attempts to contact Kibra regarding the completion of the work. Kibra has not resumed the work, and has left several items under the contract incomplete. Therefore, I recommend that a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

Kibra's failure to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. The contract specified that Kibra would construct in accordance with city and state building codes, would complete the project in three months or less from the date the permit was obtained, and would commence work within three days after receiving the down payment. Kibra failed to obtain the permit, did not begin work until three months after receiving the down payment, and never finished the work. Therefore, I recommend that a monetary penalty of \$750.00 be imposed.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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 THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: April 26, 2004 (revised July 29, 2004)

FILE NUMBER: 2004-02345
RESPONDENT: American Investments Real Estate Corporation, t/a Kibra
Construction
LICENSE NUMBER: 2705056570
EXPIRATION: September 30, 2004

SUBMITTED BY: Carolyn D. Wright
APPROVED BY: Linda Boswell

COMMENTS:

None.

American Investments Real Estate Corporation, t/a Kibra Construction ("Kibra"), was at all times material to this matter a licensed contractor in Virginia (No. 2705056570).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On December 2, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Maggie Luu ("Luu") regarding Kibra Construction Inc. (Exh. C-1)

On February 7, 2003, Luu entered into a written contract with Kibra, in the amount of \$85,000.00, to remodel Luu's residence at 2216 S. Nelson Street, Arlington, Virginia. (Exh. C-2)

On February 7, 2003, Luu paid Kibra \$15,000.00 by check. On February 8, 2003, Luu paid Kibra a total of \$10,000.00 by credit card. (Exh. C-5)

On April 10, 2003, Luu and Kibra entered into a written change order, in the amount of \$1,000.00, to perform additional remodeling work. (Exh. C-3)

On April 15, 2003, Luu paid Kibra \$1,000.00 by check. (Exh. C-5)

In May 2003, Kibra commenced work. (Exh. I-1)

In May 2003, Luu and Kibra entered into a written change order, in the amount of \$10,000.00, to expand the basement at the subject property. (Exh. C-3) (Note: The written change order is not signed by either party; however, Luu told Investigator Carolyn Wright, the Board's agent, she signed the change order. (Exh. C-3 and I-1))

On May 28, 2003, Luu paid \$5,000.00 by check. (Exh. C-5)

On May 30, 2003, Alexander Matthews ("Matthews") of Kibra applied for a building permit; however Matthews paid with a bad check. (Exh. I-2)

On June 3, 2003, Luu paid Kibra \$6,000.00 by check. On June 19, 2003, Luu paid Kibra \$4,000.00 by check. (Exh. C-5)

On June 19, 2003, Luu and Kibra entered into a written change order for modifications to the original contract. (Exh. C-2)

On June 30, 2003, a Stop Work Order was issued for performing work at the subject property without a required permit, in violation of Section 109.0 of the Uniform Statewide Building Code. (Exh. C-4)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;

- h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
- i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Kibra in the transaction failed to contain subsections (d), (e), (f), (h), and (i).

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

- 25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

FACTS:

On July 23, 2003, the Department of Community Planning, Housing and Development Inspection Services Division for Arlington County sent Kibra a letter requesting Kibra remit payment, in the amount of \$1,524.54, and advising Kibra that the permit was cancelled until payment was received. (Exh. C-4)

In September 2003, Luu obtained the building permit for the work performed at the subject property. (Exh. I-2)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

- 14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

The last day Kibra performed work at the subject property was late June 2003 or mid July 2003. (Exh. I-1)

Luu made several attempts to contact Kibra regarding the completion of the work contracted for. (Exh. C-4)

As of December 10, 2003, Kibra failed to complete the following:

- Siding
- Roof
- Electrical work in the basement and on the second level
- Two windows on the second level
- Heating or air conditioning on the second level
- Plumbing on the second level
- Appliances
- Fixtures
- Main entrance
- Deck on the back
- Dining or family rooms
- Carpet or hardwood
- Stairs to the second level. (Exh. I-1)

In a written response dated December 10, 2003, Matthews stated "When we started the job, the price of lumber tripled almost due to war in Iraq, and we ran short of money on our third draw after the structure had been erected." Matthews further stated Kibra was "still willing to go forward but owner has to cover the difference in cost." (Exh. R-1)

As of April 27, 2004, Kibra has not contacted Luu, who cannot live in the house. (Exh. I-1)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

The contract specified "Contractor will furnish all labor, materials and equipment to construct in a good workmanlike manner in accordance with city and state building codes." (Exh. C-2)

The contract specified "Project will be completed in approximately three months or less from commencement date, the date the permit is obtained." (Exh. C-2)

The contract also specified "The work to be performed by Contractor pursuant to this Agreement shall be commenced within approximately three days after received down payment from homeowner and shall be substantially completed within three months from commencement date." (Exh. C-2)

The contract further specified "Commencement of work shall be defined as (briefly describe type of work representing commencement): demolition of existing roof." (Exh. C-2)

According to the contract, the down payment to start was \$25,000.00, which was paid by Luu by February 8, 2003. (Exh. C-2 and C-5)

Kibra failed to commence work, obtain required building permits, and complete work in accordance with the terms of the contract.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: American Investments Real Estate Corporation, t/a Kibra Construction

File Number: 2004-01082
License Number: 2705056570

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On April 9, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to American Investments Real Estate Corporation, t/a Kibra Construction ("Kibra") to the address of record. The Notice included the Informal Fact-Finding Conference Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On May 26, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jennifer Kazzie, Staff Member; and Mark Franko, Presiding Officer. Neither Kibra nor anyone on its behalf appeared at the IFF.

On August 12, 2004, a letter to reconvene the IFF was mailed, via certified mail, to Kibra to its new address of record at 2238 – C Gallows Road, Vienna, Virginia 22182. The certified mail was signed and received.

On September 28, 2004, the IFF was reconvened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Alexander Matthews, Responsible Management for Kibra, Respondent; Joe Haughwout, Staff Member; and Charles Falwell, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the IFF Memorandum:

Count 1: Board Regulation (Effective January 1, 2003)

Kibra's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. The contract used in the transaction failed to contain four of the required provisions. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

Kibra's failure to obtain required permits is a violation of Board Regulation 18 VAC 50-22-260.B.6. The contract specified that Kibra would obtain the necessary permits, in accordance with the city, county, and state building codes. The contract called for electrical, plumbing, and HVAC to be performed. In December 2003, the Fairfax County Department of Public Works and Environmental Services informed the Board's agent that Kibra failed to obtain the required permits. During the IFF, Matthews stated that he believed that the subcontractors would pull the permits, but that as the general contractor, he was the responsible party. Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

Kibra's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. In May 2003, Kibra commenced work on the project. Between June 27, 2003 and August 16, 2003, Kibra worked sporadically. On August 16, 2003, Kibra informed Milhorn that it would return to the property on August 18 to perform additional work. Kibra failed to return on the specified date. Milhorn sent Kibra a letter to schedule a meeting to discuss termination of the contract. On August 25, 2003, Milhorn removed Kibra as the contractor on the building permit, and obtained his own building permit. Kibra has not completed the work, and has left numerous items unfinished. Therefore, I recommend that a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

Kibra's retention or misapplication of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. Between May and August 2003, Milhorn paid Kibra a total of \$61,500.00 towards the contract price. Milhorn also paid a material supplier directly for plumbing fixtures. Kibra failed to complete the work, and has not returned money received for work not performed or performed in part. Therefore, I recommend that a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

Kibra's failure to provide requested information to the Board's agent is a violation of Board Regulation 18 VAC 50-22-260.B.13. In December 2003, the Board's agent request that Kibra provide her with the names of the electrical, plumbing, and HVAC subcontractors who performed work at the subject property. Kibra provided the Board's agent with the names of the plumbing and HVAC subcontractors, and promised to provide her with the name of the electrician. Kibra failed to provide this information. During the IFF, Matthews stated that his subcontractor, Ed Denson, was responsible for this information, and that he and Denson were "having a falling out." Denson did not supply Matthews with the required information. Matthews was not able to provide the information during the IFF. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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 THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
ENFORCEMENT DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors
DATE: January 29, 2004 (revised February 17, 2004)
RE: 2004-01082; American Investments Real Estate Corporation, t/a Kibra
Construction

BACKGROUND:

On August 26, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Brandon L. Milhorn ("Milhorn") regarding a contract entered into with American Investments Real Estate Corporation ("American Investments"), t/a Kibra Construction. (Exh. C-1)

On April 30, 2003, Brandon and Kirsten Milhorn ("the Milhorns") entered into a contract with Kibra, in the amount of \$150,000.00, to construct an addition and perform remodeling work at 2902 Adams Place, Falls Church, Virginia. (Exh. C-2)

On May 24, 2003, American Investments commenced construction on the project. In June 2003, American Investments performed demolition and framing work. On June 27, 2003, American Investments commenced work on the electrical wiring and HVAC. (Exh. C-1)

1. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(9).

FACTS:

The contract used in the transaction by American Investments 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, (f) disclosure of the cancellation rights of the parties, (h) contractor's license expiration date and specialty service, and (i) a statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties. (Exh. C-2)

2. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(6).

FACTS:

The contract specified American Investments would "obtain necessary permits, in accordance with city, county, and state building codes." (Exh. C-2)

The contract specified the following:

- Install electrical to local code and drawing specifications;
- Install lighting fixtures;
- Install appliances;
- Install plumbing (including copper piping and PVC drains) for one kitchen, two full bathrooms, laundry room, and two powder rooms;
- Install water heater;
- Install duct work (to all living spaces to local code), furnace, heat pump, and air handler. (Exh. C-2)

On December 11, 2003, Penelope Rood, Code Coordinator for Fairfax County Department of Public Works and Environmental Services, advised Investigator Carolyn D. Wright, the Board's agent, that American Investments failed to obtain required electrical, plumbing, and HVAC permits. (Exh. I-3)

On December 18, 2003, American Investments told the Board's agent that American Investments was the general contractor and that the subcontractors represented that the electrical, plumbing, and HVAC permits were obtained. (Exh. I-2)

3. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(15).

FACTS:

Between June 27, 2003 and August 16, 2003, American Investments worked sporadically. (Exh. C-1)

On August 12, 2003, Milhorn sent American Investments a letter, via facsimile, regarding completion of the work contracted for. (Exh. C-6)

On August 16, 2003, American Investments assured Milhorn that work would resume on August 18, 2003. As of August 18, 2003, American Investments failed to return to the subject property to perform additional work. (Exh. C-1)

On August 20, 2003, Milhorn sent American Investments a letter, via facsimile and email, to schedule a meeting to discuss termination of the contract. (Exh. C-5 and C-6)

On August 25, 2003, Milhorn removed American Investments as the contractor on building permit number 03099B0360 and obtained a building permit number 03237B0960. (Exh. C-1)

As of August 26, 2003, American Investments failed to return to complete the following work:

- Framing of veranda;
- Framing of interior stairs;
- Framing of basement (bathroom, mud room, laundry room);
- Completion of basement entry and stairs;
- Demolition of existing front porch, front planter boxes, walkway, and rear portion of asphalt driveway;
- Framing/carpentry to complete duct work installation;
- Removal of old furnace and old water heater;
- Removal of old bathtub;
- Pour front porch;
- Framing for bathroom tubs;
- Roofing (shingles partially completed, ridge vent, flashing, sealing of plumbing vents)
- Purchase and installation of first floor windows, rear French door, basement door, and front door;
- Electrical wiring (partially finished);
- Duct work (partially finished);
- Plumbing (partially finished);
- House wrap incomplete;
- Insulation;
- Basement door;
- Front door;
- Siding; and
- Gutters. (Exh. C-1)

4. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(16).

FACTS:

Between May 26, 2003 and August 4, 2003, Milhorn paid American Investments a total of \$61,500.00 towards the contract price. (Exh. C-3) On August 5, 2003, Milhorn paid Faucets Direct \$2,328.73 by American Express for plumbing fixtures. (Exh. C-1)

As of August 28, 2003, American Investments failed to return money received for work not performed or performed in part.

5. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(13).

FACTS:

On December 19, 2003, the Board's agent left a voice mail message for American Investments requesting American Investments provide the names of the electrical, plumbing, and HVAC subcontractors who performed work at the subject property. (Exh. I-2)

On January 15, 2004, American Investments left a voice mail message for the Board's agent that Antonio's Plumbing performed the plumbing and HVAC work. American Investments also stated that it would obtain the electrician's name and obtain it to the Board's agent. (Exh. I-3)

As of January 29, 2004, American Investments failed to provide the electrician's name to the Board's agent.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: James Chason III (Claimant) and Vincent P. Davis, t/a Designs By Davis (Regulant)

File Number: 2004-01041
License Number: 2705065629

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 13, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to James Chason III ("Claimant") and Vincent P. Davis, t/a Designs By Davis ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail was signed and received by the Claimant. The certified mail to the Regulant was returned by the United States Postal Service, and marked as "Moved, Left No Address."

On September 28, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: James Chason III, Claimant; Mary Jane Chason, Witness; Joe Haughwout, Staff Member; and Charles Falwell, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the recovery fund claim:

On October 7, 2002, the Claimant entered into a contract with the Regulant to construct a fence and deck at the Claimant's property.

The Claimant paid the Regulant a total of \$5,997.38 towards the contract.

The Regulant constructed the fence, but did not construct the deck.

On May 19, 2003, in the Stafford County General District Court, the Claimant obtained a judgment against the Regulant, in the amount of \$3,350.00, plus interest and \$96.00 in court costs.

The Claimant is seeking a payment from the Recovery Fund, in the amount of \$3,446.00.

During the IFF, the Claimant stated that the Regulant continually provided excuses as to why the work could not be completed. The Claimant also stated that he believes that the Regulant has left Virginia.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$3,446.00.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: August 12, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of James E. Chason, III, (Claimant) and Vincent Davis t/a Designs By Davis (Regulant)
File Number: 2004-01041

BACKGROUND

On May 19, 2003, in the Stafford County General District Court, James E. Chason, III, obtained a Judgment against Vincent P. and Georgia Davis, co: Land Designs by Davis, in the amount of \$3350.00, plus interest and \$96.00 costs.

The claim in the amount of \$3,446.00 was received by the Department of Professional and Occupational Regulation on July 31, 2003.

CLAIM FILE INFORMATION

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

The Warrant in Debt recites "Yard clean up \$100.00, Loss of Use \$500.00 Fence Warranty Work \$300.00" as the basis of the suit. The block designated "Contract" has been marked.

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

The claimants did contract with the regulant.

The Board issued Class C License Number 2705065629 to Vincent P. Davis, t/a Designs by Davis, on October 17, 2001. The license was permanently revoked on August 28, 2003. The claimant entered into a written contract with Vincent P. Davis, t/a Land Designs by Davis on October 9, 2002, for the construction of a fence and deck at the claimant's residence.

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

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

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

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

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

A Judgment was entered on May 19, 2003. The claim was received on July 31, 2003.

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 Land Designs by Davis, for the construction of a fence and deck at the claimant's residence.

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

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

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

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

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

The Warrant in Debt does not recite the basis of the award.

In the affidavit of facts dated October 23, 2003 the claimant asserts that that the regulant received \$5997.38 toward the construction of the fence and deck, leaving a \$400.00 balance due to the regulant upon completion of the project. The regulant only constructed the fence and did not return to construct the deck. The regulant has not returned to the claimant's money for the portion of the project not completed.

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

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

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

The Claim Form does not include interest or damages.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Jeremy J. Funk, t/a F & M Paving

File Number: 2004-01861
License Number: 2705059080

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 16, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Jeremy J. Funk ("Funk"), t/a F & M Paving through his attorney David A. Downes, Esq. at 14 Chester Street, Front Royal, Virginia 22630. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On September 28, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Duane Sours and Janet Sours, Witnesses; Joe Haughwout, Staff Member; and Charles Falwell, Presiding Board Member. Neither Funk nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective May 1, 1999)

Funk's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. The contract used in the transaction failed to include four of the required provisions. Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 2: Board Regulation (Effective May 1, 1999)

Funk's failure to perform repairs is a violation of Board Regulation 18 VAC 50-22-260.B.6. In November 2000, Funk commenced work on the driveway. Funk used substandard, defective asphalt, and did not prepare a base. In December 2000, Funk attempted to repair defects in the driveway. Funk also requested, and was paid, additional monies to

perform the repairs. In February 2001, a Sheriff's incident report noted that the driveway was coming apart, and had grass coming through it. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

Funk's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. In June 2003, in the Circuit Court of Page County, a judgment against Funk was awarded to the Sours. Funk has failed to satisfy the judgment. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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 THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: July 30, 2004 (revised August 11, 2004)

FILE NUMBER: 2004-01861
RESPONDENT: Jeremy J. Funk, t/a F&M Paving
LICENSE NUMBER: 2705059080
EXPIRATION: October 31, 2004

SUBMITTED BY: Carolyn D. Wright
APPROVED BY:

COMMENTS:

None.

Jeremy J. Funk ("Funk"), t/a F&M Paving, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705059080)

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violations of the Code of Virginia and/or Board's regulations:

BACKGROUND:

On October 29, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received information regarding Funk. (Exh. C-1)

On November 30, 2000, Janet Sours entered into a written contract with Funk, in the amount of \$7,4000.00, to pave a driveway at 433 Belair Avenue, Front Royal, Virginia. (Exh. C-2)

1. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of these regulations, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee/certificate holder or his agent. At a minimum the contract shall specify or disclose the following:
 - a. When work is to begin and the estimated completion date;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license/certificate number, expiration date, class of license/certificate, and classification or specialty services.

FACTS:

The contract used by Funk in the transaction failed to contain subsections: (a) , (e), (f), and (h). (Exh. C-2)

2. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

In November 2000, Funk commenced work. Funk laid only one-half inch of substandard, defective asphalt without preparing a base. (Exh. C-1)

On November 30, 2000, Nelson and Janet Sours ("the Sours") paid Funk \$7,4000.00 by check. (Exh. C-3)

On December 1, 2000, Funk returned to the subject property and attempted to correct defects in the driveway at the subject property. Funk requested the Sours pay an additional \$3,000.00 to correct the defects. (Exh. C-1) On December 1, 2000, the Sours paid Funk \$3,000.00 by check. (Exh. C-3)

In a Sheriff's incident report dated February 15, 2001, the officer noted the "asphalt was laid directly on her old gravel and grass driveway with no base preparation underneath. The asphalt is coming apart in sections and even has grass coming through." (Exh. C-4)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On June 17, 2003, in the Circuit Court of Page County, Virginia, Nelson and Janet Sours ("the Sours") were awarded a \$59,000.00 judgment against Jeremy Jacob Funk, a/k/a, Jeremy J. Funk, t/a F&M Paving. (Exh. C-1)

As of July 30, 2004, Funk failed to satisfy the judgment. (Exh. I-1)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Paul A. Evans

File Number: 2004-00599
License Number: 2705074855

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 17, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Paul A. Evans ("Evans") to the address of record. The Notice was also mailed, via certified mail, to Evans at 5202 Victoria Street, Roanoke, Virginia 24017. The Notice included the Informal Fact-Finding Conference Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mailings were not returned to the Department.

On September 28, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Evans, Respondent; Ruby Miller, Complainant (by telephone); Sherry Dean, Witness; Joe Haughwout, Staff Member; and Charles Falwell, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the IFF Memorandum:

During the IFF, Miller stated that Evans performed the work between June 6, 2003, and June 14, 2003.

Count 1: Board Regulation (Effective January 1, 2003)

Evans's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. The contract used by Evans stated the firm's name as Paul A. Evans Construction. The license was issued as Paul A. Evans. Therefore, I recommend that a monetary penalty of \$250.00 and remedial education be imposed.

The Board's Basic Contractor Licensing Course (remedial education) must be successfully completed by a member of the Responsible Management for the firm within six (6) months of the entry of this order.

Count 2: Board Regulation (Effective January 1, 2003)

Evans's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. The contract failed to contain seven of the required provisions. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

Evans's action of improperly performing roofing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Between June 6, 2003 and July 15, 2003, Evans performed roofing work at the subject property. After Evans performed the work, Miller noticed that the roof was leaking, and that insulation and ceilings in two roofs had been damaged. Evans returned to the property to perform repairs, but was unable to repair the leaks. In July 2003, Miller hired another contractor to inspect the roof. The contractor noted several defects with the work performed by Evans. Miller hired Star City Roofing to replace the roof. Even though there was some improper work performed, Evans stated that it was temporary, and had all intentions of returning to complete the project. Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

During the IFF, Evans stated that he was willing to return to the property to perform repairs, but that Miller did not allow him to do so. Therefore, I recommend that Count 4 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.30.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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 THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
ENFORCEMENT DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors
DATE: March 25, 2004 (revised August 10, 2004)
RE: 2004-00599; Paul A. Evans

BACKGROUND:

On July 30, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from M.D. and Ruby Miller ("the Millers") regarding Paul A. Evans ("Evans"). (Exh. C-1)

On June 5, 2003, the Millers entered into a written contract with Paul A. Evans Construction, in the amount of \$3,000.00, to replace roof shingles at 7224 Woodhaven Road, Roanoke, Virginia 24019. The contract indicated "VA License # 2705074855." (Exh. C-2)

Between June 6, 2003 and July 15, 2003, Evans performed the roof work at the subject property. (Exh. C-1)

On August 1, 2003, a review of the licensing records for the Board for Contractors revealed Evans was issued Class C Contractor's license number 2705074855 on March 5, 2003. (Exh. I-1)

1. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230(A)

FACTS:

Evans failed to operate in the name in which the license was issued.

2. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(9)

FACTS:

The contract used by Evans in the transaction failed to contain subsections: (a) the estimated completion date, (c) a listing of specified materials and work to be performed, (d) a "plain-language" exculpatory clause, (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, (h) contractor's license expiration date, class of license, and classification or specialty services, and (i) statement providing that any modification to the contract which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties. (Exh. C-2)

3. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(5)

FACTS:

After Evans performed the work, Miller noticed the roof leaking, which caused damage to the insulation and ceilings in two rooms. Evans returned to the property but was unsuccessful in repairing the leaks. (Exh. C-1)

On July 11, 2003, Miller Roofing Inc. ("Miller") inspected the roof at the subject property and indicated the following:

- Rakes cut too short or too long.
- Walls have shingles run upon them.
- Key ways lapped over.
- Shingles improperly nailed.
- Vent flanges not nailed down.
- Caps run both ways.
- Shingles at ridge line appear to have a hole.
- Shingles used as flashing. (Exh. C-4)

In a written statement dated July 15, 2003, Star City Roofing ("Star City") indicated the roof was "not installed properly." Star City also indicated, "In order to make this roofing correct it will have to be completely torn off back down to scratch and replaced with new roofing material." (Exh. C-6)

4. Violation of Code of Virginia or Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260(B)(30)

FACTS:

The contract specified "1 year garauntee." (Exh. C-2)

As of July 30, 2003, Evans failed to honor the warranty.

On October 2, 2003, the Millers entered into a written contract with Star City, in the amount of \$2,400.00, to tear off the old roofing and replace the shingles. (Exh. C-9)

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

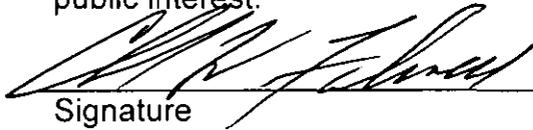
**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

1. Name: Charles Falwell
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on September 28, 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

9-28-04
Date