

**Minutes of Meeting  
BOARD FOR CONTRACTORS  
INFORMAL FACT-FINDING CONFERENCES  
November 10, 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.

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

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

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

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

Participants

- |   |  |
|---|--|
| 1. Kenneth R. Brown<br>t/a Southside Aluminum<br>File Number 2004-03160 (Disc)              | Brown – R<br>Michael Calhoun – W<br>Sherry Kidd – C<br>Rodger Kidd – W |
| 2. Advanced Concrete Concepts Inc.<br>File Number 2004-02604 (Disc)                         | None   |
| 3. Wilmer N. Ricks<br>t/a W N Ricks<br>File Number 2004-03329 (Disc)                        | Rosyln Ridley – C  |
| 4. Thomas J. Fannon & Sons Inc.<br>File Number 2004-04090 (Disc)                            | Fannon – R   |
| 5. Thomas J. Fannon & Sons Inc.<br>File Number 2004-04088 (Disc)                            | Fannon – R   |
| 6. Peter F. Barker and<br>Global Coatings & Restorations LLC<br>File Number 2004-00286 (RF) | Barker – C   |

7. Vincent T Anwyll and  
A to Z Renovations Inc.  
File Number 2004-03036 (RF) Anwyll – C
  
8. Victoria Carpenter  
and Charles W. Akers  
t/a Virginia Roofing Co.  
File Number 2004-02577 (RF) Carpenter – C
  
9. Johnny McCoy and  
Glenn J. Burris  
t/a Burris Home Improvements  
File Number 2004-04466 (RF) Paulette McCoy – C  
Burris – R
  
10. Susie M. Pearson and  
QVS Construction of VA LLC  
File Number 2004-03041 (RF) David M. Hall – C Atty  
**(No Decision)**

ASAP

The meeting adjourned at 2:55 p.m.

BOARD FOR CONTRACTORS

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Mark D. Kinser, Chairman

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Louise Fontaine Ware, Secretary

COPY TESTE:

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Custodian of Records

ASAP

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

Re: Kenneth R. Brown, t/a Southside Aluminum

File Number: 2004-03160  
License Number: 2701033856

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On July 30, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Kenneth R. Brown ("Brown"), t/a Southside Aluminum 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 signed and received.

On September 24, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Brown to the address of record. The certified mail was signed and received.

On November 10, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Brown, Respondent; Sherry Kidd; Complainant; Michael Calhoun and Roger Kidd, Witnesses; Joe Haughwout, 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 IFF Memorandum:

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

Brown'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.

Based on the record, the Board for Contractors issued Class A contractor's license number 2701033856 to Brown as a sole proprietorship on March 4, 1989. On January 22, 1997, Southside Aluminum Inc. became incorporated in Virginia. R. Kenneth Brown is the President, Secretary, and Treasurer of Southside Aluminum Inc. In June 2003, Kidd

entered into a written contract with Southside Aluminum Inc. to construct a new home. R. Kenneth Brown signed the contract as President of Southside Aluminum Inc.

During the IFF, Brown stated Southside Aluminum Inc. applied for its license as a corporation and Board staff advised him the license should be ready this week. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

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

Brown'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. Brown contracted and operated under the name Southside Aluminum Inc. During the IFF, Brown stated he operated as Southside Aluminum Inc. since it became incorporated. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

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

Brown's failure to provide 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, Brown stated he did not know the provisions had to be in the contract. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

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

Brown's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15.

Paragraph 12 of the contract specified, "Upon completion of the entire project, and prior to occupancy by Owners, Builder and Owners shall conduct a 'Walk Through' of the project. All aspects of the construction in need of completion or adjustment shall be noted in writing. Upon completion of the walk through, Owners and Builder shall each sign and receive a written copy of the items noted for completion or adjustment. Any item requiring completion or repair, and required for the Certificate of Occupancy to be issued, shall be completed or repaired immediately, all other non-emergency items will be completed or repaired within 30 days of the walk through inspection."

Based on the record, Kidd closed on the subject property in January 2004 and then moved in. Between January 2004 and April 2004, Brown performed additional work to complete punch list items. As of April 21, 2004, Brown failed to complete corrections and several punch list items. Kidd also incurred additional costs to complete several items that Brown failed to complete or provide.

During the IFF, Kidd stated a walk through was performed because she was told the Certificate of Occupancy was obtained, but at the time of the walk through there were several outstanding items. Kidd further stated she did not remember signing a list following the walk through.

During the IFF, Brown and Calhoun stated a walk through list was prepared and signed. Calhoun stated the parties went to a bank to have the list notarized.

Over an extended period of time, Brown was told not to return to the property. It appears Brown made an effort to complete the work, but nevertheless did not complete the work. Therefore, I recommend a monetary penalty of \$1,000.00 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  
ENFORCEMENT DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VIRGINIA 23230-4917

INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors  
DATE: April 28, 2004 (revised July 22, 2004)  
RE: 2004-03160; Kenneth R. Brown, t/a Southside Aluminum

BACKGROUND:

On February 3, 2004, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Sherry Kidd ("Kidd") regarding Kenneth R. Brown ("Brown"), t/a Southside Aluminum. (Exh. C-1)

On June 14, 2003, Kidd entered into a written contract with Southside Aluminum Inc., in the amount of \$222,549.00, to construct a new home at 19013 Waterford Drive, Sutherland, Virginia. The contract was signed by R. Kenneth Brown as President of Southside Aluminum Inc. (Exh. C-2)

On March 4, 1989, Brown was issued Class A Contractor's license number 2701033856 as a sole proprietorship. (Exh. I-1)

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

18 VAC 50-22-210.

FACTS:

On January 22, 1997, Southside Aluminum Inc. became incorporated in Virginia. R. Kenneth Brown is the President, Secretary, and Treasurer and Michael S. Calhoun is the Vice President of the corporation. (Exh. I-2)

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

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

18 VAC 50-22-230(A).

FACTS:

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

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

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

FACTS:

The contract used by Brown in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (b) a schedule of progress payments, (d) a “plain-language” exculpatory clause, (f) disclosure of cancellation rights, and (h) contractor’s license number, expiration date, class of license/certificate, and classification or specialty services. (Exh. C-2)

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

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

FACTS:

On January 14, 2004, Kidd closed on the subject property. On January 22, 2004, Kidd moved into the subject property. (Exh. C-1)

Between January 2004 and April 20, 2004, Brown performed additional work to correct punch list items. (Exh. C-1)

As of April 21, 2004, Brown failed to complete corrections and punch list items, including, but not limited to:

- a. Painting not completed
- b. Upside down crown molding with large gaps has not been repaired
- c. Shrubs not provided
- d. Garage door does not work
- e. Nail pops not repaired
- f. Ceramic backsplash not provided and installed in the kitchen
- g. Sidewalk holes not repaired
- h. Screws for front entry door lock not provided and installed
- i. Front door not adjusted
- j. Holes in brick not filled
- k. Broken vinyl not repaired
- l. Window screens not provided. (Exh. C-1)

In addition, Kidd incurred additional costs to complete several items that Brown failed to complete or provide. (Exh. C-1)

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

Re: Advanced Concrete Concepts Inc.

File Number: 2004-02604  
License Number: 2705058012

**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 Advanced Concrete Concepts Inc. ("Advanced Concrete") 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 November 10, 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 Ray Ketner nor anyone on behalf of Advanced Concrete 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)

Advanced Concrete's failure to fully execute the contract prior to commencing work is a violation of Board Regulation 18 VAC 50-22-260.B.8. On July 26, 2003, Benjamin and Elizabeth Vega ("the Vegas") entered into a written contract with Advanced Concrete to install a driveway and walkway at the subject property. On August 21, 2003, Advanced Concrete commenced work. Advanced Concrete did not obtain the Vegas' signature on the contract prior to commencement of work. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

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

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

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

Advanced Concrete's failure to return funds received for work not performed is a violation of Board Regulation 18 VAC 50-22-260.B.16.

On July 26, 2003, the Vegas paid Advanced Concrete \$1,217.00 as a deposit. On August 21, 2003, Advanced Concrete commenced work. While performing work, Advanced Concrete uncovered power lines that were buried too near the surface. Advanced Concrete stopped work until Virginia Power buried the power lines to code. On September 6, 2003, the Vegas and Advanced Concrete met to discuss the delay of work because of the uncovered power lines, and the extra costs associated with the rental of a backhoe truck. On September 9, 2003, Benjamin Vega requested the contract be terminated and Advanced Concrete refund the deposit.

Advanced Concrete responded to Benjamin Vega's request by stating it refused to refund the deposit because, under the terms and conditions of the contract, Advanced Concrete was not required to refund the down payment due to expenses incurred.

Advanced Concrete did incur expenses on the job. While performing work, Advanced Concrete ran into an issue with the power lines. According to the contract, the issue was clearly a concealed condition and the responsibility of the owner to cure the issue. Therefore, I recommend that Count 3 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.16.

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

Advanced Concrete's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. On March 8, 2004, in the Henrico County General District Court, the Vegas obtained a judgment, in the amount of \$1,217.00, against Advanced Concrete. As of June 1, 2004, Advanced Concrete has not paid the judgment. Therefore, I recommend a monetary penalty of \$1,000.00 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 & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: June 7, 2004 (revised September 20, 2004)

FILE NUMBER: 2004-02604  
RESPONDENT: Advanced Concrete Concepts Inc.  
LICENSE NUMBER: 2705058012  
EXPIRATION: December 31, 2004

SUBMITTED BY: Wayne J. Ozmore, Jr.  
APPROVED BY: Kevin Hoeft

COMMENTS:

None.

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Advanced Concrete Concepts Inc. ("Advanced Concrete") was at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705058012).

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 December 18, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Benjamin and Elizabeth Vega ("the Vegas") regarding Advanced Concrete. (Exh. C-1)

On July 26, 2003, the Vegas entered into a written contract with Advanced Concrete, in the amount of \$3,650.00, to install a driveway and walkway at 8520 Woodlake Drive, Richmond, Virginia 23294. The contract was signed by Lee Ketner on behalf of Advanced Concrete. (Exh. C-2)

On July 26, 2003, the Vegas paid Advanced Concrete \$1,217.00 by check. (Exh. C-3)

On August 21, 2003, Advanced Concrete commenced work. (Exh. C-1 and R-1) While performing work, Advanced Concrete uncovered power lines that were buried only 4"

below the ground. Advanced Concrete stopped work until Virginia Power buried the power lines to code. (Exh. C-1)

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1. Board Regulation (Effective January 1, 2003)

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:

The Vegas did not sign the contract. (Exh. C-2)

Advanced Concrete failed to obtain the Vegas' signatures on the contract prior to commencement of work.

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Advanced Concrete in the transaction failed to contain subsections: (a) estimated completion date; (e); (h) contractor's license number, expiration date, class of license, and classifications or specialty services. (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On September 6, 2003, the Vegas and Advanced Concrete met at the subject property to discuss the delay of work because of the power lines being uncovered and the extra costs associated with the rental of a backhoe truck. (Exh. C-1)

On September 9, 2003, Benjamin Vega sent Advanced Concrete a letter requesting the contract be terminated and Advanced Concrete refund the \$1,217.00 deposit. (Exh. C-4)

On September 18, 2003, Advanced Concrete sent the Vegas a letter terminating the contract. Advanced Concrete further stated it would not refund the deposit because, under the terms and conditions of the contract, Advanced Concrete was not required to refund the down payment due to expenses incurred. (Exh. C-5)

As of June 1, 2004, Advanced Concrete failed to return money received for work not performed or performed in part. (Exh. I-2)

4. 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 March 8, 2004, in the Henrico County General District Court, the Vegas were awarded a \$1,217.00 default judgment against Advanced Concrete. (Exh. I-1) As of June 1, 2004, Advanced Concrete failed to satisfy the judgment. (Exh. I-1 and I-2)

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

Re: Wilmer N. Ricks, t/a W N Ricks

File Number: 2004-03329  
License Number: 2705079912

**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 Wilmer N. Ricks ("Ricks"), t/a W N Ricks 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 November 10, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Roslyn Ridley; Complainant; Joe Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Ricks 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)

Ricks's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. On October 24, 2003, in the Richmond City General District Court, Roslyn Ridley ("Ridley") was awarded a \$4,047.00 judgment against Ricks. During the IFF, Ridley stated Ricks has not satisfied the judgment. Therefore, I recommend a monetary penalty of \$1,500.00 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.

ASAP

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

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: June 22, 2004 (revised September 20, 2004)

FILE NUMBER: 2004-03329  
RESPONDENT: Wilmer N. Ricks, t/a W N Ricks  
LICENSE NUMBER: 2705079912  
EXPIRATION: October 31, 2005

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

COMMENTS:

Contract was entered into before Ricks became licensed. Unlicensed case being handled by the Criminal Investigations Section.

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Wilmer N. Ricks ("Ricks"), t/a W N Ricks, was at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705079912).

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 20, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Roslyn B. Ridley ("Ridley") regarding Wilmer N. Ricks, t/a W N Ricks Construction, and Pamela R. Butts, t/a Angel Kei Management Inc. (Exh. C-1)

On April 27, 2003, Ridley entered into a written contract with Wilmer Ricks of W.N. Ricks Construction & Angel Kei Management Affiliations Inc., an unlicensed entity, in the amount of \$4,945.00, to perform repairs at 5407 Wainwright Drive, Richmond, Virginia and 3217 3<sup>rd</sup> Avenue, Richmond, Virginia. (Exh. C-2)

On October 20, 2003, Ricks was issued Class C Contractor's license number 2705079912 as a sole proprietorship. (Exh. I-1)

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1. 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 24, 2003, in the Richmond City General District Court, Ridley was awarded a \$4,047.00 judgment against Ricks. The judgment was based on fraud and misrepresentation by contractor. (Exh. C-1 and I-2)

As of April 20, 2004, Ricks failed to satisfy the judgment. (Exh. I-2)

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

Re: Thomas J. Fannon & Sons Inc.

File Number: 2004-04090  
License Number: 2701006070

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On August 18, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Thomas J. Fannon & Sons Inc. ("Fannon") 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 signed and received.

On September 27, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Fannon to the address of record. The certified mail was signed and received.

On November 10, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Thomas Fannon, Responsible Management for Fannon, Respondent; Joe Haughwout, 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 IFF Memorandum:

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

Fannon's failure to obtain plumbing, electrical, and mechanical permits prior to performing work is a violation of Board Regulation 18 VAC 50-22-260.B.25. On March 18, 2004, a Stop Work Order was issued to Fannon for performing work at 1301 Prince Street, Alexandria, Virginia, without the required plumbing, electrical, and mechanical permits, in violation of Section 109.1 of the Uniform Statewide Building Code.

During the IFF, Thomas Fannon stated he did not have any record of an installation of a gas boiler at the subject property. Thomas Fannon also stated Fannon did previously install a fan coil, which would not require a permit. As testimony indicated, Fannon was not

contracted to do the work and did not perform the work. Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.25.

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

Fannon's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. On April 20, 2004, Investigator Diana Santoni-Bell made a written request to Fannon for a written response and supporting documents to the complaint filed with the Board. As of May 20, 2004, the investigator did not receive a response from Fannon.

Based on his testimony during the IFF, it appears Thomas Fannon responded in other matters and had no intent not to respond. Therefore, I recommend no monetary penalty be imposed.

By: \_\_\_\_\_  
Mark Franko  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

### **MONETARY PENALTY TERMS**

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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 20, 2004 (August 10, 2004)  
RE: 2004-04090; Thomas J. Fannon & Sons, Inc.

BACKGROUND:

On April 6, 2004, the Enforcement Division of the Department of Professional and Occupational Regulation received information from Virginia Clarke ("Clarke"), Supervisory Administrative Officer for the City of Alexandria Code Enforcement, regarding Thomas J. Fannon & Son's Inc. ("Fannon"). (Exh. C-1)

On March 18, 2004, a Stop Work Order was issued to Fannon for performing work at 1301 Prince Street, Alexandria, Virginia, without the required plumbing, electrical, and mechanical permits, in violation of Section 109.1 of the Uniform Statewide Building Code. (Exh. C-1)

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

18 VAC 50-22-260(B)(25)

FACTS:

As of May 18, 2004, Fannon failed to obtain the required plumbing, electrical and mechanical permits for performing work at 1301 Prince Street in Alexandria, Virginia. (Exh. I-2)

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

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

FACTS:

On April 20, 2004, Investigator Diana Santoni-Bell, the Board's agent, made a written request to Fannon at the address of record of 1200 Duke Street, Alexandria, Virginia, 22314, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested a written response be received by April 30, 2004. (Exh. I-1)

As of May 20, 2004, Fannon refused or failed to respond to the Board's agent.

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

Re: Thomas J. Fannon & Sons Inc.

File Number: 2004-04088  
License Number: 2701006070

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On August 18, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Thomas J. Fannon & Sons Inc. ("Fannon") 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 signed and received.

On September 27, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Fannon to the address of record. The certified mail was signed and received.

On November 10, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Thomas Fannon, Responsible Management for Fannon, Respondent; Joe Haughwout, 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 IFF Memorandum:

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

Fannon's failure to obtain a mechanical permit prior to performing work is a violation of Board Regulation 18 VAC 50-22-260.B.6. On March 30, 2004, a Stop Work Order was issued to Fannon for performing work at 305 Mansion Street, Alexandria, Virginia, without the required mechanical permit, in violation of the Uniform Statewide Building Code. On March 31, 2004, Fannon obtained an after-the-fact permit for the work performed at the subject property.

Based on a letter presented by Thomas Fannon during the IFF, Fannon's business is predicated on fast response. During the IFF, Thomas Fannon stated the permit

requirements for the City of Alexandria has become more complicated and it is not a simple process. Thomas Fannon further stated Fannon previously had a working understanding with the City of Alexandria ("the City") to contact the City regarding work to be performed and Fannon would be in the next day to obtain the permit. I feel he made reasonable and customary efforts to obtain the permit. Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.6.

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

Fannon's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. On April 20, 2004, Investigator Diana Santoni-Bell made a written request to Fannon for a written response and supporting documents to the complaint filed with the Board. As of May 20, 2004, the investigator did not receive a response from Fannon.

Based on his testimony during the IFF, it appears Thomas Fannon responded in other matters and had no intent not to respond. Therefore, I recommend no monetary penalty 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 20, 2004 (revised August 10, 2004)  
RE: 2004-04088; Thomas J. Fannon & Sons, Inc.

BACKGROUND:

On April 6, 2004, the Enforcement Division of the Department of Professional and Occupational Regulation received information from Virginia Clarke ("Clarke"), Supervisory Administrative Officer for the City of Alexandria Code Enforcement, regarding Thomas J. Fannon & Son's Inc. ("Fannon"). (Exh. C-1)

On March 30, 2004, a Stop Work Order was issued to Fannon for performing work at 305 Mansion Street, Alexandria, Virginia, without a required mechanical permit, in violation of Section 109.1 of the Uniform Statewide Building Code. (Exh. C-1)

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

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

FACTS:

On March 31, 2004, Fannon obtained after-the-fact mechanical permit number MEC2004-00605 for the work performed by Fannon at the subject property. (Exh. I-2)

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

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

FACTS:

On April 20, 2004, Investigator Diana Santoni-Bell, the Board's agent, made a written request to Fannon at the address of record of 1200 Duke Street, Alexandria, Virginia, 22314, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested a written response be received by April 30, 2004. (Exh. I-1)

As of May 20, 2004, Fannon refused or failed to respond to the Board's agent.

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

Re: Peter F. Barker (Claimant) and Global Coatings & Restorations LLC (Regulant)

File Number: 2004-00286  
License Number: 2705072557

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On September 24, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Peter F. Barker ("Claimant"), through his attorney, and Global Coatings & Restorations LLC ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail to the Claimant was signed and received. The certified mail to the Regulant was returned by the United States Postal Service, and marked "Not Deliverable as Addressed, Unable to Forward."

On October 6, 2004, the Notice was mailed, via certified mail, to the Regulant at 3000 Cicero Parkway, Chester, Virginia 23831. The certified mail was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On November 10, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Peter F. Barker, Claimant; Jeffrey Buckley, Staff Member; and Mark Franko, Presiding Officer. Neither Leroy White nor anyone on behalf of the Regulant appeared at the IFF.

**RECOMMENDATION**

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

In September 2002, the Claimant entered into a written contract with the Regulant to replace a window and perform exterior painting. The Claimant paid the Regulant \$2,500.00 as a deposit on the contract. The Regulant never commenced work. The Claimant cancelled the contract, and requested a refund of the deposit. The Regulant promised it would return the deposit, but never did so.

On February 19, 2003, in the City of Lynchburg General District Court, the Claimant obtained a judgment against the Regulant, in the amount of \$2,500.00, plus interest and \$48.00 in court costs.

The Claimant is seeking a payment from the Recovery Fund in the amount of \$3,625.00. The Claim Form specifies a request for \$1,000.00 for attorney's fees.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$3,048.00.

By: \_\_\_\_\_

Mark Franko  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

ASAP

## 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 Peter F. Barker (Claimant) and Global Coatings & Restoration, LLC t/a Global Coatings & Restorations, LLC (Regulant)  
File Number: 2004-00286

## BACKGROUND

On February 19, 2003, in the City of Lynchburg, Virginia General District Court, Peter F. Barker c/o J. B. Feinman & Associates obtained a Judgment against Global Coatings & Restoration, LLC, in the amount of \$2,500.00, plus interest and \$48.00 costs.

The claim in the amount of \$3,625.00 was received by the Department of Professional and Occupational Regulation on June 24, 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 does recite 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 claimant did contract with the regulant.

The Board issued Class A License Number 2705072557 to Global Coatings & Restorations LLC t/a Global Coatings & Restorations LLC, on December 12, 2002. The license was permanently revoked March 3, 2004. The claimant entered into a written contract with Global Coatings & Restorations September 2, 2002 for the replacement of one window at no cost and exterior painting at the claimant's residence.

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

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

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

The Board did not receive 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 February 19, 2003. The claim was received on June 24, 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 Global Coatings & Restorations September 2, 2002 for the replacement of one window at no cost and exterior painting at the claimant's residence.

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

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

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

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

Debtor's interrogatories were not conducted. In a letter dated June 12, 2003 the claimant's attorney asserts that the company no longer exist and good service could not be obtained.

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

The Warrant in Debt does recite the basis for the suit. The block designated "Contract" has been marked.

In the Affidavit of Facts dated June 20, 2003, the claimant asserts that the regulant received \$2,500.00 deposit at the time the contract was signed. The regulant never returned to do the work contracted for. The claimant has been unable to obtain a refund from the regulant.

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.

ASAP

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

Re: Vincent T. Anwyll and Michelle K. Anwyll (Claimants) and A to Z Renovations Inc. (Regulant)

File Number: 2004-03036  
License Number: 2705052762

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On September 24, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Vincent T. Anwyll ("Claimant"), through his attorney, and A to Z Renovations Inc. ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail to the Claimant was signed and received. 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 November 10, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Vincent Anwyll, Claimant; John Dickson, on behalf of A to Z Renovations, Regulant; Jeffrey Buckley, Staff Member; and Mark Franko, Presiding Officer. Neither John Dickson nor anyone on behalf of the Regulant appeared at the IFF.

**RECOMMENDATION**

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

In October 2001, the Claimants entered into a written contract with the Regulant to remodel the kitchen at the Claimant's residence. In November 2001, the Regulant completed the work. In November 2002, the Claimants noticed problems with the household lighting circuit breaker. The Claimants were informed by an electrician that the Regulant had improperly performed electrical work during the remodeling.

On January 9, 2003, in the United States Bankruptcy Court, Eastern District of Virginia, the Regulant filed for bankruptcy protection. No judgment was obtained against the Regulant.

The Claimants are seeking a payment from the Recovery Fund in the amount of \$1,315.00.

The record reflected that the Claimant paid out \$1,235.00 to another contractor to complete the work, and \$80.00 in court costs.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$1,315.00.

By: \_\_\_\_\_  
Mark Franko  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

ASAP

## CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor  
Legal Assistant

DATE: August 17, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Vincent T. and Michele K. Anwyll (Claimants) and A to Z Renovations, Inc., t/a A to Z Renovations, Inc. (Regulant)  
File Number: 2004-03036

## BACKGROUND

On January 9, 2003, in the United States Bankruptcy Court, Eastern District of Virginia, Alexandria Division, A to Z Renovations, Inc. filed a Chapter 7 Petition.

The claim in the amount of \$1,315.00 was received by the Department of Professional and Occupational Regulation on October 17, 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.

A to Z Renovations, Inc. filed for bankruptcy protection, therefore, judgment was not obtained.

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

The claimant did contract with the regulant.

The Board issued Class B License Number 2705052762 to A to Z Revocations, Inc., t/a A to Renovations, Inc., on October 8, 1999. The license was permanently revoked on April 19, 2004. The claimant entered into a written contract with A to Z Renovations, Inc. on October 24, 2001 for the remodeling of the kitchen 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 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 claim was received on October 17, 2003. Judgment was not obtained due to the regulant filing for bankruptcy protection.

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 A to Z Renovations, Inc. for the renovation of the kitchen of the claimant's 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? 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. The regulant filed for bankruptcy protection.

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

Judgment was not obtained.

In the Affidavit of Facts dated February 3, 2003, the claimants assert that A to Z Renovations, Inc. performed faulty remodeling/renovations to the kitchen electrical system at the claimants' residence. The claimants requested the kitchen be upgraded to 20 amp circuit for the appliances. The regulant installed a lesser amp circuit. A short circuit occurs whenever the microwave is in operation. The regulant failed to install 120 watt lighting fixtures and instead installed 75 watt fixtures. The regulant installed 120 watt light bulbs in the 75 watt lighting fixtures causing damage to the fixtures. The claimants incurred additional expenses in correcting the regulant's work.

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 claimants responded, "Yes." A Proof of Claim was filed with the bankruptcy court.

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: Victoria Carpenter (Claimant) and Charles W. Akers, t/a Virginia Roofing Co.  
(Regulant)

File Number: 2004-02577  
License Number: 2705059183

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On August 24, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Charles W. Akers, t/a Virginia Roofing Co. ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail was signed for and received by the Regulant.

On September 27, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Victoria Carpenter ("Claimant"). The letter included the Notice. The certified mail to the Claimant was signed and received. A letter to reschedule the IFF was also mailed, via certified mail, to the Regulant. The certified mail to the Regulant was returned by the United States Postal Service, and marked as "Unclaimed."

On November 10, 2004, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF Conference: Victoria Carpenter, Claimant; Jeffrey Buckley, Staff Member; and Mark Franko, Presiding Officer. Neither Charles W. Akers nor anyone on his behalf appeared at the IFF Conference.

**RECOMMENDATION**

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

On March 29, 2002, the Claimant entered into a written contract with the Regulant to perform plumbing repairs, and install a bathroom floor at the claimant's residence. The Claimant paid the Regulant \$750.00 as a down payment, and the Regulant commenced work at the Claimant's residence. The Claimant returned from work the following day, and found the plumbing fixtures in the yard. The Regulant wanted the Claimant to agree to a new contract, increasing the price of the project, due to the extra work involved. On April 3, 2002, the Claimant entered into a second

contract with the Regulant to perform additional improvements to the bathroom at the claimant's residence.

On January 6, 2003, in the Henrico County General District Court, the Claimant obtained a judgment against the Regulant, in the amount of \$2,250.00, plus interest and \$36.00 in court costs. The judgment order recites "inferior work" as the basis for the judgment.

The Claimant is seeking a payment from the Recovery Fund, in the amount of \$2,472.00.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$2,472.00.

By: \_\_\_\_\_  
Mark Franko  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

## CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor  
Legal Assistant

DATE: August 16, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Victoria Carpenter (Claimant) and Charles William Akers, t/a Virginia Roofing Co. (Regulant)  
File Number: 2004-02577

## BACKGROUND

On January 6, 2003, in Henrico County General District Court, Victoria Carpenter obtained a Judgment against Charles Akers, in the amount of \$2,250.00, plus interest and \$36.00 costs.

The claim in the amount of \$2,472.00 was received by the Department of Professional and Occupational Regulation on May 12, 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 "inferior work" the basis for the suit.

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

The claimant did contract with the regulant.

The Board issued Class C License Number 2705059183 to Charles William Akers t/a Virginia Roofing Co., on October 16, 2000. The license expired on October 31, 2002. The claimant entered into a written contract with Virginia Roofing Company on March 29, 2002 for plumbing repairs and the installation of a bathroom floor. A second contract dated April 3, 2002 was entered into by the regulant and claimant for additional improvement to the bathroom at the claimant's residence.

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

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

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

The Board did not receive pleadings 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 January 6, 2003. The claim was received on May 12, 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 Virginia Roofing Company on March 29, 2002 for plumbing repairs and the installation of a bathroom floor. A second contract dated April 3, 2002 was entered into by the regulant and claimant for additional improvement to the bathroom at the claimant's residence.

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

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

or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? The claimant did not answer the question.

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

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

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

The Warrant in Debt recites "inferior work" the basis for the suit. In the Affidavit of Facts dated December 17, 2003, the claimant asserts that regulant received a down-payment of \$750.00 for plumbing repairs at the claimant's residence. The claimant returned from work and found the plumbing fixtures in the front yard. The regulant wanted the claimant to sign a new contract increasing the price of the project due to the extra work involved. The claimant entered into a second contract for the additional repairs of the plumbing under the house and installation of a bathroom floor. The claimant felt the choices were to pay the additional \$1,800.00 or absorb the \$750.00.

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.

ASAP

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

Re: Johnny and Paulette McCoy (Claimants) and Glenn J. Burris, t/a Burris Home Improvement (Regulant)

File Number: 200404466  
License Number: 2705076393

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On September 28, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Johnny McCoy ("Claimant") and Glenn J. Burris, t/a Burris Home Improvement ("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 and the Regulant.

On November 10, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Paulette McCoy (by telephone), Claimant; Glenn Burris, Regulant; Jeffrey Buckley, Staff Member; and Mark Franko, Presiding Officer.

**RECOMMENDATION**

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

In June 2003, the Claimant entered into a written contract with the Regulant to remove and install a roof at the Claimants' residence. The Regulant completed the work in July 2003. In August 2003, the roof on the Claimants' residence started leaking. The Claimant contacted the Regulant regarding the leaking roof. The Regulant promised that he would return to the property to repair the roof. The Regulant failed to return to the property to make the repairs. The Claimant contacted the Regulant several more times regarding the leaking roof. The Regulant never fixed the leaking roof.

On March 23, 2004, in the Grayson County General District Court, the Claimants obtained a judgment against the Regulant, in the amount of \$1,800.00, plus interest and \$37.00 in court costs. The judgment order recites, "To redo the roof and fix damages from leaks" as the basis for the judgment.

The Claimants are seeking a payment from the Recovery Fund in the amount of \$1,861.00.

The record reflected that the Claimants had David E. Bourne of Bourne Construction inspect the roof. A written statement from Bourne indicated that the roof was improperly installed.

During the IFF, McCoy stated that the roof was under a two-year guarantee, and that Burriss failed to uphold the terms of the guarantee.

During the IFF, Burriss stated that he believed that the basis for the lawsuit was fraudulent, and that he did not improperly perform the roofing work.

Therefore, I recommend that the recovery fund claim be approved for payment in the amount of \$1,861.00.

By: \_\_\_\_\_  
Mark Franko  
Presiding Officer

Board for Contractors

Date: \_\_\_\_\_

## CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor  
Legal Assistant

DATE: September 15, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Johnny and Paulette McCoy (Claimants) and Glenn J. Burris t/a Burris Home Improvements (Regulant)  
File Number: 2004-04466

### BACKGROUND

On March 23, 2004, in the Grayson County General District Court, Johnny and Paulette McCoy obtained a Judgment against Jeff Burris, in the amount of \$1,800.00, plus interest and \$37.00 costs.

The claim in the amount of \$1,861.00 was received by the Department of Professional and Occupational Regulation on May 5, 2004.

### 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 "To redo the roof and fix damages from leaks" as the basis for the suit. The block designated "Other" 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 claimant did contract with the regulant.

The Board issued Class C License Number 2705076393 to Glenn J. Burris t/a Burris Home Improvements on May 1, 2003. The license will expire on May 31, 2005. The claimant entered into a written contract with Burris Home Improvements for the removal and installation of a roof at the claimants' residence. (note: The contract is not dated.)

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 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 March 23, 2004. The claim was received on May 5, 2004.

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 Burris Home Improvements for the removal and installation of a roof 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 conducted. No assets were revealed.

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

The Warrant in Debt recites "To redo the roof and fix damages from leaks" the basis for the suit. The block designated "Other" has been marked. In the Affidavit of Facts dated May 14, 2004, the claimant asserts the claimants' roof had previously had storm damage and the regulant was contracted to install a new roof. The regulant gave the claimants a two year guarantee that the roof would not leak after the repairs. The roof was not installed and/or repaired properly causing the roof to leak. The claimants made several attempts to contact the regulant regarding the problems they were having with the roof. The regulant has never returned to the claimants' residence to correct the problem.

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 amount does not include interest or damages

ASAP