

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
October 26, 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.

Dorothy Wood, Board member, presided. Ann Rackas Pate, Board member, observed. No other Board members were present.

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

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

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

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

Participants

- | | |
|--|---|
| 1. Lan Trac Construction Inc.
File Number 2003-02946 (Disc) | Makka Zahir – R
Rabb Sabbakhan – W |
| 2. Lan Trac Construction Inc.
File Number 2003- 00607(Disc) | Makka Zahir – R
Rabb Sabbakhan – W |
| Old Dominion Manufactured Homes LC
File Number 2003-03164 (Disc) | Herbert Taylor – C
Carolyn Taylor – W
Paul Snyder – W |
| 3. Country and Lake Homes and Land Inc.
File Number 2004-05161 (Disc) | Herbert Taylor – C
Carolyn Taylor – W
Paul Snyder – W |
| 4. Russell T. Hohmann
File Number 2004-01184 (Disc) | Leo & Judy Farris – C
Ike Rowland – W |

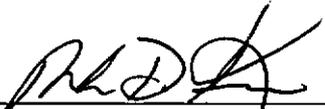
5. Frank and Donna Brown and
Roof Systems of Tidewater Inc.
File Number 2004-04217 (RF) Brown – C

6. Michael and Deborah Arrowood and
Jacqueline Sawyer
t/a Wishmakers
File Number 2004-04206 (RF) Arrowood – C

7. John and Kathleen Adair and
Always Contracting Co. Inc.
t/a ACC Inc. Design & Build
File Number 2004-01042 (RF) Adair – C
Joe Amaral – W
JoAnn Amaral – W

The meeting adjourned at 2:25 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: Lan Trac Construction Inc.

File Number: 2003-02946
License Number: 2701038208

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On September 3, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Lan Trac Construction Inc. ("Lan Trac") 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 26, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Makka Zahir, Responsible Management for Lan Trac; Rabb Sabbakhan, Witness; Jennifer Kazzie, Staff Member; Ann Rackas Pate, Observing Board Member; and Dorothy Wood, Presiding Board Member.

RECOMMENDATION

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

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

Lan Trac's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. The contract used in the transaction failed to contain five of the required provisions. During the IFF, Rabb Sabbakhan and Zahir stated Robert Allen contracted with the insurance company. Based on the record, the contract was between Robert Allen and Lan Trac. Therefore, I recommend that a monetary penalty of \$1,000.00 and remedial education be imposed.

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

Count 2: Board Regulation (Effective September 1, 2001)

Lan Trac's action of contracting with an unlicensed contractor is a violation of Board Regulation 18 VAC 50-22-260.B.29. On August 14, 2003, Rabb Sabbakhan of Lan Trac told the Board's agent that Kevin Cochran of Bigg Slimm Majestic Plumbing performed the plumbing work at the subject property. A search of the records for the Board for Contractors revealed that Cochran is neither a licensed tradesman nor a licensed contractor, and that Bigg Slimm Majestic Plumbing is not licensed contractor. During the IFF, Rabb Sabbakhan stated Cochran performed demolition plumbing work. Based on the record, Rabb Sabbakahn indicated Cochran also performed rough-in plumbing. Therefore, I recommend that a monetary penalty of \$500.00 and remedial education be imposed.

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

Count 3: Board Regulation (Effective September 1, 2001)

Lan Trac's failure to obtain written change orders is a violation of Board Regulation 18 VAC 50-22-260.B.31. The contract specified 5/8" sheetrock would be replaced on the walls and ceilings. Lan Trac installed 1/2" sheetrock on the walls and ceilings. In a written response dated June 18, 2003, Sabbakhan stated that Lan Trac obtained permission to install the 1/2" sheetrock from Ronald Allen's brother. Based on the record, Robert Allen (Ronald Allen's brother) was not a party to the contract. Therefore, I recommend that a monetary penalty of \$500.00 and remedial education be imposed.

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

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

Lan Trac's failure to report to the Board, in writing, a change of officers of the corporation within ninety (90) days of the change is a violation of Board Regulation 18 VAC 50-22-220.A. In February 1991, Lan Trac was issued Class A Contractor's license number 2701038208. Makka Zahir is the Responsible Management for license number 2701038208. On May 29, 2003, Sabbakhan told the Board's agent that Zahir was no longer the President of Lan Trac. Sabbakhan also told the Board's agent that this was a recent change and that he would be correcting the license soon. On June 14, 2004, the State Corporation Commission records revealed that Sabbakhan as the Vice President, Patricia Bolling as the Secretary, and David R. Pilgrim as the Treasurer of Lan Trac.

During the IFF, Zahir stated it was an oversight that Lan Trac had to inform the Board regarding a change of the officers of the corporation. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

By: _____
Dorothy Wood
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: May 5, 2004 (revised July 28, 2004)

FILE NUMBER: 2003-02946
RESPONDENT: Lan Trac Construction Inc.
LICENSE NUMBER: 2701038208
EXPIRATION: December 31, 2004

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

COMMENTS:

A dispute began between the parties regarding insulation that was not in the contract but was required to be installed. The work and payments stopped around the time of this dispute. The parties entered into arbitration through the court. Any issues in the complaint being sent forward to the Board are regarding issues occurring prior to the dispute.

Lan Trac Construction Inc. ("Lan Trac") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2701038208).

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 April 30, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Ronald Allen ("Allen") regarding Lan Trac. (Exh. C-1)

On October 24, 2002, Allen entered into a written contract with Lan Trac, in the amount of \$57,465.97, to repair fire damage at 2304 Barton Avenue, Richmond, Virginia 23222. (Exh. C-2)

1. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

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

FACTS:

The contract used by Lan Trac in this transaction failed to contain subsections: (d); (e); (f); (h); and; (i). (Exh. C-2)

2. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

FACTS:

On August 14, 2003, Rabb Sabbakhan ("Sabbakhan") of Lan Trac told Investigator Renee Popielarz, the Board's agent, that Kevin Cochran ("Cochran") with Bigg Slimm Majestic Plumbing performed plumbing work at the subject property. (Exh. I-3)

On May 5, 2004, a search of the licensing records for the Board for Contractors revealed Cochran is neither a licensed tradesman nor a licensed contractor. The records further revealed Bigg Slimm Majestic Plumbing is not a licensed contractor. (Exh. I-4)

3. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

The contract specified 5/8" sheet rock would be replaced on walls and ceilings. (Exh. C-2)

Lan Trac installed 1/2" sheetrock on the walls and ceilings. (Exh. C-1)

In a written response dated June 18, 2003, Sabbakhan stated he obtained permission to install the 1/2" sheetrock from Allen's brother. (Exh. R-1)

Lan Trac failed to obtain a written change, signed by all parties, for a modification of the materials.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-220. Change of responsible management, designated employee, or qualified individual.

- A. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 90 days of the change.

FACTS:

On February 4, 1991, Lan Trac was issued Class A Contractor's license number 2701038208 as a corporation. Makka Zahir ("Zahir"), individual certificate number 2706058259, is the Responsible Management for the license number 2701038208. (Exh. I-5)

On May 29, 2003, Sabbakhan told the Board's agent that Zahir was no longer the President of Lan Trac. Sabbakhan also told the Board's agent that this was a recent change and he would be correcting the license record soon. (Exh. I-1)

On June 14, 2004, the State Corporation Commission records revealed Sabbakhan s the Vice President, Patricia Bolling as the Secretary, and David R. Pilgrim as the Treasurer of Lan Trac. (Exh. I-7)

Lan Trac failed to report, in writing, a change in the officers of the corporation to the Board within ninety (90) days of the change.

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

Re: Lan Trac Construction Inc.

File Number: 2004-00607
License Number: 2701038208

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On September 29, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Lan Trac Construction Inc. ("Lan Trac") 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 26, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Makka Zahir, Responsible Management for Lan Trac; Rabb Sabbakhan, Witness; Jennifer Kazzie, Staff Member; Ann Rackas Pate, Observing Board Member; and Dorothy Wood, Presiding Board Member.

RECOMMENDATION

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

During the IFF, Rabb Sabbakhan stated Lan Trac did not include the provisions required by the Board's regulations and did not use written change orders. During the IFF, Makka Zahir also stated Lan Trac satisfied a judgment obtained by Maiden and provided a letter of satisfaction dated March 26, 2004.

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

Lan Trac'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 six of the required provisions. Therefore, I recommend that a monetary penalty of \$1,000.00 and remedial education be imposed.

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

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

Lan Trac's failure to use written change orders is a violation of Board Regulation 18 VAC 50-22-260.B.31. *Between June 26, 2003 and July 14, 2003, Lan Trac performed work at the subject property. Lan Trac installed the trap door in the upstairs bath with screws and no hinges. During the construction, Maiden agreed to additional roofing because the roofer indicated another area was rotten. Lan Trac agreed to perform the additional work at no additional charge to cover the cost of a damaged television. Lan Trac performed additional work in a bathroom. Therefore, I recommend that a monetary penalty of \$1,000.00 and remedial education be imposed.*

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

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

Lan Trac's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. *On July 2003, Maiden discovered that the pvc pipe in the kitchen sink was hooked together with a piece of heater hose under the house. Maiden's son observed the heater hose hanging off of the pipe, and 3" of water on the ground under the house. Maiden also noticed rain leaking into the den and water running down the walls. In August 2003, Rabb Sabbakhan informed Maiden that his subcontractors had installed flashing with inappropriate nailing or caulking around the chimneys. Sabbhakhan also told Maiden that the windows were wrapped satisfactorily, but that only a few were caulked. Sabbhakhan offered to refund Maiden \$500.00, return a television, and finish caulking the windows. Therefore, I recommend that a monetary penalty of \$2,000.00 and remedial education be imposed.*

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

By: _____
Dorothy Wood
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: September 7, 2004 (revised September 28, 2004)

FILE NUMBER: 2004-00607
RESPONDENT: Lan Trac Construction Inc.
LICENSE NUMBER: 2701038208
EXPIRATION: December 31, 2004

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

COMMENTS:

An issue regarding failure to change the RM listed for Lan Trac Construction Inc. was handled in file number 2003-02946.

Lan Trac Construction Inc. ("Lan Trac") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2701038208).

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 July 28, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Anne Maiden ("Maiden") regarding Lan Trac. (Exh. C-1)

On June 24, 2003, Maiden entered into a written contract with Lan Trac, in the amount of \$4,945.00, to perform remodeling work at 261 Hanover Road, Sandston, Virginia. (Exh. C-2 and R-2)

On June 25, 2003, Lan Trac commenced work. (Exh. I-1) Between June 26, 2003 and July 14, 2003, Lan Trac performed work at the subject property. (Exh. C-1)

On June 25, 2003, Maiden paid Lan Trac \$1,648.00 by check. (Exh. C-3) On July 1, 2003, Maiden paid Lan Trac \$1,648.00 by check. (Exh. C-4) On July 14, 2003, Maiden paid Lan Trac \$1,868.00 by check. (Exh. C-5)

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

FACTS:

The contract used by Lan Trac in this transaction failed to contain subsections: (a), (d), (e), (f), (h), and (i). (Exh. C-2; and R-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

The contract specified "Install new trap door with hinges" in the upstairs bath. (Exh. C-2 and R-2)

Lan Trac installed the trap door in the upstairs bath with screws and no hinges. (Exh. I-1)

During the construction, Maiden agreed to additional roofing because the roofer indicated another area was rotten. Lan Trac agreed to perform the additional roof work at no additional charge to cover the cost of a damaged television. (Exh. I-1)

Lan Trac also told Maiden a new gutter was needed, which Maiden did not have to pay for, but the gutter cost Lan Trac \$120.00. (Exh. I-1)

Lan Trac also moved a receptacle 8" and installed a light fixture in a bathroom. (Exh. I-2)
On August 14, 2003, E W Yates obtained electrical permit number ELE2003-03230 to move the range receptacle and replace the fixture at the subject property. (Exh. I-3)

Lan Trac failed to use written change orders, signed by all parties, for modifications to the scope of the work to be performed, materials, and costs of the original contract.

3. Board Regulation (Effective January 1, 2003)

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:

On July 19, 2003, Maiden had no water and discovered the pvc pipe to the kitchen sink was hooked together with a piece of heater hose under the house. Maiden's son observed 3" of water on the ground under the house and the heater hose hanging off the pipe. (Exh. C-1)

On July 22, 2003, Maiden noticed rain leaking into the den and water running down the walls. (Exh. C-1)

In a letter dated August 13, 2003, Rob Sabbakhan ("Sabbakhan"), General Manager for Lan Trac, told Maiden "My subcontractors admitted to installing flashing with inappropriate nailing or caulking around the chimneys. Caulking was not completed. Old fascia board should have been torn out & replaced." Sabbakhan also told Maiden "Windows were wrapped satisfactorily but only a few were caulked." Sabbakhan offered to refund \$500.00, return the television, and finish caulking the windows. (Exh. C-7 and R-3)

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

Re: Old Dominion Manufactured Homes LC

File Number: 2003-03164
License Number: 2705044015

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On September 7, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Old Dominion Manufactured Homes LC ("Old Dominion") to the address of record, and at 2802 Lewiston Road, Bumpass, Virginia 23024. 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 returned by the United States Postal Service and marked as "Not Deliverable as Addressed, Unable to Forward." The certified mail to the second address was signed and received.

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

The following individuals participated at the IFF: Herbert Taylor; Complainant; Paul Snyder and Carolyn Taylor, Witnesses; Jennifer Kazzie, Staff Member; Ann Rackas Pate, Observing Board Member; and Dorothy Wood, Presiding Board Member. Neither Keith West nor anyone on behalf of Old Dominion 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)

Old Dominion's failure to abate building code violations is a violation of Board Regulation 18 VAC 50-22-260.B.25. In March 1998, Old Dominion was issued Class A Contractor's license number 2705044015, as a limited liability company. In June 2000, Old Dominion Manufactured Homes Inc. was issued Class A Contractor's license number 2705056823. In March 2003, Old Dominion Manufactured Homes Inc. returned its license. In July 2004, license number 2705056823 expired. Keith J. West was the Responsible Management for license numbers 2705044015 and 2705056823, as well as three additional licenses issued by the Board.

In February 2001, Taylor entered into an agreement with Old Dominion Manufactured Homes Inc. to purchase and set up a manufactured home at Rock Creek Estates, Bumpass, Virginia. The contract was signed for on behalf of Old Dominion Manufactured Homes Inc. by Keith J. West. In April 2003, Paul Snyder, Assistant Building Official for the County of Louisa, inspected the subject property. In May 2003, Snyder sent West a letter and Notice of Code Deficiencies regarding several building code violations at the subject property. Snyder requested that West respond to the Notice within fourteen (14) calendar days.

During the IFF, Snyder stated that a final inspection was approved for the subject property. On October 29, 2003, Snyder sent a Notice of Building Code Violation to Old Dominion, by certified mail. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed." Snyder also stated that West responded to the Notice by stating that Old Dominion was out of business, and therefore had no means to correct the building code violations. Snyder further stated that he went forward to prosecute West for building code violations, but was informed by the Louisa County attorney that because Old Dominion's corporation was terminated, West was protected by corporate law.

Old Dominion failed to abate the building code violations. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____
Dorothy Wood
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Contractors
DATE: June 29, 2004 (revised August 12, 2004)

FILE NUMBER: 2003-03164
RESPONDENT: Old Dominion Manufactured Homes, LC
LICENSE NUMBER: 2705044015
EXPIRATION: March 31, 2002

SUBMITTED BY: Kevin Hoeft, Investigations Administrator

COMMENTS:

Companion file (File No. 2004-05161) involving Country and Lake Homes and Land, Inc.

Old Dominion Manufactured Homes, LC ("Old Dominion") was at all times material to this matter a licensed contractor in Virginia (License Number 2705044015).

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

BACKGROUND:

On April 7, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Herbert A. Taylor ("Taylor") regarding Weston Modular Homes, a.k.a. Old Dominion Manufactured Homes, LC. (Exh. C-1)

On February 8, 2001, Taylor entered into a written contract with Old Dominion Manufactured Homes Inc., in the amount of \$118,147.00, to purchase and set up a manufactured home at Rock Creek Estates, Bumpass, Virginia. The contract was signed by Keith J. West ("West") on behalf of Old Dominion Manufactured Homes Inc. (Exh. C-1)

On March 31, 1998, Old Dominion was issued Class A Contractor's license number 2705044015 as a limited liability company. (Exh. I-3)

On June 21, 2000, Old Dominion Manufactured Homes Inc. was issued Class A Contractor's license number 2705056823 as a corporation. On March 21, 2003, Old Dominion Manufactured Homes Inc. returned its license. On July 31, 2004, license number 2705056823 expired. (Exh. I-4)

Keith J. West ("West"), individual certificate number 2706090908, was Responsible Management for:

- Old Dominion Manufactured Homes LC (License No. 2705044015), effective March 31, 1998;
- PF Summers of Virginia LLC (License No. 2705043783), effective April 3, 1998;
- Old Dominion Manufactured Homes Inc. (License No. 2705056823), effective June 21, 2000 to March 21, 2003;
- Weston Modular Home Sales, Inc. (License No. 2705062494), effective April 18, 2001 to March 24, 2003; and
- Country and Lake Homes and Land, Inc. (License No. 2705074635), effective March 10, 2003. (Exh. I-3)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On April 4, 2003, Paul Snyder ("Snyder"), Assistant Building Official for County of Louisa, conducted an inspection of the subject property. In a letter dated April 5, 2003, Snyder noted his observations. (Exh. W-1)

On May 21, 2003, Snyder sent West a letter and Notice of Code Deficiencies ("the Notice") regarding several building code violations at the subject property. Snyder requested West, agent of Old Dominion, respond to the Notice within fourteen (14) calendar days. (Exh. W-1)

As of June 18, 2004, Old Dominion failed to abate the building code violations. (Exh. I-1)

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

Re: Country and Lake Homes and Land Inc.

File Number: 2004-05161
License Number: 2705074635

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On September 7, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Country and Lake Homes and Land Inc. ("Country and Lake") 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 26, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the *Department of Professional and Occupational Regulation*.

The following individuals participated at the IFF: Herbert Taylor; Complainant; Paul Snyder and Carolyn Taylor, Witnesses; Jennifer Kazzie, Staff Member; Ann Rackas Pate, Observing Board Member; and Dorothy Wood, Presiding Board Member. Neither Keith West nor anyone on behalf of Country and Lake 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)

Country and Lake's failure to abate building code violations is a violation of Board Regulation 18 VAC 50-22-260.B.6. Keith J. West was the Responsible Management for Old Dominion Manufactured Homes Inc., license number 2705056823. West is also the Responsible Management for Country and Lake, license number 2705074635. West was also Responsible Manager for three other licenses issued by the Board. In February 2001, Taylor entered into an agreement with Old Dominion Manufactured Homes Inc. to purchase and set up a manufactured home at Rock Creek Estates, Bumpass, Virginia. The contract was signed for on behalf of Old Dominion Manufactured Homes Inc. by Keith J. West.

In April 2003, Paul Snyder, Assistant Building Official for the County of Louisa, inspected the subject property. In May 2003, Snyder sent Country and Lake a letter and Notice of Code Deficiencies regarding several building code violations at the subject property. Snyder requested that West respond to the Notice within fourteen (14) calendar days.

During the IFF, Snyder stated that a final inspection was approved for the subject property. On October 29, 2003, Snyder sent a Notice of Building Code Violation to Country and Lake.

Country and Lake failed to abate the building code violations. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Country and Lake's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. In August 2003, the Board's agent made a written request to Country and Lake at the address of record, requesting a written response regarding the complaint filed with the Board. Country and Lake failed to respond to the Board's agent. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____
Dorothy Wood
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Contractors
DATE: June 29, 2004 (revised August 12, 2004)

FILE NUMBER: 2004-05161
RESPONDENT: Country and Lake Homes and Land, Inc.
LICENSE NUMBER: 2705074635
EXPIRATION: March 31, 2005

SUBMITTED BY: Kevin Hoeft, Investigations Administrator

COMMENTS:

Companion file (File No. 2003-3164) involving Old Dominion Manufactured Homes LC.

Country and Lake Homes and Land, Inc. ("Country and Lake") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705074635).

Based on the investigation of this matter, there is probable cause to believe the respondent has committed the following violations of the Board's regulation:

BACKGROUND:

On April 7, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Herbert A. Taylor ("Taylor") regarding Weston Modular Homes, a.k.a. Old Dominion Manufactured Homes, LC. (Exh. C-1)

On February 8, 2001, Taylor entered into a written contract with Old Dominion Manufactured Homes Inc., in the amount of \$118,147.00, to purchase and set up a manufactured home at Rock Creek Estates, Bumpass, Virginia. The contract was signed by Keith J. West ("West") on behalf of Old Dominion Manufactured Homes Inc. (Exh. C-1)

Keith J. West ("West"), individual certificate number 2706090908, was Responsible Management for:

- Old Dominion Manufactured Homes LC (License No. 2705044015), effective March 31, 1998;
- PF Summers of Virginia LLC (License No. 2705043783), effective April 3, 1998;
- Old Dominion Manufactured Homes Inc. (License No. 2705056823), effective June 21, 2000 to March 21, 2003;
- Weston Modular Home Sales, Inc. (License No. 2705062494), effective April 18, 2001 to March 24, 2003; and
- Country and Lake Homes and Land, Inc. (License No. 2705074635), effective March 10, 2003. (Exh. I-3)

1. Board Regulation (Effective January 1, 2003)

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 April 4, 2003, Paul Snyder ("Snyder"), Assistant Building Official for County of Louisa, conducted an inspection of the subject property. In a letter dated April 5, 2003, Snyder noted his observations. (Exh. W-1)

On May 21, 2003, Snyder sent Country and Land a letter and Notice of Code Deficiencies ("the Notice") regarding several building code violations at the subject property. Snyder requested Country and Land, agent of Old Dominion, respond to the Notice within fourteen (14) calendar days. (Exh. W-1)

As of June 18, 2004, the building code violations have not been abated. (Exh. I-1)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On August 29, 2003, Investigations Administrator Kevin Hoefft, the Board's agent, made a written request to Country and Lake at the address of record of 2802 Lewiston Road, Bumpass, Virginia 23024, requesting a written response regarding the complaint filed with the Board. The Board's agent requested a written response by September 8, 2003. (Exh. I-2)

As of June 29, 2004, Country and Lake failed to respond Board's agent.

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

Re: Russell T. Hohmann

File Number: 2004-01184
License Number: 2701032206

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

The following individuals participated at the IFF: Leo and Judy Farris; Complainants; Ike Rowland, Witness; Jennifer Kazzie, Staff Member; Ann Rackas Pate, Observing Board Member; and Dorothy Wood, Presiding Board Member. Neither Hohmann 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:

During the IFF, the record was corrected to reflect on May 19, 2003, Hohmann paid Mega Dors \$2,306.10.

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

Hohmann's failure to apply for 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 June 1988, Hohmann was issued Class A Contractor's license number 2701032206, as a sole proprietorship. In July 1988, Russ Hohmann Builders Inc. became incorporated in Virginia. In December 2003, the Department received a Name & Address Change Form from Hohmann to change the business name for license number 2701032206 to Russ Hohmann Builders Inc. Therefore, I recommend that a monetary penalty of \$500.00 and remedial education be imposed.

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

Count 2: Board Regulation (Effective September 1, 2001)

Hohmann's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. The contract used in the transaction reflected the names Russ Hohmann Builders and Russ Hohmann Builders Inc. In July 2002, Hohmann obtained a building permit using the name Russ Hohmann Builders Inc. Therefore, I recommend that a monetary penalty of \$500.00 and remedial education be imposed.

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

Count 3: Board Regulation (Effective September 1, 2001)

Hohmann'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 \$1,000.00 and remedial education be imposed.

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

Count 4: Board Regulation (Effective September 1, 2001)

(TWO COUNTS)

Hohmann's action of contracting with unlicensed subcontractors is a violation of Board Regulation 18 VAC 50-22-260.B.29. On July 24, 2002, Diggin' Dick Mitchell submitted an invoice to Hohmann for work performed at the subject property. On August 2, 2002, Hohmann paid Diggin' Dick Mitchell for the work.

On September 30, 2002, Harbor Contracting Inc. submitted a pay requisition to Hohmann for work performed at the subject property. On October 1, 2002, Hohmann paid Harbor Contracting Inc. for the work.

In a written response to the Board's agent in December 2003, Hohmann stated "The subcontractors who worked on this job are nearly all licensed by the state of Virginia, with a few exceptions. Those are very small operations which, until this point, I thought were blanketed by my contractors' license." On January 20, 2004, a search of the licensing records for the Board for Contractors revealed that Dick Mitchell and Harbor Contracting Inc. are not licensed contractors. Therefore, I recommend that a monetary penalty of \$1,000.00 and remedial education for each count, for a total of \$2,000.00 and remedial education be imposed.

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

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

(SEVEN COUNTS)

Hohmann's action of contracting with unlicensed subcontractors is a violation of Board Regulation 18 VAC 50-22-260.B.29. Custom Wood Products of VA submitted an invoice to Hohmann for work performed at the subject property. On January 10, 2003, Hohmann paid Custom Wood for the work.

On January 5, 2003, Phillips Brother's Enterprises LLC submitted an invoice to Hohmann for work performed at the subject property. On January 17, 2003, Hohmann paid Phillips Brother's for the work.

On January 8, 2003, Kitchen Design Inc. submitted an invoice to Hohmann for work performed at the subject property. On January 17, 2003, Hohmann paid Kitchen Design for the work.

In February 3, 2003, and again on February 18, 2003, University Contractors Inc. submitted invoices to Hohmann for work performed at the subject property. On February 7, 2003 and on February 18, 2003, Hohmann paid University Contractor's for the work.

On February 19, 2003 and again on June 12, 2003, L.W. Eure Painting Contractor submitted invoices to Hohmann for work performed at the subject property. On February 20, 2003 and June 27, 2003, Hohmann paid L.W. Eure for the work.

On February 27, 2003, C & R Masonry, Inc. submitted an invoice to Hohmann for work performed at the subject property. On March 7, 2003, Hohmann paid C & R Masonry for the work.

On March 18, 2003, and again on April 2, 2003, Mega Dors Inc. submitted invoices to Hohmann for work performed at the subject property. On May 19, 2003, Hohman paid Mega Dors for the work.

On November 4, 2003, Phillips Brother's was issued a Class C license by the Board for Contractors. On November 24, 2003 a search of the licensing records for the Board for Contractors revealed that Custom Wood, Kitchen Designs, and L.W. Eure are not licensed contractors. In a written response to the Board's agent in December 2003, Hohmann stated "The subcontractors who worked on this job are nearly all licensed by the state of Virginia, with a few exceptions. Those are very small operations which, until this point, I thought were blanketed by my contractors' license." On January 20, 2004, a subsequent search of the licensing records for the Board for Contractors revealed that C & R Masonry, Mega Dors, and University Contractors are not licensed contractors. Therefore, I recommend that a monetary penalty of \$1,000.00 and remedial education for each count, for a total of \$7,000.00 and remedial education be imposed.

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

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

Hohmann's failure to obtain written change orders, signed by both parties, is a violation of Board Regulation 18 VAC 50-22-260.B.31. The contract specified: "Settlement: ("Settlement") under this Purchase Agreement to be on or about November 1, 2002 or within five (5) days after notification by Seller that the Property has been "completed" or within five (5) business days after the loan has been approved, whichever occurs last ("Settlement Date")

On February 5, 2003, Hohmann sent the Farrises a third written change order for changes in the materials and work to be performed. On March 27, 2003, after subsequent revisions, Hohmann submitted the third change order to the Farrises. The change order was signed by Hohmann, but not the Farrises.

On February 12, 2003, the Farrises sent Hohmann an addendum to change the closing date from 11/01/04 to 3/4/03. The addendum also provided reimbursement to the Farrises for food, lodging, and loan interest on construction financing until the closing date. The addendum was not signed by either Hohmann or either of the Farrises. In a written response to the Board's agent in December 2003, Hohmann admitted that he refused to sign the addendum.

On March 27, 2003, Hohmann sent the Farrises a fourth written change order for changes in the materials and work to be performed. The change order was signed by Hohmann, but not the Farrises. Hohmann revised the fourth change order and sent it to

the Farris on April 1, 2003. The change order was not signed by either Hohmann or the Farris.

In a written response to the Board's agent in December 2003, Hohmann explained that because Mrs. Farris so many changes, modifications, and up-grades to the original contract, that it was an ordeal to keep up. Hohmann stated that although he presented Mrs. Farris with written change orders, she would verbally agree to some items in the change orders and not others, but that she gave verbal permission to proceed with the agreed items. Hohmann further stated that he believed that verbal acceptance of changes to the original contract is binding until the actual document is signed. On February 13, 2004, Lisa Moberg of Boathouse Creek Graphics Inc. inspected the subject property and found that items had been changed from the original plans.

Therefore, I recommend that a monetary penalty of \$500.00 and remedial education be imposed.

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

Count 7: Board Regulation (Effective September 1, 2001)

Hohmann's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. In March 2003, Jamison Brown of AmeriSpec Quality Home Inspection inspected the subject property. In a report, Brown noted several items that are inoperable or defects in need of correction.

In April 2003, at the request of the Farris, Black Goose Chimney Sweep installed a chimney cap at the subject property. Ike Rowland and Melanie Beeman of Black Goose conducted a National Fire Protection Association inspection of the subject property. In a report dated May 8, 2003, Black Goose noted problems found in the chimney liners, and stated that it believed that the chimney was not built to local codes, national standards or usual and customary practices. Black Goose recommended that the chimney was unsuitable for use, and should not be used until relined. In October 2003, at the request of the Farris, James E. Wirkner inspected the subject property and reviewed the Black Goose report. Wirkner reported that the fireplace chimneys were improperly constructed. Wirkner agreed with Black Goose's inspection report and recommended that the chimney and fireplaces be rebuilt. In letters dated January 22, 2004 and February 16, 2004, Black Goose informed the Farris of improper construction discovered during the demolition of the chimney at the subject property.

At the request of the Farris, Arthur E. Berkley, CBO and Director of Inspections for the County of Isle of Wight performed an inspection of the subject property. On November 21, 2003, Berkley sent Hohmann a letter regarding building code violations discovered during the inspection.

During the IFF, the Farris stated Hohmann has been unwilling to perform repairs at the subject property. The Farris also stated they and Hohmann participated in arbitration, but the arbitration did not resolve the repairs. In addition, the Farris stated they received a \$46,000.00 estimate to rebuild the chimney and other incidental work associated with rebuilding the chimney.

During the IFF, Judy Farris stated she contacted Complete Restoration; however, Hohmann agreed to pay Complete Restoration for repairs to the crawl space from water damage caused by Hohmann. The Farris further stated Complete Restoration is seeking civil damages from the Farris and non-suited the matter against Hohmann.

Therefore, I recommend that a monetary penalty of \$2,500.00 and license suspension for a period of six (6) months be imposed.

By: _____

Dorothy Wood
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors
DATE: January 9, 2004 (revised August 20, 2004)
RE: 2004-01184; Russell T. Hohmann

BACKGROUND:

On September 10, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Leo and Judy Farris ("the Farris") regarding Russell T. Hohmann ("Hohmann"), Harbor Contracting Inc., and Russ Hohmann Builders Inc. (Exh. C-1)

On May 20, 2002, the Farris entered into a written contract with Russ Hohmann Builders, in the amount of \$366,360.00, to construct a new residence at Lot 1, Deer Creek Trail, Isle of Wight County, Virginia. The contract indicated Russ Hohmann Builders Inc. as the Escrow Agent. (Exh. C-2 and C-10)

On June 22, 1988, Hohmann was issued Class A Contractor's license number 2701032206 as a sole proprietorship. (Exh. I-1)

On July 18, 2002, Russ Hohmann Builders Inc. obtained building permit number 044269 for new construction at Lot 77 Vineyard Lane, Parcel No. 33-01-077D, County of Isle of Wight, Virginia. (Exh. I-12)

On August 5, 2002, the Farris and Russ Hohmann Builders entered into an addendum to the contract. The addendum adjusted the allowances and increased the sales price to \$415,686.10. (Exh. C-1)

On November 21, 2002, the Farris and Hohmann agreed to a written change order, in the amount of \$7,751.00, for modifications to windows, brickwork, framing, painting, and insulation at the subject property. (Exh. C-4)

On November 21, 2002, the Farrises and Hohmann agreed to a second written change order, in the amount of \$750.00, for electrical changes at the subject property. (Exh. C-5)

On March 20, 2003, a Certificate of Occupancy was issued for the single family residence constructed on Map No. 33-01-077D at 16180 Deek Creek Trail, Smithfield, Virginia 23430. (Exh. I-13)

On June 17, 2003, the Farrises settled on the subject property. (Exh. C-11)

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

18 VAC 50-22-210

FACTS:

On July 5, 1988, Russ Hohmann Builders Inc. became incorporated in Virginia. (Exh. I-2)

On December 12, 2003, the Department of Professional and Occupational Regulation received a Name & Address Change Form from Hohmann to change the business name for license number 2701032206 from R. H. Construction and Russell T. Hohmann to Russ Hohmann Builders Inc. (Exh. R-3)

Hohmann failed to apply for a new license within thirty (30) days of a change of business entity.

2. Violation of Board Regulation (Effective September 1, 2001)

18 VAC 50-22-230.A

FACTS:

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

3. Violation of Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260.B.9

FACTS:

The contract used by Hohmann in the transaction failed to contain subsection: (h) the contractor's address, license number, expiration date, class of license/certificate, and classification or specialty services. (Exh. C-2)

4. Violation of Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260.B.29 (TWO COUNTS)

FACTS:

On July 24, 2002, Diggin' Dick Mitchell, Inc. ("Dick Mitchell") submitted an invoice to Hohmann, in the amount of \$2,430.00, for footings installed at the subject property. On August 2, 2002, Hohmann paid Dick Mitchell \$2,430.00. (Exh. R-10)

On September 30, 2002, Harbor Contracting, Inc. ("Harbor Contracting") submitted a pay requisition to Hohmann, in the amount of \$19,500.00, for framing work performed at the subject property. On October 1, 2002, Hohmann paid Harbor Contracting \$25,000.00. (Exh. R-8)

In a written response dated December 8, 2003, Hohmann stated "The sub-contractors who worked on this job are nearly all licensed by the state of Virginia, with a few exceptions. Those are very small operations which, until this point, I thought were blanketed by my contractors' license." (Exh. R-1)

On January 20, 2004, a search of the licensing records of the Board for Contractors ("the Board") revealed Dick Mitchell and Harbor Contracting are not licensed contractors. (Exh I-7 and I-9)

Hohmann contracted with unlicensed subcontractors in the delivery of contracting services.

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

18 VAC 50-22-260.B.29 (SEVEN COUNTS)

FACTS:

Custom Wood Products of VA ("Custom Wood") submitted an invoice to Hohmann, in the amount of \$6,581.25, for flooring installed at the subject property. On January 10, 2003, Hohmann paid Custom Wood \$6,581.25. (Exh. R-6)

On January 5, 2003, Phillips Brother's Enterprises LLC ("Phillips Brother's") submitted an invoice to Hohmann, in the amount of \$6,000.00, for installing trim work at the subject property. On January 17, 2003, Hohmann paid Phillips Brother's \$6,000.00. (Exh. R-7)

On January 8, 2003, Kitchen Design Inc. ("Kitchen Design") submitted an invoice to Hohmann, in the amount of \$33,342.00, for building and installing kitchen and vanity cabinets and granite at the subject property. Kitchen Design did not install the granite, which reduced the invoice to \$21,672.00. On January 17, 2003, Hohmann paid Kitchen Design \$21,672.00. (Exh. R-4)

On February 3, 2003, University Contractors, Inc. ("University Contractors") submitted an invoice to Hohmann, in the amount of \$4,459.00, for preparing and pouring concrete at the subject property. On February 7, 2003, Hohmann paid University Contractors \$4,459.00. On February 18, 2003, University Contractors submitted a second invoice to Hohmann, in the amount of \$979.00, for preparing and pouring concrete at the subject property. On February 21, 2003, Hohmann paid University Contractors \$5,065.00. (Exh. R-12)

On February 19, 2003, L.W. Eure Painting Contractor ("Eure") submitted an invoice to Hohmann, in the amount of \$8,959.50, for interior painting at the subject property. On February 20, 2003, Hohmann paid Eure \$8,959.50. On June 12, 2003, Eure submitted a second invoice to Hohmann, in the amount of \$2,190.00, for additional costs and work performed at the subject property. On June 27, 2003, Hohmann paid Eure \$3,140.00. (Exh. R-5)

On February 27, 2003, C & R Masonry, Inc. ("C & R Masonry") submitted an invoice to Hohmann, in the amount of \$1,785.28, for glass blocks installed at the subject property. On March 7, 2003, Hohmann paid C & R Masonry \$1,785.28. (Exh. R-9)

On March 18, 2003, Mega Dors, Inc. ("Mega Dors") submitted an invoice to Hohmann, in the amount of \$2,276.10, for two garage doors installed at the subject property. On April 2, 2003, Mega Dors submitted an invoice to Hohmann, in the amount of \$30.00, for 7' Astragal installed on the garage door at the subject property. On May 19, 2003, Mega Dors \$2,306.10. (Exh. R-11)

On November 4, 2003, Phillips Brother's was issued Class C Contractor's license number 2705080418 with the home improvement contracting ("HIC") specialty. (Exh. I-6)

On November 24, 2003, a search of the licensing records of the Board revealed Custom Wood, Kitchen Designs, and Eure are not licensed contractors. (Exh. I-3, I-4, and I-5)

In a written response dated December 8, 2003, Hohmann stated "The sub-contractors who worked on this job are nearly all licensed by the state of Virginia, with a few exceptions. Those are very small operations which, until this point, I thought were blanketed by my contractors' license." (Exh. R-1)

On January 20, 2004, a search of the licensing records of the Board revealed C & R Masonry, Mega Dors, and University Contractors are not licensed contractors. (Exh I-8, I-10, and I-11)

Hohmann contracted with unlicensed subcontractors in the delivery of contracting services.

6. Violation of Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260.B.31

FACTS:

The contract specified "Settlement: ("Settlement") under this Purchase Agreement to be on or about November 1, 2002 or within five (5) days after notification by Seller that the Property has been "completed" or within five (5) business days after the loan has been approved, whichever occurs last ("Settlement Date"). (Exh. C-2)

On February 5, 2003, Hohmann sent the Farrises a third written change order for modifications and additions to materials and work performed at the subject property. On February 26, 2003, the written change order was revised. On March 27, 2003, Hohmann sent the Farrises a revised written change order, in the amount of \$15,853.03. The change order was signed by Hohmann but not by the Farrises. (Exh. C-6)

On February 12, 2003, the Farrises sent Hohmann an addendum to amend the closing date from on or before 11/01/04 to on or before 3/4/03. The addendum also provided reimbursement to the Farrises for food, lodging, and loan interest on construction financing until closing date. The addendum was not signed by either Hohmann or either the Farrises. (Exh. C-9)

On March 27, 2003, Hohmann sent the Farrises a fourth written change order, in the amount of \$752.75, for modifications and additions to materials and work performed at the subject property. The change order was signed by Hohmann but not by the Farrises. (Exh. C-7)

Hohmann revised the fourth written change order and sent it to the Farrises on April 1, 2003. The revised change order, in the amount of \$1,662.75, included the modifications and additions to materials and work performed at the subject property at outlined in the March 27, 2003, change order and added additional materials. A \$165.00 cost was crossed out and the total cost of \$1,497.75 was hand written on the change order. The change order was not signed by either Hohmann or the Farrises. (Exh. C-8)

In a written response dated December 8, 2003, Hohmann stated "Mrs. Farris requested so many changes, modifications and up-grades to the original contract that it became an ordeal to keep up with them . . ." Hohmann also stated "She sought me out to build her house and then embroiled me in such a quagmire of changes and modifications that I was spending hours of every day working up change order for her – only to have her demand more changes before she had signed off on the ones I had submitted. She was presented with change orders which included multiple items. She would verbally

accept several items, but ask for modifications to some of the others, thereby delaying signing it, but giving verbal permission to proceed with the rest." Hohmann further stated "In all honesty, I have been under the impression that a verbal acceptance of changes to the original contract is binding until the actual document is signed. " Hohmann also admitted he refused to sign the addendum presented by the Farris regarding the estimated completion date. (Exh. R-1)

On February 13, 2004, Lisa Moberg ("Moberg") of Boathouse Creek Graphics, Inc. inspected the subject property and found items that had been changed from the original plans. In a letter dated February 17, 2004, Moberg provided a partial list of the changes found. (Exh. W-6)

Hohmann failed to obtain written change orders, signed by both parties, for modifications to the original contract, which included the cost, materials, work to be performed, and estimated completion date.

7. Violation of Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260.B.5

FACTS:

On March 20, 2003, Jamison Brown ("Brown") of AmeriSpec Quality Home Inspection, inspected the subject property. In a report, Brown noted several items that are inoperable or defects in need of correction. (Exh. W-1)

On April 15, 2003, at the request of the Farris, Black Goose Chimney Sweep ("Black Goose") installed a chimney cap at the subject property. (Exh. W-2)

On April 25, 2003, at the request of the Farris, Ike Rowland ("Rowland") and Melanie Beeman ("Beeman") of Black Goose conducted a National Fire Protection Association ("NFPA") Level 2 inspection of the subject property. In a letter dated May 8, 2003, Black Goose noted the problems found in the chimney liners. Black Goose also stated "In our opinion, this chimney was not built to local codes, national standards, or usual and customary practices. This chimney is not a suitable candidate for use in its present condition and should be discontinued from service until relined." (Exh. W-2)

On October 7, 2003, at the request of the Farris, James E. Wirkner ("Wirkner"), P.E., inspected the subject property. Wirkner reviewed the report dated May 8, 2003, from Black Goose. In a letter dated October 9, 2003, Wirkner stated "The biggest concern is both the structural integrity of the fireplace chimneys due to the faulty and improper construction. I concur with the inspection of BGCS dated May 8, 2003 and recommend

that the chimney and fireplaces be rebuilt as per the attached drawings and all local and national codes.” Wirkner also noted problems with girders and rafters. (Exh. W-3)

At the request of the Farris, Arthur E. Berkley (“Berkley”), CBO and Director of Inspections for the County of Isle of Wight, performed an inspection of the subject property. On November 21, 2003, Berkley sent Hohmann a letter regarding the following building code violations discovered during the inspection:

- Provide full bearing for all hip and valley rafters (Chapter 8, Section 802.5)
- Repair or rebuild chimney to code requirements (Chapter 10, Section 100.1)
- Install guardrail at screen porch (Chapter 3, Section 315.3)
- Firestop at ceiling around range hood (Chapter 6, Section 602.7)
- Firestop chases formed by angled walls next to fireplace (Chapter 6, Section 602.7)
- Provide proper bearing for girder on pier in crawl space (Chapter 5, Section 502.4.1)
- Install cover-plate for switch in kitchen at range hood (Chapter 45, Section 4501.11). (Exh. W-5)

In letters dated January 22, 2004 and February 16, 2004, Black Goose notified the Farris of improper construction discovered during the demolition of the chimney at the subject property. (Exh. W-2A and W-2B)

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

Re: Frank and Donna Brown (Claimants) and Roof Systems of Tidewater Inc.
(Regulant)

File Number: 2004-04217
License Number: 2705033973

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 Frank and Donna Brown ("Claimants") and Roof Systems of Tidewater Inc. ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail to the Claimants was signed and received. The certified mail the Regulant was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

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

The following individuals participated at the IFF: Frank and Donna Brown, Claimants; Joe Haughwout, Staff Member; Ann Pate, Witness; and Dorothy Wood, Presiding Board Member. Neither Pegram nor anyone on the Regulant's behalf appeared at the IFF.

RECOMMENDATION

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

In November 2001, the Claimant entered into a verbal contract with the Regulant to remove and replace a rubber roof on the Claimant's residence and tool shed. The Claimant paid the Regulant for the work. Soon after the work was completed, the roof began to leak. The Claimant contacted the Regulant regarding the leaking roof. The Regulant promised to pay another contractor to repair the roof. The Regulant did not repair the roof, and did not pay to have the roof repaired.

On May 29, 2002, in the General District Court for the City of Chesapeake, Donna Brown obtained a judgment against the Regulant, in the amount of \$4,400.00, plus interest and \$43.00 in court costs.

The Claimants are seeking a payment from the Recovery Fund in the amount of \$5,173.00.

During the IFF, the Donna Brown stated that she verbally contracted with William Pegram, who represented himself as Roof Systems of Tidewater, Inc. The Claimants also stated that they are claiming \$773.00 for court costs and attorney fees.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$5,173.00.

By: _____

Dorothy Wood
Presiding Board Member

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: June 9, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Frank S. and Donna S. Brown (Claimants) and Roof Systems of Tidewater, Inc., t/a Roof Systems of Tidewater, Inc. (Regulant)
File Number: 2004-04217

BACKGROUND

On May 29, 2002, in the General District Court for the City of Chesapeake, Donna S. Brown obtained a Judgment against William Pegram, in the amount of \$4,400.00, plus interest and \$43.00 costs.

The claim in the amount of \$5,173.00 was received by the Department of Professional and Occupational Regulation on May 19, 2003.

CLAIM FILE INFORMATION

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

The Warrant in Debt recites "Breach of Contract" as the basis of the suit.
The block designated "Contract" has been marked.

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

In the Affidavit of Facts the claimant asserts there was a verbal agreement with Mr. Pegram of Tidewater Roof Systems.

The Board issued Class A License Number 2705033973 to Roof Systems of Tidewater, Inc., t/a Roof Systems of Tidewater, Inc., on November 25, 1996. The license expired on November 30, 2002. William Pegram is listed on the Board for Contractors' licensing record as the Responsible Management, President, and Qualified Individual for Roof Systems of Tidewater, Inc. The claimant entered into a verbal contact with William Pegram of Tidewater Roof Systems for the removal and replacement of a rolled rubber roof on the claimants' residence and tool shed.

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

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

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

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

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

A Judgment was entered on May 29, 2002. The claim was received on May 19, 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 claimants entered into a verbal agreement with Roof Systems of Tidewater, William Pegram, to remove and replace a rolled rubber roof on the main residence and tool shed.

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 claimants were 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? Claimants 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. In response to the question on the claim form, the claimants responded "Pegram failed to appear, did not respond to show cause summons."

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

The Warrant in Debt recites 'Breach of Contract' as the basis of the suit.

In the Affidavit of Facts dated June 6, 2003, Donna Brown states she entered into a verbal agreement with Roof Systems of Tidewater, William Pegram, in November 2001 to "removed and replaced a rolled rubber roof on my main residence and tool shed ...". "Shortly after the house's roof was finished, we had a rain and the section of roof where the work was done started to leak. The water came in all around the edge of the roof, running down the walls and through the electrical boxes, switches and ceiling lights. Water also came in around the sliding glass door. The floors and walls were soaked."

SECTION 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimants 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 claimants were asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimants 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: Michael L. & Deborah J. Arrowood (Claimants) and Jacqueline A. Sawyer, t/a Wishmakers (Regulant)

File Number: 2004-04206
License Number: 2705061287

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 Michael L. & Deborah J. Arrowood ("Claimants") and Jacqueline A. Sawyer, t/a Wishmakers ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail to the Claimants was signed and received. The certified mail to the Regulant was returned by the United States Postal Service, and marked as "Unclaimed."

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

The following individuals participated at the IFF: Michael and Deborah Arrowood, Claimants; Joe Haughwout, Staff Member; Ann Rackas Pate, Observing Board Member; and Dorothy Wood, Presiding Board Member. Neither Jacqueline A. Sawyer nor anyone on her behalf appeared at the IFF.

RECOMMENDATION

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

During the IFF, the record was corrected to reflect that the Regulant commenced work on June 20, 2002.

On June 9, 2002, the Claimants entered into a written contract with the Regulant to construct a porch and deck at the Claimant's residence.

The Claimants paid the Regulant prior to the commencement of work. In June 2002, the Regulant commenced work. The Regulant completed the footings. The Regulant completed the framing incorrectly. After July 20, 2002, the Regulant never returned to the property to complete work. The Claimants made several attempts to contact the Regulant. The Regulant never responded, and never returned any money to the Claimants.

On October 10, 2002, in the City of Chesapeake General District Court, the Claimants obtained a judgment against the Regulant, in the amount of \$15,000.00, plus interest and \$48.00 in court costs.

The Claimants are seeking a payment from the recovery fund in the amount of \$10,000.00.

During the IFF, the Claimants stated that the judgment was entered against Jacqueline Sawyer, and that David Sawyer could not be served. The Claimants further stated that they paid the Regulant fifty percent down on the contract's value. The Claimants also stated that the judgment amount was based on the amount of money required to hire other contractors to perform the work that the Regulant did not perform. The judgment amount did not include the money paid to the Regulant as a down payment.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$10,000.00.

By: _____
Dorothy Wood
Presiding Board Member

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: May 20, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Michael L. & Deborah J. Arrowood (Claimants) and Jacqueline A. Sawyer t/a Wishmakers (Regulant)
File Number: 2004-04206

BACKGROUND

On October 10, 2002, in City of Chesapeake General District Court, Michael L. & Deborah J. Arrowood obtained a Judgment against Jacqueline A. Sawyer, in the amount of \$15,000.00, plus interest and \$48.00 costs.

The claim in the amount of \$10,000.00 received by the Department of Professional and Occupational Regulation on May 30, 2003.

CLAIM FILE INFORMATION

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

The Warrant in Debt recites "Default of construction contract for porch and deck" as the basis for the suit. The block designated "Contract "has been marked.

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

The claimants did contract with the regulant.

The Board issued Class C License Number 27050061287 to Jacqueline A. Sawyer t/a Wishmakers, on March 6, 2001. The license suspended on February 3, 2004. The claimants entered into a written contract with Jacqueline A. Sawyer t/a Wishmakers June 9, 2002 for the construction of a porch and deck at the claimants' residence.

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

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

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

The Board did not receive 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 October 10, 2002. The claim was received on May 30, 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 June 9, 2002 for the porch and deck at the claimants' residence.

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

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B

State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

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

Debtor's interrogatories were not conducted, as the regulant failed to appear.

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

The Warrant in Debt recites "Default of construction contract for porch and deck" as the basis for the suit. The block designated "Contract" has been marked.

In the Affidavit of Facts dated May 27, 2003, the claimants assert that the regulant received funds from the claimants prior to starting the construction. The project starting date was June 10, 2002. The footings were not dug until June 20, 2003. The Building Inspector failed the footing inspection and had to be corrected. The framing was completed incorrectly. The claimants made several attempts to contact the regulant to have the correction done and job completed. The regulant never completed the project and never returned the claimants' money.

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? n 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: John & Kathleen Adair (Claimants) and Always Contracting Company, Inc., t/a ACC Inc. Design & Build (Regulant)

File Number: 2004-01042
License Number: 2705020307

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On September 2, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to John and Kathleen Adair ("Claimants") and Always Contracting Company, Inc. ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mailings to the Claimant and the Regulant were signed and received.

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

The following individuals participated at the IFF: John and Kathleen Adair, Claimants; Joe and JoAnn Amaral, Witnesses; Joe Haughwout, Staff Member; Ann Rackas Pate, Observing Board Member, and Dorothy Wood, Presiding Board Member. Neither Immer nor anyone on the Regulant's behalf appeared at the IFF.

RECOMMENDATION

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

On September 3, 1999, the Claimants entered into a written contract with the Regulant to construct a family room with interior remodeling at the Claimant's residence. The Claimants paid the Regulant \$51,000.00 to perform the work. Because the Regulant failed to complete work, and completed work in a careless, negligent, and unworkmanlike manner, the Claimants paid an additional \$53,000.00 to have the work completed correctly.

On October 1, 2002, in the Circuit Court of Fairfax County, the Claimants obtained a judgment against the Regulant, in the amount of \$45,000.00 in Compensatory Damages, plus \$5,000.00 in Punitive Damages.

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

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$10,000.00.

By: _____
Dorothy Wood
Presiding Board Member

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: August 12, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of John & Kathleen Adair (Claimants) and Always Contracting Co Inc., t/a ACC Inc. Design & Build

(Regulant)
File Number: 2004-01042

BACKGROUND

On October 1, 2002, in the Circuit Court of Fairfax County, John Adair & Kathleen Adair obtained a Judgment against Always Contracting Company, Inc., in the amount of \$45,000.00, in Compensatory Damages and \$5,000.00 in Punitive Damages.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on August 14, 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 recites "Fraud" as 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.

The Board issued Class A License Number 2705020307 to Always Contracting Co., Inc., t/a ACC Inc. Design & Build, on April 21, 1993. The license was permanently revoked August 10, 2001. The claimants entered into a written contract with ACC Inc. t/a Always Contracting Company Inc., September 3, 1999 to construct a family room with interior remodeling on the claimants' residence.

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

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

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

A Order was entered on October 1, 2002. The claim was received on August 13, 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 claimants entered into a written contract with ACC Inc., t/a Always Contracting Company Inc., September 3, 1999 to construct a family room addition 16' x 24' with interior remodeling on the claimant's residence.

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

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or

have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

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

Debtor's interrogatories were not conducted. On September 2, 2003 the SCC terminated the corporation for failure to file an annual report.

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 recites "Fraud" as the basis for the award.

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.

