

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
October 13, 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.

Mark Franko, presiding officer, presided. No Board members were present.

Joe Haughwout and Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

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

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

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

Participants

- | | |
|--|---|
| 1. Bently Thomas Brown (<i>Tradesman</i>)
File Number 2004-00710 (Disc) | None |
| 2. Mountain Crest Builders Inc.
File Number 2004-04146 (Disc) | None |
| 3. Steven McNeil and
JTY Builders Inc.
File Number 2003-02128 (RF) | McNeil – C |
| 4. J C Laughlin Builder Inc.
File Number 2003-00866 (Disc)
(No Decision) | John Laughlin – R
John Perry – R Atty
Morris Lockhart – C
Brenda Lockhart – C
Charles Parker – W
James Couch – W |
| 5. Garry A. Gale
File Number 2004-00778 (Disc) | Roger Gilmer – C |

- | | |
|---|--|
| 6. Mountain Valley Sheet Metal Inc.
File Number 2004-00144 (Disc)
(Consent Order) | Glen Turner – R
Tom Bell – R Atty
Kip Painter – W
Charlie Shipe – W |
| 7. BP Construction Company Inc.
File Number 2004-01519 (Disc) | None |
| 8. Daniel G. Dudley
t/a Dudley Custom Building
File Number 2002-02324 (Disc) | Dudley – R
Dennis Dewalt – C
Denise Dewalt – C |
| 9. Daniel G. Dudley
t/a Dudley Custom Building
File Number 2002-02715 (Disc) | Dudley – R |

The meeting adjourned at 4:30 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: Bently Thomas Brown

File Number: 2004-00710
License Number: 2710027306

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 31, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Bently Thomas Brown ("Brown") 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 October 13, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joe Haughwout, Staff Member, and Mark Franko, Presiding Officer. Neither Brown 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)

Brown's failure to hold a contractor's license in order to perform contracting work is a violation of Board Regulation 18 VAC 50-30-190.1. Brown, operating under the trade name Brown's Heating and Air Conditioning, entered into a written contract with Bailey and Jessica Martin to install a heat pump and duct system at 120 East Union Street, Sandston, Virginia 23150. Brown is only licensed as a Journeyman HVAC and Gas Fitter tradesman. In February 2003, Brown installed the heat pump at the subject property. Brown admitted to the Board's agent that he installed a heating and air conditioning system at the subject property, and further stated that he did not know he needed a contractor's license to install the HVAC system. Therefore, I recommend that a monetary penalty of \$875.00 be imposed.

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

Brown's failure to obtain a permit is a violation of Board Regulation 18 VAC 50-30-190.14. In February 2003, Brown installed the heat pump at the subject property. John G. Cooper, Senior Plumbing and Mechanical Inspector with Henrico County Building Construction and Inspections, told the Board's agent that Brown did not obtain the required permit. Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

By: _____

Mark Franko
Presiding Officer

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 29, 2004 (revised August 25, 2004)

FILE NUMBER: 2004-00710
RESPONDENT: Bently Thomas Brown
LICENSE NUMBER: 2710027306
EXPIRATION: April 30, 2005

SUBMITTED BY: E. Nathan Matthews
APPROVED BY: Wayne Mozingo

COMMENTS:

None.

Bently Thomas Brown ("Brown") was at all times material to this matter a licensed tradesman in Virginia (No. 2710027306).

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 August 5, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Bailey and Jessica Martin ("the Martins") regarding Bently Thomas Brown, t/a Brown's Heating and Air Conditioning. (Exh. C-1)

On January 23, 2003, the Martins entered into a written contract with Brown's Heating and A/C, in the amount of \$3,500.00, to install a heat pump system and duct system at 120 East Union Street, Sandston, Virginia 23150. The contract was signed by Tom Brown. (Exh. C-2)

On January 17, 1996, Brown was issued Journeyman HVAC & Gas Fitter tradesman license number 2710027306. (Exh. I-1)

In February 2003, Brown installed the heat pump at the subject property. (Exh. C-1)

On October 6, 2003, Brown admitted he installed a heating and air conditioning system at the subject property. (Exh. I-5)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or regulations of the board.

FACTS:

On October 6, 2003, Brown told Investigator E. Nathan Matthews, the Board's agent, that he did not know he needed a contractor's license to install the HVAC system. (Exh. I-5)

On October 7, 2003, a search of the license records of the Board for Contractors revealed Tom Brown, t/a Brown's Heating & A/C, was not a licensed contractor. (Exh. I-3)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

14. Failure to comply with the Virginia Uniform Statewide Building Code, as amended.

FACTS:

On October 6, 2003, Brown told the Board's agent that he was not sure if he obtained a mechanical permit since the work was considered to be change out. (Exh. I-6)

On November 4, 2003, John G. Cooper, Senior Plumbing and Mechanical Inspector with the Henrico County Building Construction and Inspections, advised the Board's agent that Brown failed to obtain a required permit for the work performed at the subject property, in violation of Sections 109.1 to 110.1 of the Uniform Statewide Building Code. (Exh. W-1)

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

Re: Mountain Crest Builders Inc.

File Number: 2004-04146
License Number: 2705067586

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On September 1, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mountain Crest Builders Inc. ("Mountain Crest") 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 30, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Mountain Crest to the address of record and at 2665 Buffalo Mill Rd., Evington, Virginia 24550. As of October 13, 2004, the certified mailings to the address of record and at 2665 Buffalo Mill Rd., Evington, Virginia 24550 were not returned to the Department, and are reported as unclaimed by the United States Postal Service.

On October 13, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joe Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Jay T. Yancey, nor anyone on behalf of Mountain Crest 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: Code of Virginia

Mountain Crest's substantial identity of interest with a contractor whose license was previously revoked by the Board is a violation of § 54.1-1110 of the Code of Virginia. On August 8, 1999, JTY Builders Inc. was issued Class A Contractor's license number 2705051553. Melinda Yancey was the Designated Employee and Jay T. Yancey was the Qualified Individual and Responsible Management for license number 2705051553. On March 20, 2002, Mountain Crest was issued Class A Contractor's license number

2705067586. Melinda Yancey is the Designated Employee and Jay T. Yancey is the Qualified Individual and Responsible Management for license number 2705067586. On November 20, 2003, the Board for Contractors, according to Final Opinions and Orders for files 2002-02933 and 2003-01337, revoked license number 2705051553 for violations of the Board's regulations. License numbers 2705051553 and 2705067586 share substantially identical principals or officers; and have the same designated employee. Therefore, I recommend that license revocation be imposed.

By: _____
Mark Franko
Presiding Officer

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: Virginia Board for Contractors
DATE: June 11, 2004 (revised August 6, 2004 and August 10,
2004)

FILE NUMBER: 2004-04146
RESPONDENT: Mountain Crest Builders Inc.
LICENSE NUMBER: 2705067586
EXPIRATION: March 31, 2006

SUBMITTED BY: Investigator Wayne J. Ozmore, Jr.
APPROVED BY: Lead Investigator Janet Creamer

COMMENTS:

None.

Mountain Crest Builders Inc. ("Mountain Crest") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705067586).

Based on the investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia:

BACKGROUND:

On December 31, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a Memorandum from the Board for Contractors ("the Board") regarding Mountain Crest. (Exh. I-1)

1. Code of Virginia

§ 54.1-1110. Grounds for denial or revocation of license or certificate.

The Board may suspend, revoke, or deny renewal of an existing license or certificate, or refuse to issue a license or certificate, to any contractor who is shown to have a substantial identity of interest with a contractor whose license or certificate has been revoked or not renewed by the Board. A substantial identity of interest includes but is not limited to (i) a controlling financial interest by the individual or corporate principals of the contractor whose license or certificate has been revoked or nonrenewed, (ii) substantially identical principals or officers, or (iii) the same designated employee as the contractor whose license or certificate has been revoked or not renewed by the Board.

FACTS:

On August 8, 1999, JTY Builders Inc. ("JTY") was issued Class A Contractor's license number 2705051553 as a corporation. M. Yancey, individual certificate number 2706093587, was the Designated Employee and Jay T. Yancey, individual certificate number 2706100321, was the Qualified Individual and Responsible Management for license number 2705051553. The address of record was 2665 Buffalo Mill Road, Evington, Virginia 24550. (Exh. I-4, I-6, I-7, and I-8)

On March 20, 2002, Mountain Crest was issued Class A Contractor's license number 2705067586 as a corporation. M. Yancey, individual certificate number 2706093587, is the Designated Employee and Jay T. Yancey, individual certificate number 2706093593, was the Qualified Individual and Responsible Management for license number 2705067586. The address of record was 2665 Buffalo Mill Road, Evington, Virginia 24550. (Exh. I-5)

On November 20, 2003, according to Final Opinion and Order for File Number 2002-02933, the Board imposed a \$4,000.00 monetary penalty and license revocation against JTY's Class A Contractor's license number 2705051553 for violations of the Board's regulations. (Exh. I-2)

On November 20, 2003, according to Final Opinion and Order for File Number 2003-021337, the Board imposed a \$11,000.00 monetary penalty and license revocation against JTY's Class A Contractor's license number 2705051553 for violations of the Board's regulations. (Exh. I-3)

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

Re: Steven McNeil (Claimant) and JTY Builders Inc. (Regulant)

File Number: 2003-02128
License Number: 2705067586

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On July 25, 2003, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Steven McNeil ("Claimant") and JTY Builders Inc. ("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 "Not Deliverable as Addressed, Unable to Forward."

On September 9, 2003, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the conference: Steven McNeil, Claimant; Douglas Schroder, Staff Member; and William Paulette, Presiding Board Member. Jay T. Yancey, JTY Builders, Inc. did not appear in person or by any other qualified representative.

On September 8, 2004, a letter to reconvene the IFF was mailed, via certified mail, to the Claimant and the Regulant. The certified mail was signed and received by the Claimant. The certified mail sent to the Regulant at 66 Mulberry Circle, Lynchburg, Virginia 24502 was signed and received.

On September 30, 2004, a letter to reschedule the reconvening of the IFF was mailed, via certified mail, to the Claimant and the Regulant. The certified mail to the Claimant was signed and received. The certified mail was sent to the Regulant at 66 Mulberry Circle, Lynchburg, Virginia 24502 and at 2665 Buffalo Mill Rd., Evington, Virginia 24550. As of October 13, 2004, the certified mailings to the Regulant at 66 Mulberry Circle, Lynchburg, Virginia 24502 and at 2665 Buffalo Mill Rd., Evington, Virginia 24550 were not returned to the Department, and are reported as unclaimed by the United States Postal Service.

On October 13, 2004, the IFF was reconvened at the Department of Professional and Occupational Regulation. The following individuals participated at the conference: Steven McNeil, Claimant; Joe Haughwout, Staff Member; and Mark Franko, Presiding Officer.

Jay T. Yancey, JTY Builders, Inc. did not appear in person or by any other qualified representative.

RECOMMENDATION

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

In June 2001, the Claimant and the Regulant entered into a written contract to construct a house.

In July 2002, the Claimant obtained a judgment against the Regulant, in the amount of \$37,690.00 plus interest.

The Claimant is seeking a payment from the Recovery Fund, in the amount of \$10,000.00.

McNeil stated during the IFF that the judgment was awarded to him for monies he paid to the Regulant, where no work was performed.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$10,000.

By: _____

Mark Franko
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: April 25, 2003

RE: **In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Steven W. McNeil & Lisa Y. McNeil (Claimants) and JTY
Builders, Inc. t/a JTY Builders, Inc. (Regulant)**
File Number: 2003-02128

BACKGROUND

On **July 26, 2002**, in the Circuit Court for the County of Campbell, Steven W. McNeil and Lisa Y. McNeil obtained a **Judgment** against JTY Builders, Inc. and Jay T. Yancey and Melinda O. Yancey, **in the amount of \$37,690.00, plus interest.**

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **February 7, 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 Order does not recite the basis for the award.

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. On page one of the contract the owners listed are P.D. and Lisa McNeil as owners. The contract was signed by Steven W. McNeil. The Board issued Class A License Number 2705051553 to JTY Builders, Inc., t/a JTY Builders, Inc., on **August 9, 1999**. The license will expire on **August 31, 2003**. The claimants entered into a written contract with JTY Builders, Inc., on **June 18, 2001** for the construction of a house.

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 any pleadings 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 **July 26, 2002**. The claim was received on **February 7, 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 the JTY Builders, Inc., for the construction of a house.

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 not conducted, as the regulant could not be found.

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 Order does not recite the basis of the award.

In the Affidavit of Facts dated **February 4, 2003**, the claimants assert the regulant received funds for the construction of a house. The regulant did not complete the construction or return the money to the claimant. The regulant did not apply all the funds received from the claimants toward the cost of the claimants' project.

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: Garry A. Gale

File Number: 2004-00778
License Number: 2705028723

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 4, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Garry A. Gale ("Gale") 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 August 27, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Gale to the address of record. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On October 13, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Roger Gilmer; Complainant; Joe Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Gale 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 IFF Memorandum:

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

Gale's failure to use a written contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. In June 2003, Gilmer entered into a verbal contract with Gale to perform electrical work. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

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

Gale's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. In June 2003, Gale commenced work. Between July 6, 2003 and July 14, 2003, Gale did not perform work at the subject property. Gilmer made several attempts to

contact Gale regarding the work progress. On July 17, 2003, a rough-in inspection of the work was approved. Gilmer contacted Gale, and requested that Gale complete work before July 21, 2003 so that insulation could be installed. Between July 17, 2003 and July 28, 2003, Gilmer made several attempts to contact Gale regarding completion of the work. Gale has failed to complete the work. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

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

Gale's failure to failure to respond to the Board's agent is a violation of Board Regulation 18 VAC 50-22-260.B.13. On April 19, 2004, the Board's agent made a written request to Gale, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent's certified letter to Gale was returned by the United States Postal Service. Gale has refused or failed to respond to the Board's agent. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

By: _____
Mark Franko
Presiding Officer

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: Contractors
DATE: May 21, 2004 (revised July 26, 2004)
RE: 2004-00778; Garry A. Gale

BACKGROUND:

On August 13, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Roger Gilmer ("Gilmer") regarding Garry A. Gale ("Gale"). (Exh. C-1)

On June 16, 2003, Gilmer entered into a verbal agreement with Gale, in the amount of \$2,000.00, to complete electrical rough-in and final at 15 Inch Run Lane, Lyndhurst, Virginia 22592. (Exh. C-1)

On June 22, 2003, Gale commenced work. (Exh. C-1)

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

18 VAC 50-22-260.B.8

FACTS:

Gale failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed, signed by all parties, prior to commencement of work.

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

18 VAC 50-22-260.B.15

FACTS:

On July 4, 2003, Gilmer told Gale the rough-in inspection should be performed before July 16, 2003, because the insulation was scheduled for July 21, 2003. (Exh. C-1)

Between July 6, 2003 and July 14, 2003, Gale did not perform work at the subject property. Gilmer made several attempts to contact Gale regarding the work progress. (Exh. C-1)

On July 14, 2003, Gale told Gilmer that the inspection would pass and after the inspection he would hook up the four closet lights, run the two outdoor motion lights, rerun #8 wire to oven instead of #6 installed, run the door wire and outdoor receptacles. (Exh. C-1)

On July 16, 2003, the rough-in inspection was performed. (Exh. C-3) The inspection was not approved because the ground wires were not tied and crimped together and no smoke detectors installed. Gilmer contacted Gale regarding the inspection and requested Gale return to the property to correct the problems. (Exh. C-1)

On July 17, 2003, the rough-in inspection was approved. (Exh. C-1)

On July 17, 2003, Gilmer contacted Gale. Gilmer told Gale that the insulation was scheduled for July 21, 2003, and requested Gale finish the project before July 21, 2003. (Exh. C-1)

Between July 17, 2003 and July 28, 2003, Gilmer made several attempts to contact Gale regarding the completion of the project. (Exh. C-1)

As of August 11, 2003, Gale failed to complete the work contracted for. (Exh. C-1)

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

18 VAC 50-22-260.B.13

FACTS:

On April 6, 2004, the Stuart's Draft Post Office certified mail was delivered to Gale at 36 Chateau Lane, Starts Draft, Virginia 24477. (Exh. I-4)

On April 19, 2004, Investigator Dale C. Amos, the Board's agent, sent a written request, via certified mail, to Gale at the address of record of 36 Chateau Lane, Stuarts Draft, Virginia 24477, requesting a written response and supporting documents to the complaint filed with the Board. (Exh. I-4)

The certified letter was unclaimed and returned by the United States Postal Service to the Board's agent on May 10, 2004. (Exh. I-4)

As of May 21, 2004, Gale refused or failed to respond to the Board's agent.

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

Re: Mountain Valley Sheet Metal Inc, t/a Mountain Valley Sheet Metal Inc
New Market, VA 22844

File Number 2004-00144
License Number 2705074884

CONSENT ORDER

Respondent Mountain Valley Sheet Metal Inc, t/a Mountain Valley Sheet Metal Inc ("Mountain Valley Sheet Metal Inc") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's 2001 Regulations provides:

18 VAC 50-22-200. Revocation or suspension; fines.

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On August 18, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mountain Valley Sheet Metal Inc. ("Mountain Valley") 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 October 13, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Glen Turner, Responsible Management for Mountain Valley, Respondent; Tom Bell, Attorney for Respondent; Kip Painter and Charlie Shipe, Witnesses; Jennifer Kazzie, Staff Member; and Mark Franko, Presiding Officer.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

During the IFF, Bell stated that Mountain Valley offered to perform the necessary repairs, but Kersey wanted Mountain Valley to perform additional work beyond the scope of the original contract.

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

By signing this Consent Order, Mountain Valley Sheet Metal Inc acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Mountain Valley Sheet Metal Inc consents to the following term(s):

	Count 1	18 VAC 50-22-260.B.8	\$400.00
	Count 2	18 VAC 50-22-260.B.5	\$0.00

	TOTAL		\$400.00

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

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

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

SEEN AND AGREED TO:

Mountain Valley Sheet Metal Inc
Date
t/a Mountain Valley Sheet Metal Inc

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____,
2004.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2004.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

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 16, 2004 (revised August 13, 2004)

FILE NUMBER: 2004-00144
RESPONDENT: Mountain Valley Sheet Metal Inc.
LICENSE NUMBER: 2705074884
EXPIRATION: April 30, 2005

SUBMITTED BY: Renee H. Popielarz
APPROVED BY: E. Wayne Mozingo

COMMENTS:

The company was initially licensed as Glen W. Turner, t/a Mountain Valley Sheet Metal, through license number 2705004622. This license was returned on April 1, 2003. On April 1, 2003, the company became licensed as Mountain Valley Sheet Metal Inc. through license number 2705074884. Correspondence in reference to this project regarding to billing and problems was continued through the new license. The company letterhead indicates the company was calling itself Inc. prior to being licensed as such.

Board member review performed by Mark Kinser.

Mountain Valley Sheet Metal Inc. ("Mountain Valley") was at all times material to this matter a licensed Class B Contractor in Virginia (No. 2705074884).

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 June 24, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Mark D. Kersey ("Kersey") regarding Mountain Valley Sheet Metal. (Exh. C-1)

Kersey received a verbal estimate from Mountain Valley to install a radiant heat system in Middlebrook, Virginia. (Exh. C-1)

On April 29, 2002, Kersey paid Mountain Valley \$7,782.00 by check. (Exh. C-2)
On December 10, 2002, Kersey paid Mountain Valley \$2,228.00 by check. (Exh. C-3)

On September 12, 2002, a permit was issued for installation of the radiant heat system at the subject property. On October 2, 2002, the final inspection was passed. (Exh. I-1)

1. Board Regulation (Effective September 1, 2001)

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 this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

In a letter dated February 14, 2003, Mountain Valley stated "Unfortunately there was never a signed contract on the price or specifics of job – all there is are verbal agreements." (Exh. C-4)

In a written response dated August 22, 2003, Mountain Valley admitted "We never had a written contract stating the price but advised Mr. Kersey that roughly would be \$11,500.00 and he gave us a verbal go ahead to Charlie Shipe, the estimator for the job." (Exh. R-1)

Mountain Valley failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed, signed by all parties, prior to commencement of work.

2. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

Mountain Valley installed the radiant heat system at the subject property. Mountain Valley hooked up the system to the boiler system and did not install tempering valves or gauges. (Exh. W2-1)

A couple months after the system was installed and turned on, Kersey noticed the gauges connected to the manifold began to leak. (Exh. C-1)

In a letter dated February 12, 2003, Southern Air Inc. advised Kersey of several problems that needed to be addressed. Southern Air Inc. provided Kersey a proposal, in the amount of \$7,780.00, to modify/correct the radiant heating system as outlined in the February 12, 2003, letter. (Exh. C-6)

In a letter dated February 14, 2003, Mountain Valley admitted it was aware of the need to install a mixing valve on the system at the subject property. (Exh. C-4)

In a written response dated August 22, 2003, Mountain Valley stated "We were made aware by Vanguard that the system needed water mixing valves installed, also we contacted Mark to do this but he didn't want us to come and do the job." (Exh. R-1)

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

Re: · BP Construction Company Inc.

File Number: 2004-01519
License Number: 2705059593

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to BP Construction Inc. ("BP Construction") to the address of record. The Notice was also mailed, via certified mail, to BP Construction at P.O. Box 571 Buena Vista, Virginia 24416. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail to the address of record was signed and received by an individual not connected with BP Construction, and subsequently returned to the Department. The certified mail to the second address was confirmed as delivered by the United States Postal Service.

On October 13, 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 Charles Baker nor anyone on behalf of BP Construction 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)

BP Construction'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 one of the required provisions. Therefore, I recommend that a monetary penalty of \$450.00 be imposed.

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

BP Construction's retention of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. In June 2003, Williams entered into a written contract with BP Construction to construct a modular house at 3372 Bethany Road, Rustburg, Virginia 24588. Williams paid BP Construction \$17,000.00 by check. On August 18, 2003, BP Construction commenced work at the subject property. On August 26, 2003, BP Construction poured the concrete footers. After this date, BP Construction did not return to the property to continue work. Williams made several attempts to contact BP Construction in order to request a refund for work not performed. Williams also made a written request to BP Construction, requesting that Baker return \$17,650.00 for work not performed. In September 2003, Williams filed a civil suit against BP Construction for failure to perform work and failure to return funds. BP has failed to return funds received for work not performed. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

BP Construction's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. In October 2003, Williams obtained a judgment, in that amount of \$15,000.00, against BP Construction. BP Construction has failed to satisfy the judgment. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

BP Construction's failure to apply a new license within thirty (30) days of a change of business entity is a violation of Board Regulation 18 VAC 50-22-210.3. In December 2000, BP Construction was issued Class A Contractor's license number 2705059593, as a corporation. On February 2, 2004, the State Corporation Commission terminated BP Construction as a corporation. BP Construction has not applied for a new license. Therefore, I recommend that a monetary penalty of \$450.00 be imposed.

By: _____

Mark Franko
Presiding Officer

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 16, 2004 (revised August 17, 2004)

FILE NUMBER: 2004-01519
RESPONDENT: BP Construction Company Inc.
LICENSE NUMBER: 2705059593
EXPIRATION: December 31, 2004

SUBMITTED BY: E. Nathan Matthews
APPROVED BY: Wayne Mozingo

COMMENTS:

Refer to Exh. I-7 for current address information related to the Respondent.

BP Construction Company Inc. ("BP Construction") was at all times material to this matter a licensed Class A Contractor in Virginia No. 2705059593.

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 October 6, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Marjorie J. Williams ("Williams") regarding Creative Design Homes and BP Construction Company Inc. ("BP Construction"). (Exh. C-1)

On January 4, 2003, Williams paid BP Construction \$650.00 by check for construction blue prints. (Exh. C-1)

On June 24, 2003, Williams entered into a written contract with BP Construction, in the amount of \$170,000, to construct a modular house at 3372 Bethany Road, Rustburg, Virginia 24588. (Exh. C-2)

Roderick F. Pierson ("Pierson"), individual certificate number 2706107490, was the Designated Employee, Qualified Individual, and Responsible Management, effective November 30, 2000 and March 16, 2004, and Charles Baker ("Baker"), individual certificate number 2706109819, is the Responsible Management, effective November 30, 2000, for license number 2705059593. (Exh. I-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:

h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by BP Construction in the transaction failed to contain subsection: (h) contractor's license expiration date and classifications or specialty services. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

On June 25, 2003, Williams paid BP Construction \$17,000.00 by check. (Exh. C-3)

On August 18, 2003, BP Construction commenced work on the project. (Exh. C-1)

On August 21, 2003, BP Construction obtained building permit number 2004-00278 for the work to be performed at the subject property. (Exh. I-8)

On August 26, 2003, BP Construction poured the concrete footers. After this date, BP Construction did not return to the property to continue work. (Exh. C-1 and R-1)

Williams made several attempts to contact BP Construction and Baker in order to request a refund for work not performed. (Exh. C-1)

In a letter dated September 20, 2003, Williams requested Baker return \$17,650.00 for BP Construction's failure to perform work. (Exh. C-4)

On September 19, 2003, in the Campbell County General District Court, Williams filed a Warrant in Debt, in the amount of \$15,000.00, for BP Construction's failure to perform work and failure to return funds. (Exh. I-5)

As of June 16, 2004, BP Construction failed to return the funds received for work not performed.

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 October 20, 2003, in the Campbell County General District Court, Williams was awarded a \$15,000.00 judgment against BP Construction. (Exh. I-5)

As of June 16, 2004, BP Construction failed to satisfy the judgment. (Exh. I-6)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-210. Change of business entity requires a new license.

Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the firm shall apply for a new license, on a form provided by the board, within 30 days of the change in the business entity. Such changes include but are not limited to:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

FACTS:

On December 4, 2000, BP Construction was issued Class A Contractor's license number 2705059593 as a corporation. (Exh. I-4)

On February 2, 2004, the State Corporation Commission terminated BP Construction as a corporation. (Exh. I-3)

BP Construction failed to apply for a new license within 30 days of a change in the business entity.

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

Re: Daniel G. Dudley, t/a Dudley Custom Building

File Number: 2002-02324
License Number: 2705048230

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Daniel G. Dudley ("Dudley"), t/a Dudley Custom Building 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 not returned to the Department.

On September 21, 2004, an Amended Report of Findings was mailed, via certified mail, to Dudley to the address of record. The certified mail was signed and received.

On October 13, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Dudley, Respondent; Dennis and Denise DeWalt; Complainants; Jennifer Kazzie, Staff Member; and Mark Franko, Presiding Officer.

RECOMMENDATION

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

During the IFF, Count 5 in the Amended Report of Findings was changed to reflect only a one count violation of 1999 Board Regulation 18 VAC 50-22-260.B.16.

During the IFF, Dudley stated that the limited liability company is still active, but that he does not use it. Dudley also stated that his attorney indicated Dudley entered into this contract as an individual, and that the limited liability company was not connected to this project. DeWalt stated that he believed that he entered into the contract with the limited liability company. The contract used in the transaction clearly indicates Dudley Custom Building LLC.

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

Dudley's failure to obtain a new license within thirty (30) days of a change of business entity is a violation of Board Regulation 18 VAC 50-22-210. In February 1999, Dudley was issued Class A Contractor's license number 2705048230 as a sole proprietorship. In March 2000, Dudley Custom Building LLC became a limited liability company in Virginia. In February 2001, the DeWalts entered into a written contract with Dudley Custom Building LLC. Therefore, I recommend that a monetary penalty of \$300.00 be imposed.

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

Dudley's failure operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. The license was issued under the trade name Dudley Custom Building, as a sole proprietorship. In February 2001, the DeWalts entered into a written contract with Dudley Custom Building LLC. Therefore, I recommend that a monetary penalty of \$225.00 be imposed.

Count 3: Board Regulation (Effective May 1, 1999)

Dudley'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 contain two of the required subsections. Therefore, I recommend that a monetary penalty of \$325.00 be imposed.

Count 4: Board Regulation (Effective May 1, 1999)

Dudley's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. The contract specified, "The Builder shall make every reasonable effort to complete the obligations under this contract within 210 days of the beginning of construction, which construction shall begin no later than March 15, 2001." In March 2001, Dudley commenced work. On October 25, 2001 Dudley signed an agreement in which Dudley admitted that he had not completed the project on or before October 15, 2001 as required by the contract. The agreement specified that Dudley would complete the residence and provide a Certificate of Occupancy on or before November 30, 2001. After December 12, 2001, Dudley abandoned the project, removed materials, and directed subcontractors not to perform any further work on the project. On January 12, 2002, the DeWalts sent Dudley a letter terminated the contract for Dudley's failure to fulfill his contractual obligations. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 5: Board Regulation (Effective May 1, 1999)

Dudley's retention or misapplication of funds is a violation of Board Regulation 18 VAC 50-22-260.B.14. Between February 21, 2001 and October 26, 2001, DeWalt paid Dudley a total of \$247,995.28 by way of several checks. The DeWalts and Dudley entered into a

"get well" plan, under which the DeWalts paid Dudley \$45,000.00 for Draw 5 and \$4,055.00 for change orders. After the septic system work was completed, the DeWalts paid Dudley \$7,200.00 for Draw 5. According to DeWalt, Dudley paid \$10,000.00 to PAC Interiors for old accounts from Draw 5. DeWalt also believes Dudley failed to pay Lake Painting, Rocky Mount Building Supply, the plumber, and the cabinet maker with the money advanced for Draw 5 and the change orders. In January 2002, Kenneth R. Potter, t/a Lake Painting, obtained a Mechanic's Lien against the DeWalts for work he performed at the subject property, while working as a subcontractor for Dudley. Therefore, I recommend that a monetary penalty of \$1,000.00, and license revocation be imposed.

Count 6: Board Regulation (Effective September 1, 2001)

Dudley's failure to honor an agreement is a violation of Board Regulation 18 VAC 50-22-260.B.6. In October 2001, Dudley signed an agreement which stated that "in the event that I fail to complete the DeWalt residence on or before November 30, 2001, to the degree that Certificate of Occupancy is issued on or before that date, I will pay the DeWalts \$2,000.00 per month to cover expenses related to their inability to occupy the residence." Dudley failed to complete the house by November 30, 2001, and failed to pay the DeWalts the \$2,000.00 per month as agreed. During the IFF, Dudley stated that he made one payment for the month of December, but made no further payments because he did not have the funds. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

By: _____
Mark Franko
Presiding Officer

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

AMENDED
REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: July 8, 2004 (revised August 11, 2004 and amended
September 3, 2004)

FILE NUMBER: 2002-02324
RESPONDENT: Daniel G. Dudley, t/a Dudley Custom Building
LICENSE NUMBER: 2705048230
EXPIRATION: 02/28/2005

SUBMITTED BY: Vernon Reynolds
APPROVED BY: M. Wayne Brown

COMMENTS:

None.

Daniel G. Dudley ("Dudley"), t/a Dudley Custom Building, was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705048230).

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 January 24, 2002, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Dennis and Denise DeWalt ("the DeWalts") regarding Daniel Dudley and Dudley Custom Building LLC. (Exh. C-1)

On February 22, 2001, the DeWalts entered into a written contract with Dudley Custom Building L.L.C., in the amount of \$303,809.00, to construct a new home at Lot 1, The

Waterfront I, Pinecrest Circle, Moneta, Virginia. The contract was signed by Danny Dudley. (Exh. C-2)

The contract specified "The Builder shall make every reasonable effort to complete his obligations under this contract within 210 days of the beginning of construction, which construction shall begin no later than March 15, 2001." (Exh. C-1)

On February 17, 1999, Dudley was issued Class A Contractor's license number 2705048230 as a sole proprietorship. (Exh. I-1)

Between February 21, 2001 and October 26, 2001, DeWalt paid Dudley a total of \$247,995.28 by several checks. (Exh. C-3)

In March 2001, Dudley commenced work. (Exh. C-1)

1. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-210. Transfer of license/certificate prohibited.

Licenses/certificates are issued to firms as defined in these regulations. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, a new license is required. Such changes include but are not limited to:

1. Death of a sole proprietor,
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership,
3. Dissolution of a corporation, a limited liability company or an association.

FACTS:

On March 16, 2000, Dudley Custom Building L.L.C. became a limited liability company in Virginia. (Exh. I-2)

Dudley failed to obtain a new license within thirty (30) days of a change of the business entity.

2. Board Regulation (Effective May 1, 1999)

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

- A. A licensee/certificate holder must operate under the name in which the license/certificate 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/certificate holder's failure to receive notices or correspondence due to the licensee's/certificate holder's not having reported a change of name.

FACTS:

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

3. 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:
- 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 Dudley in the transaction failed to contain subsections: (f) and (h). (Exh. C-2)

4. Board Regulation (Effective May 1, 1999)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

On October 25, 2001, Dudley signed an agreement, which stated "I, Danny Dudley (and Dudley Custom Building) acknowledge that I have not completed the DeWalt residence at 72 Pinecrest Circle on or before October 15, 2001 as required by the construction contract agreement between me and the Dewalt's." The agreement further stated "I agree that I will complete the residence and provide a Certificate of Occupancy on or before November 30, 2001." (Exh. C-6)

After December 12, 2001, Dudley abandoned the project, removed materials and directed subcontractors not to perform any further work on the project. (Exh. C-1)

As of December 28, 2001, Dudley failed to complete the work contracted for, including but not limited to:

- Insulate attic
- Deliver appliances
- Repair basement leak over door, steel beam/drywall, damaged doors/window trim, and Hardi-Plank over entrance
- Hand rake and seed yard
- Install temporary driveway/walks, shower door/mirrors, carpet, door hardware, bath accessories, and gutters and spouts
- Prep fireplace mantles, install fireplace mantles/marble, and gas logs/tank
- Complete electrical work and tile work
- Connect electric to boathouse
- Add chains/fix joist-boathouse
- Paint
- Replace broken window
- Finish hardwood floors/stairs, cabinets, deck, siding, and trim
- Clean house
- Drywall touch-up
- Switch sunroom tempered windows
- Fix drainage left and right
- Add trim and grout stone at grade
- Fix loose floor boards

- Stain deck. (Exh. C-1)

On January 12, 2002, the DeWalts sent Dudley a letter terminating the contract for Dudley's failure to fulfill its contractual obligations. The DeWalts hired several contractors to complete the unfinished work. (Exh. C-1)

5. Board Regulation (Effective May 1, 1999) (TWO COUNTS)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

After the DeWalts and Dudley entered into a "get well" plan, the DeWalts advanced Dudley \$45,000.00 for Draw 5 and \$4,055.00 for change orders. After the septic system work was completed, the DeWalts paid Dudley \$7,200.00 for Draw 5. (Exh. C-1)

According to DeWalt, Dudley paid \$10,000.00 to PAC Interiors for old accounts from Draw 5. DeWalt also believes Dudley failed to pay Lake Painting \$4,500.00, Rocky Mount Building Supply for lighting and bath fixtures, the plumber for plumbing fixtures, and the cabinet maker with the money advanced for Draw 5 and the change orders. (Exh. C-1)

On January 15, 2002, in the Franklin County Circuit Court, a Mechanic's Lien was recorded against the DeWalts by Kenneth R. Potter ("Potter"), t/a Lake Painting, in the amount of \$8,900.00, for painting services provided during the construction of the subject property. (Exh. C-5)

6. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On October 25, 2001, Dudley signed an agreement, which stated "in the event that I fail to complete the DeWalt residence on or before November 30, 2001, to the degree that a

Certificate of Occupancy is issued on or before that date, I will pay the DeWalt's \$2,000.00 per month to cover expenses related to their inability to occupy the residence." (Exh. C-6)

Per the agreement, Dudley paid the DeWalts \$2,000.00 for December 2001. (Exh. C-1)

Dudley failed to complete the house by November 30, 2001, and failed to honor the agreement to pay the \$2,000.00 per month for non completion.

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

Re: Daniel G. Dudley, t/a Dudley Custom Building

File Number: 2002-02715
License Number: 2705048230

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Daniel G. Dudley ("Dudley"), t/a Dudley Custom Building 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 for and received.

On October 13, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Dudley, Respondent; Jennifer Kazzie, Staff Member; and Mark Franko, Presiding Officer.

RECOMMENDATION

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

During the IFF, Dudley stated that the limited liability company is still active, but that he does not use it. Dudley also stated that his attorney indicated Dudley entered into this contract as an individual, and that the limited liability company was not connected to this project.

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

Dudley failure to obtain a new license within thirty (30) days of a change of the business entity is a violation of Board Regulation 18 VAC 50-22-210. On February 17, 1999, Dudley was issued Class A Contractor's license number 2705048230 as a sole proprietorship. On March 16, 2000, Dudley Custom Building LLC became a limited liability company in Virginia. In July 2001, the Hladiks received a written estimate from Dudley Custom Building LLC to construct a new home. During the IFF, Dudley stated that the limited liability company is still active, but that he does not use it. Therefore, I recommend that a monetary penalty of \$300.00 be imposed.

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

Dudley 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 estimate used by Dudley reflected the name Dudley Custom Building LLC. The contract used in the transaction reflected the name Dudley Construction. Therefore, I recommend that a monetary penalty of \$225.00 be imposed.

Count 3: Board Regulation (Effective May 1, 1999)

Dudley failure to include the required minimum provisions in the written contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. The contract used in the transaction failed to contain two of the required provisions. Therefore, I recommend that a monetary penalty of \$325.00 be imposed.

Count 4: Board Regulation (Effective May 1, 1999)

Dudley failure to complete work contracted for is a violation of Board Regulation 18 VAC 50-22-260.B.12. In August 2001, Dudley commenced work. As of December 10, 2001, Dudley had the house under roof, which included the pouring of the basement floor, framing of the basement area, and installing most of the windows and doors. On December 17, 2001, Stephen Hladik met with Dudley regarding the status of the work. Dudley told Hladik that he was unable to finish the construction of the house at the contract price. Dudley has failed to complete the work contracted for. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 5: Board Regulation (Effective May 1, 1999)

Dudley's failure to pay Newcomb, a subcontractor, for services provided at the subject property is a violation of Board Regulation 18 VAC 50-22-260.B.12. Between July 18, 2001 and December 10, 2001, the Hladiks paid Dudley a total of \$170,843.00. On December 26, 2001, Phillip C. Newcomb filed a Mechanic's Lien against the Hladiks for work performed at the subject property, while working as a subcontractor for Dudley. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 6: Board Regulation (Effective May 1, 1999)

Dudley failure to return funds received for work not performed is a violation of Board Regulation 18 VAC 50-22-260.B.12. On December 17, 2001, Stephen Hladik told Dudley he would agree to continue construction under new contract conditions, provided Dudley repaid the \$47,129.00 draw paid by the Hladiks. Dudley told Stephen Hladik that the draw could not be returned because "the draw was gone." In January 2002, the Hladiks attorney sent a Dudley a letter demanding repayment of the \$47,129.00 draw. Dudley has failed to return the funds. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

By: _____

Mark Franko
Presiding Officer

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 13, 2004 (revised August 12, 2004)

FILE NUMBER: 2002-02715
RESPONDENT: Daniel G. Dudley, t/a Dudley Custom Building
LICENSE NUMBER: 2705048230
EXPIRATION: 02/28/2005

SUBMITTED BY: Vernon Reynolds
APPROVED BY: M. Wayne Brown

COMMENTS:

None.

Daniel G. Dudley ("Dudley"), t/a Dudley Custom Building, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705048230).

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 February 7, 2002, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Stephen and Donna Hladik ("the Hladiks") regarding Dudley. (Exh. C-1)

On July 8, 2001, the Hladiks received a written estimate from Dudley Custom Building LLC, in the amount of \$294,557.00, to construct a new home. (Exh. C-2)

On August 6, 2001, the Hladiks entered into a written contract with Dudley Construction, in the amount of \$294,557.00, to construct a new home at Lot 12, Southwind Key, Franklin County, Virginia. (Exh. C-2)

Between July 18, 2001 and December 10, 2001, the Hladiks paid Dudley a total of \$170,843.00 by several checks. (Exh. C-4)

On or about August 10, 2001, Dudley commenced work. (Exh. C-1)

On August 14, 2001, permits were issued for the work to be performed at the subject property. (Exh. C-1)

On February 17, 1999, Dudley was issued Class A Contractor's license number 2705048230 as a sole proprietorship. (Exh. I-1)

1. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-210. Transfer of license/certificate prohibited.

Licenses/certificates are issued to firms as defined in these regulations. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, a new license is required. Such changes include but are not limited to:

1. Death of a sole proprietor,
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership,
3. Dissolution of a corporation, a limited liability company or an association.

FACTS:

On March 16, 2000, Dudley Custom Building L.L.C. became a limited liability company in Virginia. (Exh. I-2)

Dudley failed to obtain a new license within thirty (30) days of a change of the business entity.

2. Board Regulation (Effective May 1, 1999)

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

- A. A licensee/certificate holder must operate under the name in which the license/certificate 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/certificate holder's failure to receive notices or correspondence due to the licensee's/certificate holder's not having reported a change of name.

FACTS:

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

3. 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:
 - 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 Dudley in the transaction failed to contain subsections: (f) and (h). (Exh. C-2)

4. Board Regulation (Effective May 1, 1999)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

As of December 10, 2001, Dudley had the house under roof, which included the pouring of the basement floor, framing of the basement area, and installing most of the windows and doors. (Exh. C-1)

On December 17, 2001, Stephen Hladik met with Dudley regarding the status of the work. Dudley told Stephen Hladik that he was unable to finish the construction of the house at the contract price. (Exh. C-1)

As of February 7, 2002, Dudley failed to complete the work contracted for, including but not limited to:

- Rip-rap installation
- Lot clearing
- Rough and finish grading
- Garage and patio concrete slabs
- Driveway stone
- Floor truss modification to accommodate a conflict with a required shower drain
- Purchase and installation of a missing 6' exterior shop door
- Fixing doors and windows that were not properly installed. (Exh. C-1)

5. Board Regulation (Effective May 1, 1999)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

On December 26, 2001, in the Franklin County Circuit Court, a Mechanic's Lien was recorded against the Hladiks by Phillip C. Newcomb ("Newcomb"), in the amount of \$4,8244.80, for services provided during the construction of the subject property. (Exh. C-3)

As of April 2004, Dudley failed to pay Newcomb for services provided at the subject property.

6. Board Regulation (Effective May 1, 1999)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which

work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

On December 17, 2001, Stephen Hladik met with Dudley regarding the status of the work. Stephen Hladik told Dudley he would agree to continue construction under new contract conditions if Dudley repaid the \$47,129.00 draw paid by the Hladiks. Dudley told Stephen Hladik the draw could not be returned because the "draw was gone." (Exh. C-1)

On January 4, 2001, the Hladiks' attorney sent Dudley a letter demanding repayment of the \$47,129.00 draw. (Exh. C-1)

As of July 13, 2004, Dudley failed to return funds received for work not performed.

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
October 13, 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.

Mark Franko, presiding officer, presided. No Board members were present.

Joe Haughwout and Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

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

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

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

Participants

- | | |
|--|---|
| 1. Bently Thomas Brown (<i>Tradesman</i>)
File Number 2004-00710 (Disc) | None |
| 2. Mountain Crest Builders Inc.
File Number 2004-04146 (Disc) | None |
| 3. Steven McNeil and
JTY Builders Inc.
File Number 2003-02128 (RF) | McNeil – C |
| 4. J C Laughlin Builder Inc.
File Number 2003-00866 (Disc)
(No Decision) | John Laughlin – R
John Perry – R Atty
Morris Lockhart – C
Brenda Lockhart – C
Charles Parker – W
James Couch – W |
| 5. Garry A. Gale
File Number 2004-00778 (Disc) | Roger Gilmer – C |

- | | |
|---|--|
| 6. Mountain Valley Sheet Metal Inc.
File Number 2004-00144 (Disc)
(Consent Order) | Glen Turner – R
Tom Bell – R Atty
Kip Painter – W
Charlie Shipe – W |
| 7. BP Construction Company Inc.
File Number 2004-01519 (Disc) | None |
| 8. Daniel G. Dudley
t/a Dudley Custom Building
File Number 2002-02324 (Disc) | Dudley – R
Dennis Dewalt – C
Denise Dewalt – C |
| 9. Daniel G. Dudley
t/a Dudley Custom Building
File Number 2002-02715 (Disc) | Dudley – R |

The meeting adjourned at 4:30 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: Bently Thomas Brown

File Number: 2004-00710
License Number: 2710027306

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 31, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Bently Thomas Brown ("Brown") 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 October 13, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joe Haughwout, Staff Member, and Mark Franko, Presiding Officer. Neither Brown 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)

Brown's failure to hold a contractor's license in order to perform contracting work is a violation of Board Regulation 18 VAC 50-30-190.1. Brown, operating under the trade name Brown's Heating and Air Conditioning, entered into a written contract with Bailey and Jessica Martin to install a heat pump and duct system at 120 East Union Street, Sandston, Virginia 23150. Brown is only licensed as a Journeyman HVAC and Gas Fitter tradesman. In February 2003, Brown installed the heat pump at the subject property. Brown admitted to the Board's agent that he installed a heating and air conditioning system at the subject property, and further stated that he did not know he needed a contractor's license to install the HVAC system. Therefore, I recommend that a monetary penalty of \$875.00 be imposed.

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

Brown's failure to obtain a permit is a violation of Board Regulation 18 VAC 50-30-190.14. In February 2003, Brown installed the heat pump at the subject property. John G. Cooper, Senior Plumbing and Mechanical Inspector with Henrico County Building Construction and Inspections, told the Board's agent that Brown did not obtain the required permit. Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

By: _____
Mark Franko
Presiding Officer

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 29, 2004 (revised August 25, 2004)

FILE NUMBER: 2004-00710
RESPONDENT: Bently Thomas Brown
LICENSE NUMBER: 2710027306
EXPIRATION: April 30, 2005

SUBMITTED BY: E. Nathan Matthews
APPROVED BY: Wayne Mozingo

COMMENTS:

None.

Bently Thomas Brown ("Brown") was at all times material to this matter a licensed tradesman in Virginia (No. 2710027306).

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 August 5, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Bailey and Jessica Martin ("the Martins") regarding Bently Thomas Brown, t/a Brown's Heating and Air Conditioning. (Exh. C-1)

On January 23, 2003, the Martins entered into a written contract with Brown's Heating and A/C, in the amount of \$3,500.00, to install a heat pump system and duct system at 120 East Union Street, Sandston, Virginia 23150. The contract was signed by Tom Brown. (Exh. C-2)

On January 17, 1996, Brown was issued Journeyman HVAC & Gas Fitter tradesman license number 2710027306. (Exh. I-1)

In February 2003, Brown installed the heat pump at the subject property. (Exh. C-1)

On October 6, 2003, Brown admitted he installed a heating and air conditioning system at the subject property. (Exh. I-5)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or regulations of the board.

FACTS:

On October 6, 2003, Brown told Investigator E. Nathan Matthews, the Board's agent, that he did not know he needed a contractor's license to install the HVAC system. (Exh. I-5)

On October 7, 2003, a search of the license records of the Board for Contractors revealed Tom Brown, t/a Brown's Heating & A/C, was not a licensed contractor. (Exh. I-3)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

14. Failure to comply with the Virginia Uniform Statewide Building Code, as amended.

FACTS:

On October 6, 2003, Brown told the Board's agent that he was not sure if he obtained a mechanical permit since the work was considered to be change out. (Exh. I-6)

On November 4, 2003, John G. Cooper, Senior Plumbing and Mechanical Inspector with the Henrico County Building Construction and Inspections, advised the Board's agent that Brown failed to obtain a required permit for the work performed at the subject property, in violation of Sections 109.1 to 110.1 of the Uniform Statewide Building Code. (Exh. W-1)

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

Re: Mountain Crest Builders Inc.

File Number: 2004-04146
License Number: 2705067586

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On September 1, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mountain Crest Builders Inc. ("Mountain Crest") 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 30, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Mountain Crest to the address of record and at 2665 Buffalo Mill Rd., Evington, Virginia 24550. As of October 13, 2004, the certified mailings to the address of record and at 2665 Buffalo Mill Rd., Evington, Virginia 24550 were not returned to the Department, and are reported as unclaimed by the United States Postal Service.

On October 13, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joe Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Jay T. Yancey, nor anyone on behalf of Mountain Crest 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: Code of Virginia

Mountain Crest's substantial identity of interest with a contractor whose license was previously revoked by the Board is a violation of § 54.1-1110 of the Code of Virginia. On August 8, 1999, JTY Builders Inc. was issued Class A Contractor's license number 2705051553. Melinda Yancey was the Designated Employee and Jay T. Yancey was the Qualified Individual and Responsible Management for license number 2705051553. On March 20, 2002, Mountain Crest was issued Class A Contractor's license number

2705067586. Melinda Yancey is the Designated Employee and Jay T. Yancey is the Qualified Individual and Responsible Management for license number 2705067586. On November 20, 2003, the Board for Contractors, according to Final Opinions and Orders for files 2002-02933 and 2003-01337, revoked license number 2705051553 for violations of the Board's regulations. License numbers 2705051553 and 2705067586 share substantially identical principals or officers; and have the same designated employee. Therefore, I recommend that license revocation be imposed.

By: _____
Mark Franko
Presiding Officer

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: Virginia Board for Contractors
DATE: June 11, 2004 (revised August 6, 2004 and August 10,
2004)

FILE NUMBER: 2004-04146
RESPONDENT: Mountain Crest Builders Inc.
LICENSE NUMBER: 2705067586
EXPIRATION: March 31, 2006

SUBMITTED BY: Investigator Wayne J. Ozmore, Jr.
APPROVED BY: Lead Investigator Janet Creamer

COMMENTS:

None.

Mountain Crest Builders Inc. ("Mountain Crest") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705067586).

Based on the investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia:

BACKGROUND:

On December 31, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a Memorandum from the Board for Contractors ("the Board") regarding Mountain Crest. (Exh. I-1)

1. Code of Virginia

§ 54.1-1110. Grounds for denial or revocation of license or certificate.

The Board may suspend, revoke, or deny renewal of an existing license or certificate, or refuse to issue a license or certificate, to any contractor who is shown to have a substantial identity of interest with a contractor whose license or certificate has been revoked or not renewed by the Board. A substantial identity of interest includes but is not limited to (i) a controlling financial interest by the individual or corporate principals of the contractor whose license or certificate has been revoked or nonrenewed, (ii) substantially identical principals or officers, or (iii) the same designated employee as the contractor whose license or certificate has been revoked or not renewed by the Board.

FACTS:

On August 8, 1999, JTY Builders Inc. ("JTY") was issued Class A Contractor's license number 2705051553 as a corporation. M. Yancey, individual certificate number 2706093587, was the Designated Employee and Jay T. Yancey, individual certificate number 2706100321, was the Qualified Individual and Responsible Management for license number 2705051553. The address of record was 2665 Buffalo Mill Road, Evington, Virginia 24550. (Exh. I-4, I-6, I-7, and I-8)

On March 20, 2002, Mountain Crest was issued Class A Contractor's license number 2705067586 as a corporation. M. Yancey, individual certificate number 2706093587, is the Designated Employee and Jay T. Yancey, individual certificate number 2706093593, was the Qualified Individual and Responsible Management for license number 2705067586. The address of record was 2665 Buffalo Mill Road, Evington, Virginia 24550. (Exh. I-5)

On November 20, 2003, according to Final Opinion and Order for File Number 2002-02933, the Board imposed a \$4,000.00 monetary penalty and license revocation against JTY's Class A Contractor's license number 2705051553 for violations of the Board's regulations. (Exh. I-2)

On November 20, 2003, according to Final Opinion and Order for File Number 2003-021337, the Board imposed a \$11,000.00 monetary penalty and license revocation against JTY's Class A Contractor's license number 2705051553 for violations of the Board's regulations. (Exh. I-3)

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

Re: Steven McNeil (Claimant) and JTY Builders Inc. (Regulant)

File Number: 2003-02128
License Number: 2705067586

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On July 25, 2003, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Steven McNeil ("Claimant") and JTY Builders Inc. ("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 "Not Deliverable as Addressed, Unable to Forward."

On September 9, 2003, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the conference: Steven McNeil, Claimant; Douglas Schroder, Staff Member; and William Paulette, Presiding Board Member. Jay T. Yancey, JTY Builders, Inc. did not appear in person or by any other qualified representative.

On September 8, 2004, a letter to reconvene the IFF was mailed, via certified mail, to the Claimant and the Regulant. The certified mail was signed and received by the Claimant. The certified mail sent to the Regulant at 66 Mulberry Circle, Lynchburg, Virginia 24502 was signed and received.

On September 30, 2004, a letter to reschedule the reconvening of the IFF was mailed, via certified mail, to the Claimant and the Regulant. The certified mail to the Claimant was signed and received. The certified mail was sent to the Regulant at 66 Mulberry Circle, Lynchburg, Virginia 24502 and at 2665 Buffalo Mill Rd., Evington, Virginia 24550. As of October 13, 2004, the certified mailings to the Regulant at 66 Mulberry Circle, Lynchburg, Virginia 24502 and at 2665 Buffalo Mill Rd., Evington, Virginia 24550 were not returned to the Department, and are reported as unclaimed by the United States Postal Service.

On October 13, 2004, the IFF was reconvened at the Department of Professional and Occupational Regulation. The following individuals participated at the conference: Steven McNeil, Claimant; Joe Haughwout, Staff Member; and Mark Franko, Presiding Officer.

Jay T. Yancey, JTY Builders, Inc. did not appear in person or by any other qualified representative.

RECOMMENDATION

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

In June 2001, the Claimant and the Regulant entered into a written contract to construct a house.

In July 2002, the Claimant obtained a judgment against the Regulant, in the amount of \$37,690.00 plus interest.

The Claimant is seeking a payment from the Recovery Fund, in the amount of \$10,000.00.

McNeil stated during the IFF that the judgment was awarded to him for monies he paid to the Regulant, where no work was performed.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$10,000.

By: _____

Mark Franko
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: April 25, 2003

RE: **In the matter of the Virginia Contractor Transaction Recovery Act Claim of Steven W. McNeil & Lisa Y. McNeil (Claimants) and JTY Builders, Inc. t/a JTY Builders, Inc. (Regulant)**
File Number: 2003-02128

BACKGROUND

On **July 26, 2002**, in the Circuit Court for the County of Campbell, Steven W. McNeil and Lisa Y. McNeil obtained a **Judgment** against JTY Builders, Inc. and Jay T. Yancey and Melinda O. Yancey, **in the amount of \$37,690.00, plus interest.**

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **February 7, 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 Order does not recite the basis for the award.

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. On page one of the contract the owners listed are P.D. and Lisa McNeil as owners. The contract was signed by Steven W. McNeil. The Board issued Class A License Number 2705051553 to JTY Builders, Inc., t/a JTY Builders, Inc., on **August 9, 1999**. The license will expire on **August 31, 2003**. The claimants entered into a written contract with JTY Builders, Inc., on **June 18, 2001** for the construction of a house.

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 any pleadings 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 **July 26, 2002**. The claim was received on **February 7, 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 the JTY Builders, Inc., for the construction of a house.

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 not conducted, as the regulant could not be found.

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 Order does not recite the basis of the award.

In the Affidavit of Facts dated **February 4, 2003**, the claimants assert the regulant received funds for the construction of a house. The regulant did not complete the construction or return the money to the claimant. The regulant did not apply all the funds received from the claimants toward the cost of the claimants' project.

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: Garry A. Gale

File Number: 2004-00778
License Number: 2705028723

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 4, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Garry A. Gale ("Gale") 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 August 27, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Gale to the address of record. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On October 13, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Roger Gilmer; Complainant; Joe Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Gale 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 IFF Memorandum:

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

Gale's failure to use a written contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. In June 2003, Gilmer entered into a verbal contract with Gale to perform electrical work. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

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

Gale's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. In June 2003, Gale commenced work. Between July 6, 2003 and July 14, 2003, Gale did not perform work at the subject property. Gilmer made several attempts to

contact Gale regarding the work progress. On July 17, 2003, a rough-in inspection of the work was approved. Gilmer contacted Gale, and requested that Gale complete work before July 21, 2003 so that insulation could be installed. Between July 17, 2003 and July 28, 2003, Gilmer made several attempts to contact Gale regarding completion of the work. Gale has failed to complete the work. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

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

Gale's failure to failure to respond to the Board's agent is a violation of Board Regulation 18 VAC 50-22-260.B.13. On April 19, 2004, the Board's agent made a written request to Gale, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent's certified letter to Gale was returned by the United States Postal Service. Gale has refused or failed to respond to the Board's agent. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

By: _____
Mark Franko
Presiding Officer

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: Contractors
DATE: May 21, 2004 (revised July 26, 2004)
RE: 2004-00778; Garry A. Gale

BACKGROUND:

On August 13, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Roger Gilmer ("Gilmer") regarding Garry A. Gale ("Gale"). (Exh. C-1)

On June 16, 2003, Gilmer entered into a verbal agreement with Gale, in the amount of \$2,000.00, to complete electrical rough-in and final at 15 Inch Run Lane, Lyndhurst, Virginia 22592. (Exh. C-1)

On June 22, 2003, Gale commenced work. (Exh. C-1)

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

18 VAC 50-22-260.B.8

FACTS:

Gale failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed, signed by all parties, prior to commencement of work.

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

18 VAC 50-22-260.B.15

FACTS:

On July 4, 2003, Gilmer told Gale the rough-in inspection should be performed before July 16, 2003, because the insulation was scheduled for July 21, 2003. (Exh. C-1)

Between July 6, 2003 and July 14, 2003, Gale did not perform work at the subject property. Gilmer made several attempts to contact Gale regarding the work progress. (Exh. C-1)

On July 14, 2003, Gale told Gilmer that the inspection would pass and after the inspection he would hook up the four closet lights, run the two outdoor motion lights, rerun #8 wire to oven instead of #6 installed, run the door wire and outdoor receptacles. (Exh. C-1)

On July 16, 2003, the rough-in inspection was performed. (Exh. C-3) The inspection was not approved because the ground wires were not tied and crimped together and no smoke detectors installed. Gilmer contacted Gale regarding the inspection and requested Gale return to the property to correct the problems. (Exh. C-1)

On July 17, 2003, the rough-in inspection was approved. (Exh. C-1)

On July 17, 2003, Gilmer contacted Gale. Gilmer told Gale that the insulation was scheduled for July 21, 2003, and requested Gale finish the project before July 21, 2003. (Exh. C-1)

Between July 17, 2003 and July 28, 2003, Gilmer made several attempts to contact Gale regarding the completion of the project. (Exh. C-1)

As of August 11, 2003, Gale failed to complete the work contracted for. (Exh. C-1)

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

18 VAC 50-22-260.B.13

FACTS:

On April 6, 2004, the Stuart's Draft Post Office certified mail was delivered to Gale at 36 Chateau Lane, Starts Draft, Virginia 24477. (Exh. I-4)

On April 19, 2004, Investigator Dale C. Amos, the Board's agent, sent a written request, via certified mail, to Gale at the address of record of 36 Chateau Lane, Stuarts Draft, Virginia 24477, requesting a written response and supporting documents to the complaint filed with the Board. (Exh. I-4)

The certified letter was unclaimed and returned by the United States Postal Service to the Board's agent on May 10, 2004. (Exh. I-4)

As of May 21, 2004, Gale refused or failed to respond to the Board's agent.

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

Re: Mountain Valley Sheet Metal Inc, t/a Mountain Valley Sheet Metal Inc
New Market, VA 22844

File Number 2004-00144
License Number 2705074884

CONSENT ORDER

Respondent Mountain Valley Sheet Metal Inc, t/a Mountain Valley Sheet Metal Inc ("Mountain Valley Sheet Metal Inc") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's 2001 Regulations provides:

18 VAC 50-22-200. Revocation or suspension; fines.

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On August 18, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mountain Valley Sheet Metal Inc. ("Mountain Valley") 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 October 13, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Glen Turner, Responsible Management for Mountain Valley, Respondent; Tom Bell, Attorney for Respondent; Kip Painter and Charlie Shipe, Witnesses; Jennifer Kazzie, Staff Member; and Mark Franko, Presiding Officer.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

During the IFF, Bell stated that Mountain Valley offered to perform the necessary repairs, but Kersey wanted Mountain Valley to perform additional work beyond the scope of the original contract.

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

By signing this Consent Order, Mountain Valley Sheet Metal Inc acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Mountain Valley Sheet Metal Inc consents to the following term(s):

	Count 1	18 VAC 50-22-260.B.8	\$400.00
	Count 2	18 VAC 50-22-260.B.5	\$0.00

	TOTAL		\$400.00

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

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

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

SEEN AND AGREED TO:

Mountain Valley Sheet Metal Inc
Date
t/a Mountain Valley Sheet Metal Inc

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____,
2004.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2004.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

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 16, 2004 (revised August 13, 2004)

FILE NUMBER: 2004-00144
RESPONDENT: Mountain Valley Sheet Metal Inc.
LICENSE NUMBER: 2705074884
EXPIRATION: April 30, 2005

SUBMITTED BY: Renee H. Popielarz
APPROVED BY: E. Wayne Mozingo

COMMENTS:

The company was initially licensed as Glen W. Turner, t/a Mountain Valley Sheet Metal, through license number 2705004622. This license was returned on April 1, 2003. On April 1, 2003, the company became licensed as Mountain Valley Sheet Metal Inc. through license number 2705074884. Correspondence in reference to this project regarding to billing and problems was continued through the new license. The company letterhead indicates the company was calling itself Inc. prior to being licensed as such.

Board member review performed by Mark Kinser.

Mountain Valley Sheet Metal Inc. ("Mountain Valley") was at all times material to this matter a licensed Class B Contractor in Virginia (No. 2705074884).

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 June 24, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Mark D. Kersey ("Kersey") regarding Mountain Valley Sheet Metal. (Exh. C-1)

Kersey received a verbal estimate from Mountain Valley to install a radiant heat system in Middlebrook, Virginia. (Exh. C-1)

On April 29, 2002, Kersey paid Mountain Valley \$7,782.00 by check. (Exh. C-2)
On December 10, 2002, Kersey paid Mountain Valley \$2,228.00 by check. (Exh. C-3)

On September 12, 2002, a permit was issued for installation of the radiant heat system at the subject property. On October 2, 2002, the final inspection was passed. (Exh. I-1)

1. Board Regulation (Effective September 1, 2001)

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 this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

In a letter dated February 14, 2003, Mountain Valley stated "Unfortunately there was never a signed contract on the price or specifics of job – all there is are verbal agreements." (Exh. C-4)

In a written response dated August 22, 2003, Mountain Valley admitted "We never had a written contract stating the price but advised Mr. Kersey that roughly would be \$11,500.00 and he gave us a verbal go ahead to Charlie Shipe, the estimator for the job." (Exh. R-1)

Mountain Valley failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed, signed by all parties, prior to commencement of work.

2. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

Mountain Valley installed the radiant heat system at the subject property. Mountain Valley hooked up the system to the boiler system and did not install tempering valves or gauges. (Exh. W2-1)

A couple months after the system was installed and turned on, Kersey noticed the gauges connected to the manifold began to leak. (Exh. C-1)

In a letter dated February 12, 2003, Southern Air Inc. advised Kersey of several problems that needed to be addressed. Southern Air Inc. provided Kersey a proposal, in the amount of \$7,780.00, to modify/correct the radiant heating system as outlined in the February 12, 2003, letter. (Exh. C-6)

In a letter dated February 14, 2003, Mountain Valley admitted it was aware of the need to install a mixing valve on the system at the subject property. (Exh. C-4)

In a written response dated August 22, 2003, Mountain Valley stated "We were made aware by Vanguard that the system needed water mixing valves installed, also we contacted Mark to do this but he didn't want us to come and do the job." (Exh. R-1)

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

Re: BP Construction Company Inc.

File Number: 2004-01519
License Number: 2705059593

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to BP Construction Inc. ("BP Construction") to the address of record. The Notice was also mailed, via certified mail, to BP Construction at P.O. Box 571 Buena Vista, Virginia 24416. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail to the address of record was signed and received by an individual not connected with BP Construction, and subsequently returned to the Department. The certified mail to the second address was confirmed as delivered by the United States Postal Service.

On October 13, 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 Charles Baker nor anyone on behalf of BP Construction 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)

BP Construction'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 one of the required provisions. Therefore, I recommend that a monetary penalty of \$450.00 be imposed.

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

BP Construction's retention of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. In June 2003, Williams entered into a written contract with BP Construction to construct a modular house at 3372 Bethany Road, Rustburg, Virginia 24588. Williams paid BP Construction \$17,000.00 by check. On August 18, 2003, BP Construction commenced work at the subject property. On August 26, 2003, BP Construction poured the concrete footers. After this date, BP Construction did not return to the property to continue work. Williams made several attempts to contact BP Construction in order to request a refund for work not performed. Williams also made a written request to BP Construction, requesting that Baker return \$17,650.00 for work not performed. In September 2003, Williams filed a civil suit against BP Construction for failure to perform work and failure to return funds. BP has failed to return funds received for work not performed. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

BP Construction's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. In October 2003, Williams obtained a judgment, in that amount of \$15,000.00, against BP Construction. BP Construction has failed to satisfy the judgment. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

BP Construction's failure to apply a new license within thirty (30) days of a change of business entity is a violation of Board Regulation 18 VAC 50-22-210.3. In December 2000, BP Construction was issued Class A Contractor's license number 2705059593, as a corporation. On February 2, 2004, the State Corporation Commission terminated BP Construction as a corporation. BP Construction has not applied for a new license. Therefore, I recommend that a monetary penalty of \$450.00 be imposed.

By: _____
Mark Franko
Presiding Officer

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 16, 2004 (revised August 17, 2004)

FILE NUMBER: 2004-01519
RESPONDENT: BP Construction Company Inc.
LICENSE NUMBER: 2705059593
EXPIRATION: December 31, 2004

SUBMITTED BY: E. Nathan Matthews
APPROVED BY: Wayne Mozingo

COMMENTS:

Refer to Exh. I-7 for current address information related to the Respondent.

BP Construction Company Inc. ("BP Construction") was at all times material to this matter a licensed Class A Contractor in Virginia No. 2705059593.

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 October 6, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Marjorie J. Williams ("Williams") regarding Creative Design Homes and BP Construction Company Inc. ("BP Construction"). (Exh. C-1)

On January 4, 2003, Williams paid BP Construction \$650.00 by check for construction blue prints. (Exh. C-1)

On June 24, 2003, Williams entered into a written contract with BP Construction, in the amount of \$170,000, to construct a modular house at 3372 Bethany Road, Rustburg, Virginia 24588. (Exh. C-2)

Roderick F. Pierson ("Pierson"), individual certificate number 2706107490, was the Designated Employee, Qualified Individual, and Responsible Management, effective November 30, 2000 and March 16, 2004, and Charles Baker ("Baker"), individual certificate number 2706109819, is the Responsible Management, effective November 30, 2000, for license number 2705059593. (Exh. I-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:

h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by BP Construction in the transaction failed to contain subsection: (h) contractor's license expiration date and classifications or specialty services. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

On June 25, 2003, Williams paid BP Construction \$17,000.00 by check. (Exh. C-3)

On August 18, 2003, BP Construction commenced work on the project. (Exh. C-1)

On August 21, 2003, BP Construction obtained building permit number 2004-00278 for the work to be performed at the subject property. (Exh. I-8)

On August 26, 2003, BP Construction poured the concrete footers. After this date, BP Construction did not return to the property to continue work. (Exh. C-1 and R-1)

Williams made several attempts to contact BP Construction and Baker in order to request a refund for work not performed. (Exh. C-1)

In a letter dated September 20, 2003, Williams requested Baker return \$17,650.00 for BP Construction's failure to perform work. (Exh. C-4)

On September 19, 2003, in the Campbell County General District Court, Williams filed a Warrant in Debt, in the amount of \$15,000.00, for BP Construction's failure to perform work and failure to return funds. (Exh. I-5)

As of June 16, 2004, BP Construction failed to return the funds received for work not performed.

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 October 20, 2003, in the Campbell County General District Court, Williams was awarded a \$15,000.00 judgment against BP Construction. (Exh. I-5)

As of June 16, 2004, BP Construction failed to satisfy the judgment. (Exh. I-6)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-210. Change of business entity requires a new license.

Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the firm shall apply for a new license, on a form provided by the board, within 30 days of the change in the business entity. Such changes include but are not limited to:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

FACTS:

On December 4, 2000, BP Construction was issued Class A Contractor's license number 2705059593 as a corporation. (Exh. I-4)

On February 2, 2004, the State Corporation Commission terminated BP Construction as a corporation. (Exh. I-3)

BP Construction failed to apply for a new license within 30 days of a change in the business entity.

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

Re: Daniel G. Dudley, t/a Dudley Custom Building

File Number: 2002-02324
License Number: 2705048230

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Daniel G. Dudley ("Dudley"), t/a Dudley Custom Building 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 not returned to the Department.

On September 21, 2004, an Amended Report of Findings was mailed, via certified mail, to Dudley to the address of record. The certified mail was signed and received.

On October 13, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Dudley, Respondent; Dennis and Denise DeWalt; Complainants; Jennifer Kazzie, Staff Member; and Mark Franko, Presiding Officer.

RECOMMENDATION

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

During the IFF, Count 5 in the Amended Report of Findings was changed to reflect only a one count violation of 1999 Board Regulation 18 VAC 50-22-260.B.16.

During the IFF, Dudley stated that the limited liability company is still active, but that he does not use it. Dudley also stated that his attorney indicated Dudley entered into this contract as an individual, and that the limited liability company was not connected to this project. DeWalt stated that he believed that he entered into the contract with the limited liability company. The contract used in the transaction clearly indicates Dudley Custom Building LLC.

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

Dudley's failure to obtain a new license within thirty (30) days of a change of business entity is a violation of Board Regulation 18 VAC 50-22-210. In February 1999, Dudley was issued Class A Contractor's license number 2705048230 as a sole proprietorship. In March 2000, Dudley Custom Building LLC became a limited liability company in Virginia. In February 2001, the DeWalts entered into a written contract with Dudley Custom Building LLC. Therefore, I recommend that a monetary penalty of \$300.00 be imposed.

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

Dudley'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 license was issued under the trade name Dudley Custom Building, as a sole proprietorship. In February 2001, the DeWalts entered into a written contract with Dudley Custom Building LLC. Therefore, I recommend that a monetary penalty of \$225.00 be imposed.

Count 3: Board Regulation (Effective May 1, 1999)

Dudley'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 contain two of the required subsections. Therefore, I recommend that a monetary penalty of \$325.00 be imposed.

Count 4: Board Regulation (Effective May 1, 1999)

Dudley's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. The contract specified, "The Builder shall make every reasonable effort to complete the obligations under this contract within 210 days of the beginning of construction, which construction shall begin no later than March 15, 2001." In March 2001, Dudley commenced work. On October 25, 2001 Dudley signed an agreement in which Dudley admitted that he had not completed the project on or before October 15, 2001 as required by the contract. The agreement specified that Dudley would complete the residence and provide a Certificate of Occupancy on or before November 30, 2001. After December 12, 2001, Dudley abandoned the project, removed materials, and directed subcontractors not to perform any further work on the project. On January 12, 2002, the DeWalts sent Dudley a letter terminated the contract for Dudley's failure to fulfill his contractual obligations. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 5: Board Regulation (Effective May 1, 1999)

Dudley's retention or misapplication of funds is a violation of Board Regulation 18 VAC 50-22-260.B.14. Between February 21, 2001 and October 26, 2001, DeWalt paid Dudley a total of \$247,995.28 by way of several checks. The DeWalts and Dudley entered into a

"get well" plan, under which the DeWalts paid Dudley \$45,000.00 for Draw 5 and \$4,055.00 for change orders. After the septic system work was completed, the DeWalts paid Dudley \$7,200.00 for Draw 5. According to DeWalt, Dudley paid \$10,000.00 to PAC Interiors for old accounts from Draw 5. DeWalt also believes Dudley failed to pay Lake Painting, Rocky Mount Building Supply, the plumber, and the cabinet maker with the money advanced for Draw 5 and the change orders. In January 2002, Kenneth R. Potter, t/a Lake Painting, obtained a Mechanic's Lien against the DeWalts for work he performed at the subject property, while working as a subcontractor for Dudley. Therefore, I recommend that a monetary penalty of \$1,000.00, and license revocation be imposed.

Count 6: Board Regulation (Effective September 1, 2001)

Dudley's failure to honor an agreement is a violation of Board Regulation 18 VAC 50-22-260.B.6. In October 2001, Dudley signed an agreement which stated that "in the event that I fail to complete the DeWalt residence on or before November 30, 2001, to the degree that Certificate of Occupancy is issued on or before that date, I will pay the DeWalts \$2,000.00 per month to cover expenses related to their inability to occupy the residence." Dudley failed to complete the house by November 30, 2001, and failed to pay the DeWalts the \$2,000.00 per month as agreed. During the IFF, Dudley stated that he made one payment for the month of December, but made no further payments because he did not have the funds. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

By: _____
Mark Franko
Presiding Officer

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

AMENDED
REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: July 8, 2004 (revised August 11, 2004 and amended
September 3, 2004)

FILE NUMBER: 2002-02324
RESPONDENT: Daniel G. Dudley, t/a Dudley Custom Building
LICENSE NUMBER: 2705048230
EXPIRATION: 02/28/2005

SUBMITTED BY: Vernon Reynolds
APPROVED BY: M. Wayne Brown

COMMENTS:

None.

Daniel G. Dudley ("Dudley"), t/a Dudley Custom Building, was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705048230).

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 January 24, 2002, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Dennis and Denise DeWalt ("the DeWalts") regarding Daniel Dudley and Dudley Custom Building LLC. (Exh. C-1)

On February 22, 2001, the DeWalts entered into a written contract with Dudley Custom Building L.L.C., in the amount of \$303,809.00, to construct a new home at Lot 1, The

Waterfront I, Pinecrest Circle, Moneta, Virginia. The contract was signed by Danny Dudley. (Exh. C-2)

The contract specified "The Builder shall make every reasonable effort to complete his obligations under this contract within 210 days of the beginning of construction, which construction shall begin no later than March 15, 2001." (Exh. C-1)

On February 17, 1999, Dudley was issued Class A Contractor's license number 2705048230 as a sole proprietorship. (Exh. I-1)

Between February 21, 2001 and October 26, 2001, DeWalt paid Dudley a total of \$247,995.28 by several checks. (Exh. C-3)

In March 2001, Dudley commenced work. (Exh. C-1)

1. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-210. Transfer of license/certificate prohibited.

Licenses/certificates are issued to firms as defined in these regulations. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, a new license is required. Such changes include but are not limited to:

1. Death of a sole proprietor,
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership,
3. Dissolution of a corporation, a limited liability company or an association.

FACTS:

On March 16, 2000, Dudley Custom Building L.L.C. became a limited liability company in Virginia. (Exh. I-2)

Dudley failed to obtain a new license within thirty (30) days of a change of the business entity.

2. Board Regulation (Effective May 1, 1999)

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

- A. A licensee/certificate holder must operate under the name in which the license/certificate 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/certificate holder's failure to receive notices or correspondence due to the licensee's/certificate holder's not having reported a change of name.

FACTS:

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

3. 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:
- 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 Dudley in the transaction failed to contain subsections: (f) and (h). (Exh. C-2)

4. Board Regulation (Effective May 1, 1999)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

On October 25, 2001, Dudley signed an agreement, which stated "I, Danny Dudley (and Dudley Custom Building) acknowledge that I have not completed the DeWalt residence at 72 Pinecrest Circle on or before October 15, 2001 as required by the construction contract agreement between me and the Dewalt's." The agreement further stated "I agree that I will complete the residence and provide a Certificate of Occupancy on or before November 30, 2001." (Exh. C-6)

After December 12, 2001, Dudley abandoned the project, removed materials and directed subcontractors not to perform any further work on the project. (Exh. C-1)

As of December 28, 2001, Dudley failed to complete the work contracted for, including but not limited to:

- Insulate attic
- Deliver appliances
- Repair basement leak over door, steel beam/drywall, damaged doors/window trim, and Hardi-Plank over entrance
- Hand rake and seed yard
- Install temporary driveway/walks, shower door/mirrors, carpet, door hardware, bath accessories, and gutters and spouts
- Prep fireplace mantles, install fireplace mantles/marble, and gas logs/tank
- Complete electrical work and tile work
- Connect electric to boathouse
- Add chains/fix joist-boathouse
- Paint
- Replace broken window
- Finish hardwood floors/stairs, cabinets, deck, siding, and trim
- Clean house
- Drywall touch-up
- Switch sunroom tempered windows
- Fix drainage left and right
- Add trim and grout stone at grade
- Fix loose floor boards

- Stain deck. (Exh. C-1)

On January 12, 2002, the DeWalts sent Dudley a letter terminating the contract for Dudley's failure to fulfill its contractual obligations. The DeWalts hired several contractors to complete the unfinished work. (Exh. C-1)

5. Board Regulation (Effective May 1, 1999) (TWO COUNTS)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

After the DeWalts and Dudley entered into a "get well" plan, the DeWalts advanced Dudley \$45,000.00 for Draw 5 and \$4,055.00 for change orders. After the septic system work was completed, the DeWalts paid Dudley \$7,200.00 for Draw 5. (Exh. C-1)

According to DeWalt, Dudley paid \$10,000.00 to PAC Interiors for old accounts from Draw 5. DeWalt also believes Dudley failed to pay Lake Painting \$4,500.00, Rocky Mount Building Supply for lighting and bath fixtures, the plumber for plumbing fixtures, and the cabinet maker with the money advanced for Draw 5 and the change orders. (Exh. C-1)

On January 15, 2002, in the Franklin County Circuit Court, a Mechanic's Lien was recorded against the DeWalts by Kenneth R. Potter ("Potter"), t/a Lake Painting, in the amount of \$8,900.00, for painting services provided during the construction of the subject property. (Exh. C-5)

6. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On October 25, 2001, Dudley signed an agreement, which stated "in the event that I fail to complete the DeWalt residence on or before November 30, 2001, to the degree that a

Certificate of Occupancy is issued on or before that date, I will pay the DeWalt's \$2,000.00 per month to cover expenses related to their inability to occupy the residence." (Exh. C-6)

Per the agreement, Dudley paid the DeWalts \$2,000.00 for December 2001. (Exh. C-1)

Dudley failed to complete the house by November 30, 2001, and failed to honor the agreement to pay the \$2,000.00 per month for non completion.

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

Re: Daniel G. Dudley, t/a Dudley Custom Building

File Number: 2002-02715
License Number: 2705048230

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On August 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Daniel G. Dudley ("Dudley"), t/a Dudley Custom Building 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 for and received.

On October 13, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Dudley, Respondent; Jennifer Kazzie, Staff Member; and Mark Franko, Presiding Officer.

RECOMMENDATION

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

During the IFF, Dudley stated that the limited liability company is still active, but that he does not use it. Dudley also stated that his attorney indicated Dudley entered into this contract as an individual, and that the limited liability company was not connected to this project.

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

Dudley failure to obtain a new license within thirty (30) days of a change of the business entity is a violation of Board Regulation 18 VAC 50-22-210. On February 17, 1999, Dudley was issued Class A Contractor's license number 2705048230 as a sole proprietorship. On March 16, 2000, Dudley Custom Building LLC became a limited liability company in Virginia. In July 2001, the Hladiks received a written estimate from Dudley Custom Building LLC to construct a new home. During the IFF, Dudley stated that the limited liability company is still active, but that he does not use it. Therefore, I recommend that a monetary penalty of \$300.00 be imposed.

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

Dudley 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 estimate used by Dudley reflected the name Dudley Custom Building LLC. The contract used in the transaction reflected the name Dudley Construction. Therefore, I recommend that a monetary penalty of \$225.00 be imposed.

Count 3: Board Regulation (Effective May 1, 1999)

Dudley failure to include the required minimum provisions in the written contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. The contract used in the transaction failed to contain two of the required provisions. Therefore, I recommend that a monetary penalty of \$325.00 be imposed.

Count 4: Board Regulation (Effective May 1, 1999)

Dudley failure to complete work contracted for is a violation of Board Regulation 18 VAC 50-22-260.B.12. In August 2001, Dudley commenced work. As of December 10, 2001, Dudley had the house under roof, which included the pouring of the basement floor, framing of the basement area, and installing most of the windows and doors. On December 17, 2001, Stephen Hladik met with Dudley regarding the status of the work. Dudley told Hladik that he was unable to finish the construction of the house at the contract price. Dudley has failed to complete the work contracted for. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 5: Board Regulation (Effective May 1, 1999)

Dudley's failure to pay Newcomb, a subcontractor, for services provided at the subject property is a violation of Board Regulation 18 VAC 50-22-260.B.12. Between July 18, 2001 and December 10, 2001, the Hladiks paid Dudley a total of \$170,843.00. On December 26, 2001, Phillip C. Newcomb filed a Mechanic's Lien against the Hladiks for work performed at the subject property, while working as a subcontractor for Dudley. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 6: Board Regulation (Effective May 1, 1999)

Dudley failure to return funds received for work not performed is a violation of Board Regulation 18 VAC 50-22-260.B.12. On December 17, 2001, Stephen Hladik told Dudley he would agree to continue construction under new contract conditions, provided Dudley repaid the \$47,129.00 draw paid by the Hladiks. Dudley told Stephen Hladik that the draw could not be returned because "the draw was gone." In January 2002, the Hladiks attorney sent a Dudley a letter demanding repayment of the \$47,129.00 draw. Dudley has failed to return the funds. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

By: _____

Mark Franko
Presiding Officer

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 13, 2004 (revised August 12, 2004)

FILE NUMBER: 2002-02715
RESPONDENT: Daniel G. Dudley, t/a Dudley Custom Building
LICENSE NUMBER: 2705048230
EXPIRATION: 02/28/2005

SUBMITTED BY: Vernon Reynolds
APPROVED BY: M. Wayne Brown

COMMENTS:

None.

Daniel G. Dudley ("Dudley"), t/a Dudley Custom Building, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705048230).

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 February 7, 2002, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Stephen and Donna Hladik ("the Hladiks") regarding Dudley. (Exh. C-1)

On July 8, 2001, the Hladiks received a written estimate from Dudley Custom Building LLC, in the amount of \$294,557.00, to construct a new home. (Exh. C-2)

On August 6, 2001, the Hladiks entered into a written contract with Dudley Construction, in the amount of \$294,557.00, to construct a new home at Lot 12, Southwind Key, Franklin County, Virginia. (Exh. C-2)

Between July 18, 2001 and December 10, 2001, the Hladiks paid Dudley a total of \$170,843.00 by several checks. (Exh. C-4)

On or about August 10, 2001, Dudley commenced work. (Exh. C-1)

On August 14, 2001, permits were issued for the work to be performed at the subject property. (Exh. C-1)

On February 17, 1999, Dudley was issued Class A Contractor's license number 2705048230 as a sole proprietorship. (Exh. I-1)

1. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-210. Transfer of license/certificate prohibited.

Licenses/certificates are issued to firms as defined in these regulations. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, a new license is required. Such changes include but are not limited to:

1. Death of a sole proprietor,
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership,
3. Dissolution of a corporation, a limited liability company or an association.

FACTS:

On March 16, 2000, Dudley Custom Building L.L.C. became a limited liability company in Virginia. (Exh. I-2)

Dudley failed to obtain a new license within thirty (30) days of a change of the business entity.

2. Board Regulation (Effective May 1, 1999)

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

- A. A licensee/certificate holder must operate under the name in which the license/certificate 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/certificate holder's failure to receive notices or correspondence due to the licensee's/certificate holder's not having reported a change of name.

FACTS:

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

3. 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:
 - 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 Dudley in the transaction failed to contain subsections: (f) and (h). (Exh. C-2)

4. Board Regulation (Effective May 1, 1999)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

As of December 10, 2001, Dudley had the house under roof, which included the pouring of the basement floor, framing of the basement area, and installing most of the windows and doors. (Exh. C-1)

On December 17, 2001, Stephen Hladik met with Dudley regarding the status of the work. Dudley told Stephen Hladik that he was unable to finish the construction of the house at the contract price. (Exh. C-1)

As of February 7, 2002, Dudley failed to complete the work contracted for, including but not limited to:

- Rip-rap installation
- Lot clearing
- Rough and finish grading
- Garage and patio concrete slabs
- Driveway stone
- Floor truss modification to accommodate a conflict with a required shower drain
- Purchase and installation of a missing 6' exterior shop door
- Fixing doors and windows that were not properly installed. (Exh. C-1)

5. Board Regulation (Effective May 1, 1999)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

On December 26, 2001, in the Franklin County Circuit Court, a Mechanic's Lien was recorded against the Hladiks by Phillip C. Newcomb ("Newcomb"), in the amount of \$4,8244.80, for services provided during the construction of the subject property. (Exh. C-3)

As of April 2004, Dudley failed to pay Newcomb for services provided at the subject property.

6. Board Regulation (Effective May 1, 1999)

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

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which

work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

On December 17, 2001, Stephen Hladik met with Dudley regarding the status of the work. Stephen Hladik told Dudley he would agree to continue construction under new contract conditions if Dudley repaid the \$47,129.00 draw paid by the Hladiks. Dudley told Stephen Hladik the draw could not be returned because the "draw was gone." (Exh. C-1)

On January 4, 2001, the Hladiks' attorney sent Dudley a letter demanding repayment of the \$47,129.00 draw. (Exh. C-1)

As of July 13, 2004, Dudley failed to return funds received for work not performed.

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

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

1. Name: Mark Franko
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on October 13, 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.

Mark D. Franko
Signature

10/13/04
Date