

**Minutes of Meeting  
BOARD FOR CONTRACTORS  
INFORMAL FACT-FINDING CONFERENCES  
November 2, 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.

Anthony Orange, Board member, presided. No other Board members were present.

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

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

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

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

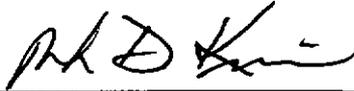
Participants

- |   |   |
|---|---|
| 1. Roland Samuel Minor<br>t/a Minor's Septic Company<br>File Number 2004-00353 (Disc)   | Minor – R<br>Carol Lien – C                         |
| 2. Coastal Cottages & Cabinets Inc.<br>File Number 2004-01455 (Disc)                    | None  |
| 3. Duane A. Morris<br>t/a Duane A. Morris Construction<br>File Number 2004-00990 (Disc) | Morris – R  |
| 4. Northern Virginia Incorporated<br>File Number 2003-02246 (Disc)                      | James Dulicai – C                                   |
| 5. Northern Virginia Incorporated<br>File Number 2003-02573 (Disc)                      | Charles Ratliff – C                                 |
| 6. Thomas Dooley<br>t/a Century Roofing<br>File Number 2003-02917 (Disc)                | Dooley – R<br>Curtis Muller – W<br>Dan Lindberg – W |

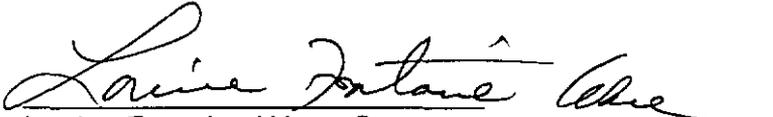
7. MGM Builders Inc. None  
File Number 2004-02087 (Disc)
8. Newmart Builders Inc. Herbert Newman – R  
File 2004-04601 (Disc)  
**(No decision made)**
9. Newmart Builders Inc. Herbert Newman – R  
File 2004-02945 (Disc)  
**(No decision made)**

The meeting adjourned at 2:40 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: Roland Samuel Minor, t/a Minor's Septic Company

File Number: 2004-00353  
License Number: 2705058061

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

On September 9, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Roland Samuel Minor ("Minor"), t/a Minor's Septic Company to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On November 2, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Roland Minor, Respondent; Carol Lien; Complainant; Jennifer Kazzie, Staff Member; and Anthony Orange, Presiding Board Member.

**RECOMMENDATION**

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

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

Minor's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22260.B.5.

In September 2002, M.R. Baker Construction was issued a sewage disposal system permit to install a sewage disposal system at Lots 354, 355, and 356 of Woodhave Shores Lots, in New Kent County. In February 2003, Minor installed a drain field at the subject property.

One month after the sewage system was installed; Minor was notified by M.R. Baker Construction regarding excess water draining across the yard. Because of pressure from M.R. Baker Construction and the homeowner, Minor returned to the property and discovered a spring had intercepted the lower three drainfield lines. Minor dug up the distribution box to shut off the fluids that were draining into the yard. Minor explained to Baker the spring intercepting the lines needed to be rerouted. In June 2003, Minor returned to the subject

property and opened up the end of the three lower failing lines. The New Kent County Health Department was contacted because Minor dug up four lines at the drainfield, exposing the percolation pipe and gravels, and causing septic effluent to surface.

In June 2003, Lien issued a Notice of Apparent Violation to the owner of the subject property regarding the sewage system. On June 23, 2003, H.L. Matthews of Matthews Soil Consultants Inc. applied for a permit to repair the sewage system at the subject property.

During the IFF, Lien stated Minor did not apply for a repair application permit prior to digging up the drainfield. During the IFF, Minor stated he did attempt to contact the Authorized On-Site Soil Evaluator (AOSE) and Lien before performing any repairs at the subject property, but after no response and pressure from Baker and the homeowner, he diverted the spring and would return to perform additional repairs to the drainfield after the spring problem was resolved.

Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By: \_\_\_\_\_  
Anthony Orange  
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 & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: August 25, 2004 (revised September 2, 2004)

FILE NUMBER: 2004-00353  
RESPONDENT: Roland Samuel Minor, t/a Minor's Septic Co  
LICENSE NUMBER: 2705058061  
EXPIRATION: September 30, 2004

SUBMITTED BY: James L. Guffey  
APPROVED BY:

COMMENTS:

None.

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Roland Samuel Minor ("Minor"), t/a Minor's Septic Co, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705058061).

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 July 14, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Carol Lien ("Lien") of the Hanover Health Department regarding Minor. (Exh. C-1)

On September 12, 2002, M. R. Baker Construction ("Baker") was issued sewage disposal system construction permit ID 02-163-0320 to install a sewage disposal system at Lots 354, 355, and 356 of Woodhaven Shores Lots, New Kent County, Virginia. (Exh. C-6)

On February 26, 2003, Minor installed a drain field at the subject property. (Exh. R-1) On February 26, 2003, Minor and Kornell R. "Trapper" Davis ("Davis"), Authorized Onsite Soil

Evaluator ("AOSE"), signed Completion Statements and certified the sewage system installed at the subject property was completed in accordance with the construction permit and the Sewage Handling and Disposal Regulations. (Exh. C-3)

On February 27, 2003, the New Kent County Health Department approved the sewage disposal system operation permit for the subject property. (Exh. C-3)

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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:

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

FACTS:

One month after installation of the sewage system, Minor was contacted by Davis that the force main line was busted because of excess water draining across the yard. Minor returned to the subject property and checked the system. Minor discovered a spring had intercepted the lower three drainfield lines. Minor immediately dug up the distribution box to shut off the fluids that were draining to the three lower failing drainfield lines. Minor contacted Davis and Lien regarding the problems with the sewage system at the subject property, but did not receive a response. (Exh. R-1)

Baker contacted Minor because the homeowner was complaining about excess water constantly running across the front yard. Minor explained the problem with the drainfield and told Baker he would dig up the distribution box and close off the three lower lines so sewage would not run across the yard. (Exh. R-1)

Baker contacted Minor several times about fixing the system. Minor explained to Baker the spring that had intercepted the three lower lines needed to be rerouted. In June 2003, Minor returned to the subject property and opened up the end of the three lower failing lines. Minor also observed the fourth line was dry. (Exh. R-1)

The New Kent County Health Department was contacted because Minor had dug up four lines at the drainfield exposing the percolation pipe and gravels and causing septic effluent to surface. (Exh. C-1)

On or about June 4, 2003, Lien made an on-site visit to the subject property. (Exh. C-3) Lien took photographs of the house, septic tank area, pump station control box, excavated trenches, exposed percolation pipe and gravels, and apparent effluent. (Exh. C-4)

On June 12, 2003, Lien issued a Notice of Apparent Violation ("the Notice") to Jason O'Donoghue for a possible violation of 12 VAC 5-610-80 (previously § 1.8 of the Sewage

Handling & Disposal Regulations) regarding the sewage system at the subject property. Lien noted she observed "Apparent septic effluent leaking onto the ground surface. An apparent backhoe was used and exposed 3 to 4 lines of the installed drain field." (Exh. C-3)

On June 23, 2003, H. L. Mathews, AOSE, of Mathews Soil Consultants Inc., applied for a sewage disposal and/or water supply permit to repair the sewage system at the subject property. (Exh. C-3)

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

Re: Coastal Cottages & Cabinets Inc.

File Number: 2004-01455  
License Number: 2705062717

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

On September 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Coastal Cottages & Cabinets Inc. ("Coastal Cottages") 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 2, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jennifer Kazzie, Staff Member; and Anthony Orange, Presiding Board Member. Neither David Englehart nor anyone on behalf of Coastal Cottages 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)

Coastal Cottages'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 \$150.00 and remedial education be imposed.

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

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

Coastal Cottages's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. In April 2003, Turner entered into a written contract with Coastal Cottages to build and install countertops at her property. Turner paid Coastal Cottages \$2,000.00 towards the contract. In August 2003, Coastal Cottages installed the countertops. Turner paid Coastal Cottages \$2,000.00 after countertops were installed. As of September 11, 2003, Coastal Cottages failed to return to the subject property and install two pieces of back splash, fill in the seam, and caulk the countertop. In November or December 2003, Turner hired another contractor to correct the problems with the countertops and complete the installation. Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed.

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

Anthony Orange  
Presiding Board Member

Board for Contractors

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

#### **MONETARY PENALTY TERMS**

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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: August 2, 2004 (revised September 3, 2004)

FILE NUMBER: 2004-01455  
RESPONDENT: Coastal Cottages & Cabinets Inc.  
LICENSE NUMBER: 2705062717  
EXPIRATION: April 30, 2005

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

COMMENTS:

On October 15, 2003, license number 2705062717 was suspended.

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Coastal Cottages & Cabinets Inc ("Coastal Cottages") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705062717).

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 September 30, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Janet M. Turner ("Turner") regarding Coastal Cottages. (Exh. C-1)

On April 7, 2003, Turner entered into written contract with Coastal Cottages, in the amount of \$4,617.86, to build and install Granite counter tops at 7079 Winding Wood Road, Mechanicsville, Virginia 23111. (Exh. C-2)

On April 22, 2003, Turner paid Coastal Cottages \$2,000.00. (Exh. C-1 and I-2)

On August 5, 2003, Coastal Cottages installed the countertops. (Exh. C-1)

On August 5, 2003, Turner paid Coastal Cottages \$2,000.00. (Exh. C-1)

On April 25, 2001, Coastal Cottages was issued Class A Contractor's license number 2705062717. (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:

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 Coastal Cottages in the transaction failed to contain subsections: (a), (d), (e), (f), (h), and (i). (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

As of September 11, 2003, Coastal Cottages failed to return to the subject property and install two pieces of back splash, fill in the seam, and caulk the counter top. (Exh. C-1)

In November or December 2003, Turner hired another contractor to correct the problems with the countertop and complete the installation. (Exh. I-2)

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

Re: Duane A. Morris, t/a Duane A. Morris Const.

File Number: 2004-00990  
License Number: 2705066213

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

On September 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Duane A. Morris ("Morris"), t/a Duane A. Morris Const. 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 2, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Morris, Respondent; Jennifer Kazzie, Staff Member; and Anthony Orange, 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, Morris stated this was a verbal agreement for a time and material installation of a project. Morris stated the Tanouses performed some of the work themselves. Morris also stated the work he performed was not put into writing until actually performed and the *scope of the work changed from the time of the verbal agreement.*

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

Morris's action of failing to obtain a Class B license to perform work in excess of the limits of a Class C license, and practicing in a classification for which he was not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. On December 3, 2001, the Board for Contractors issued Class C Contractor's license number 2705066213. Between March 21, 2002, and July 2003, the Tanouses paid Morris \$21,900.00 for work performed at the subject property.

Therefore, I recommend a monetary penalty of \$200.00 be imposed. I also recommend the Board waive the imposition of the \$200.00 monetary penalty provided Morris successfully

completes remedial education by attending the Board's Basic Contracting License class and passing the examination within six months of the effective date of the order. If Morris fails to successfully complete remedial education within six months of the effective date of the order, then the monetary penalty will be automatically imposed.

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

Morris's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. In March 2003, Morris signed an agreement to complete work at the subject property, including roof beams, cross ties, stall doors with bars, outdoor lights, gutter/trim, deck, patch in the garage, insulation, and ceiling sheet rock at the subject property; however, the agreement was not signed by the Tanouses. Since the Tanouses did not sign the agreement, I believe the agreement was not binding.

During the IFF, Morris stated he did make repairs to correct the sag in the roof. Morris also stated the items the Tanouses claimed he did not complete were not part of the original verbal agreement.

Therefore, I recommend that Count 2 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.15.

By: \_\_\_\_\_  
Anthony Orange  
Presiding Board Member

Board for Contractors

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

### **MONETARY PENALTY TERMS**

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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: August 9, 2004 (revised September 3, 2004)

FILE NUMBER: 2004-00990  
RESPONDENT: Duane A. Morris  
LICENSE NUMBER: 2705066213  
EXPIRATION: December 31, 2005

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

COMMENTS:

On April 1, 2001, Duane A. Morris ("Morris"), t/a Duane A. Morris Const, began work for Carl and Diane Tanous ("the Tanouses") and continued to perform work into spring 2003. Morris did not become licensed until December 3, 2001; therefore, issues occurring before December 3, 2001, will not be handled as a regulatory matter.

Work was for construction of a barn; therefore, contract not required because not residential contracting.

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Morris was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705066213).

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 August 18, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from the Tanouses regarding Morris. (Exh. C-1)

In April 2001, the Tanouses entered into a verbal agreement with Morris, in the amount of \$36,000.00, to construct a barn at 4996 Bybee Church Road, Troy, Virginia. (Exh. C-1)

On June 15, 2001, the Tanouses paid Morris \$12,000.00 by check. On October 9, 2001, the Tanouses paid Morris \$12,000.00 by check. (Exh. C-1)

On December 3, 2001, Morris was issued Class C Contractor's license number 2705066213 with the electrical contractors ("ELE") and building contractors ("BLD") classifications and the landscape service contracting ("LSC"), farm improvement contracting ("FIC"), equipment/machinery contracting ("EMC"), commercial improvement contracting ("CIC"), and home improvement contracting ("HIC") specialty services. (Exh. I-5)

On March 21, 2002, the Tanouses paid Morris \$12,000.00 by check. On May 10, 2002, the Tanouses paid Morris \$2,000.00 by check. (Exh. C-4)

In July 2002, Morris provided the Tanouses with a written estimate, in the amount of \$36,000.00 and \$6,000.00 for extras, for the work being performed at the subject property. (Exh. C-2)

On July 16, 2002, the Tanouses paid Morris \$4,500.00 by check. On August 2, 2002, the Tanouses paid Morris \$1,800.00 by check. (Exh. C-4)

On March 5, 2003, the Tanouses entered into an agreement with Morris, in the amount of \$3,200.00, to complete the roof beams, cross ties, grading, stall doors with bars, outdoor lights, gutter/trim, deck, patch in the garage, insulation, and ceiling sheet rock at the subject property within 90 days of completion of duct work. The agreement was signed by Morris but not the Tanouses. (Exh. C-3)

On March 5, 2003, the Tanouses paid Morris \$1,600.00. (Exh. C-3)

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1. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

Between March 21, 2002 and July 2003, the Tanouses paid Morris \$21,900.00 for work performed at the subject property. (Exh. C-3 and C-4)

Morris failed to obtain a Class B license to perform work in excess of the \$7,500.00 limit of a Class C license and practiced in a class of license for which he was not licensed.

2. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

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

FACTS:

According to the Tanouses, Morris started ignoring them and making excuses in June 2003. In July 2003, the Tanouses told Morris they were going to finish the job themselves. (Exh. I-1)

As of October 16, 2003, Morris failed to straighten the roof beam and cross ties, complete the grading, complete the bars on the stall doors, patching and gutter/trim work. (Exh. I-2)

The Tanouses agreed to finish the deck and railings. (Exh. I-2)

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

Re: Northern Virginia Paving Incorporated

File Number: 2003-02246  
License Number: 2705055115

**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 Northern Virginia Paving Incorporated ("Northern Virginia") 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 2, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: James Dulicai; Complainant; Jennifer Kazzie, Staff Member; and Anthony Orange, Presiding Board Member. Neither Roy Harrison nor anyone on behalf of Northern Virginia 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:

During the IFF, Dulicai stated he made several attempts, via telephone calls and letters, to contact Northern Virginia regarding the problems with the driveway but Northern Virginia did not respond. Dulicai also stated he hired another contractor to pave the driveway at an additional cost of approximately \$6,000.00.

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

Northern Virginia'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 three of the required provisions.

Therefore, I recommend a monetary penalty of \$200.00 and remedial education be imposed. The Board's Basic Contracting License class (remedial education) must be successfully

completed by a member of Responsible Management within six months of the effective date of this order.

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

Northern Virginia's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. In December 2002, Dulicai entered into a written contract with Northern Virginia to install a driveway at Dulicai's residence. Northern Virginia performed the work. Harrison promised Dulicai that the gravel mix used would "set up as hard as stone." Whenever it rained, or snow melted, puddles formed on the driveway and the new surface was muddy. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Northern Virginia's failure to honor the terms and conditions of a warranty is a violation of Board Regulation 18 VAC 50-22-260.B.30. The contract specified that "All material is guaranteed for 1 full year." Dulicai made several attempts to contact Northern Virginia regarding the problems with the driveway. On January 27, 2003, Dulicai sent Northern Virginia a letter requesting that Northern Virginia repair the driveway. Northern Virginia has failed to honor the warranty to correct the driveway. Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed.

By: \_\_\_\_\_  
Anthony Orange  
Presiding Board Member

Board for Contractors

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

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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: August 12, 2004 (revised August 23, 2004)

FILE NUMBER: 2003-02246  
RESPONDENT: Northern Virginia Paving Incorporated  
LICENSE NUMBER: 2705055115  
EXPIRATION: March 31, 2006

SUBMITTED BY: James L. Guffey  
APPROVED BY:

COMMENTS:

None.

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Northern Virginia Paving Incorporated ("Northern Virginia") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705055115).

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 February 21, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from James Dulicai ("Dulicai") regarding Northern Virginia. (Exh. C-1)

On December 2, 2002, Dulicai entered into a written contract with Northern Virginia, in the amount of \$4,500.00, to install a driveway at 770 Willowbrook Road, Fairfax Station, Virginia. (Exh. C-2)

On December 3, 2002, Northern Virginia performed the work. (Exh. C-1)

On December 3, 2002, Dulicai paid Northern Virginia \$5,100.00 by check. (Exh. C-3)

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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:
  - 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.

FACTS:

The contract used by Northern Virginia failed to contain subsections: (a), (e), and (h) contractor's license number, expiration date, class of license, and classifications or specialty services. (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:

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

FACTS:

Roy Harrison, President of Northern Virginia, promised Dulicai that the gravel mix used would "set up as hard as stone." (Exh. C-1)

Whenever it rained or snow melted, puddles formed on the driveway and the new surface was muddy. (Exh. C-1)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The contract specified "All material is guaranteed for 1 full year." (Exh. C-2)

Dulicai made several attempts to contact Northern Virginia regarding the driveway still puddling and being muddy. (Exh. C-1)

On January 27, 2003, Dulicai sent Northern Virginia a letter requesting Northern Virginia repair the driveway. (Exh. C-1)

As of February 21, 2003, Northern Virginia failed to honor the warranty and correct the driveway. (Exh. C-1)

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

Re: Northern Virginia Paving Incorporated

File Number: 2003-02573  
License Number: 2705055115

**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 Northern Virginia Paving Incorporated ("Northern Virginia") 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 2, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Charles Ratliff, Complainant; Cherise Hsu, Witness; Jennifer Kazzie, Staff Member; and Anthony Orange, Presiding Board Member. Neither Roy Harrison nor anyone on behalf of Northern Virginia 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 September 1, 2001)

Northern Virginia'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 three of the required provisions. Therefore, I recommend a monetary penalty of \$200.00 and remedial education be imposed. The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of this order.

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

Northern Virginia's failure to honor the terms and conditions of a warranty is a violation of Board Regulation 18 VAC 50-22-260.B.30. In September 2002, Ratliff entered into a written contract with Northern Virginia to install a driveway at Ratliff's residence. Northern Virginia performed the work. The contract specified that "All material is guaranteed for 1 full year." Northern Virginia told Ratliff that it would return and fix any irregularities in the driveway surface. A week after the driveway was installed by Northern Virginia, Ratliff observed streaks and uneven areas in the driveway. Ratliff made several attempts to contact Northern Virginia to correct the driveway. Northern Virginia has failed to correct the driveway.

During the IFF, Ratliff and Cherise Hsu, Ratliff's wife, stated they made several attempts, via telephone calls and letters, to contact Northern Virginia regarding the problems with the driveway but Northern Virginia did not respond. Ratliff stated Northern Virginia had mechanical problems with a piece of equipment and left before finishing the driveway. Ratliff also stated it was getting dark when Northern Virginia left the project and Northern Virginia promised to return the next day; however, Northern Virginia did not return to finish the driveway.

Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

By: \_\_\_\_\_  
Anthony Orange  
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 & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: August 12, 2004 (revised August 23, 2004)

FILE NUMBER: 2003-02573  
RESPONDENT: Northern Virginia Paving Incorporated  
LICENSE NUMBER: 2705055115  
EXPIRATION: March 31, 2006

SUBMITTED BY: James L. Guffey  
APPROVED BY:

COMMENTS:

None.

\*\*\*\*\*

Northern Virginia Paving Incorporated ("Northern Virginia") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705055115).

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 March 18, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Charles Ratliff ("Ratliff") regarding Northern Virginia. (Exh. C-1)

On September 7, 2002, Ratliff entered into a written contract with Northern Virginia, in the amount of \$1,050.00, to install a driveway at 5207 Bradfield Drive, Burke, Virginia. (Exh. C-2)

On September 18, 2002, Northern Virginia performed the work. (Exh. C-1)

On September 18, 2002, Ratliff paid Northern Virginia \$1,100.00 by check. (Exh. C-3)

\*\*\*\*\*

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:
  - 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.

FACTS:

The contract used by Northern Virginia failed to contain subsections: (a), (e), and (h) contractor's license number, expiration date, class of license, and classifications or specialty services. (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:

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

FACTS:

The contract specified "All material is guaranteed for 1 full year." (Exh. C-2)

Northern Virginia told Ratliff that it would return and fix any irregularities in the driveway surface. (Exh. C-10)

A week after the driveway was installed by Northern Virginia, Ratliff observed streaks and uneven areas in the driveway installed by Northern Virginia. (Exh. C-4)

Ratliff made several attempts to contact Northern Virginia to correct the driveway. (Exh. C-1)

In a facsimile dated September 25, 2002, Ratliff requested Northern Virginia repair the driveway by early October. (Exh. C-4)

In a facsimile dated February 25, 2003, Ratliff requested Northern Virginia contact Ratliff regarding the matter. (Exh. C-4)

As of March 18, 2003, Northern Virginia failed to honor the warranty and correct the driveway. (Exh. C-1)

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

Re: Thomas E Dooley, t/a Century Roofing  
Virginia Beach, VA 23456

File Number 2003-02917  
License Number 2705043525

**CONSENT ORDER**

Respondent Thomas E Dooley, t/a Century Roofing ("Thomas E Dooley") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

**Board's 2003 Regulations provides:**

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

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

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

On September 8, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Thomas E Dooley at 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 for and received.

On November 2, 2004, the Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation in Richmond, Virginia.

The following individuals participated at the conference: Thomas E Dooley, Respondent; Curtis Muller, Witness; Dan Lindberg, Witness; Jennifer Kazzie, Staff Member; and Anthony Orange, Presiding Board Member.

During the IFF, Dooley presented a notarized statement from Ingellis that the work was completed to his satisfaction and Ingellis was withdrawing his complaint. Since Ingellis has

been satisfied and the work was completed with an approved inspection, the negligence charge was dropped and the Informal Fact-Finding Conference Memorandum was amended.

During the IFF, Dooley stated he has revised his contract. Dooley further stated his attorney is reviewing the revised contract and additional changes may be made to the contract.

The Amended Informal Fact-Finding Conference Memorandum, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

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

By signing this Consent Order, Thomas E Dooley acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Amended Informal Fact-Finding Conference Memorandum. Thomas E Dooley consents to the following term(s):

|  |         |                      |          |
|--|---------|----------------------|----------|
|  | Count 1 | 18 VAC 50-22-260.B.9 | \$100.00 |
|  |         |                      | -----    |
|  | TOTAL   |                      | \$100.00 |

In addition, The Board waives the imposition of the \$100.00 monetary penalty for Count 1 provided a member of Responsible Management successfully completes remedial education by attending the Board's Basic Contracting License class (remedial education) and passing the examination within six months of the effective date of this order. If a member of Responsible Management fails to successfully complete remedial education within six months of the effective date of this order, then the monetary penalty will be automatically imposed.

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

**Thomas E Dooley acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Thomas E Dooley's license until such time as there is compliance with all terms of this Order. Thomas E Dooley understands the right to have this automatic suspension considered in an IFF pursuant to the**

**Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.**

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

SEEN AND AGREED TO:

\_\_\_\_\_  
Thomas E Dooley  
t/a Century Roofing

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF \_\_\_\_\_  
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SO ORDERED:**

Entered this \_\_\_\_ day of \_\_\_\_\_, 2004.

Board for Contractors

BY: \_\_\_\_\_  
Louise Fontaine Ware, Secretary

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

AMENDED  
INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors  
DATE: April 27, 2004 (revised August 12, 2004 and amended November 2, 2004)  
RE: 2003-02917; Thomas E. Dooley, t/a Century Roofing

BACKGROUND:

On April 28, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received information from the Office of the Commonwealth's Attorney for the City of Virginia Beach regarding Thomas E. Dooley, t/a Century Roofing Systems. (Exh. C-1)

On February 24, 2003, David and Julie Ingellis ("the Ingellises") entered into a written contract with Century Roofing Systems, in the amount of \$3,025.00, to remove a tree and repair the siding, fascia, soffit, and shingles on the edge of the roof at 2376 Court Circle, Virginia Beach, Virginia 23453-3509. The contract was signed for by Tom Dooley. (Exh. C-2)

On September 17, 1998, Thomas E. Dooley ("Dooley"), t/a Century Roofing, was issued Class C Contractor's license number 2705043525. (Exh. I-1)

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 Dooley in the transaction failed to contain subsections: (a), (d), (e), (f), (h), and (i). (Exh. C-2)

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

Re: MGM Builders Inc.

File Number: 2004-02087  
License Number: 2701036302

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

On September 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to MGM Builders Inc. ("MGM Builders") 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 2, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the *Department of Professional and Occupational Regulation*.

The following individuals participated at the IFF: Jennifer Kazzie, Staff Member; and Anthony Orange, Presiding Board Member. Neither Michael Matthews nor anyone on behalf of MGM Builders 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 September 1, 2001)

(TWO COUNTS)

MGM Builders's failure to include minimum provisions in the contracts is two violations of Board Regulation 18 VAC 50-22-260.B.9. The contracts used in transactions failed to contain seven of the required provisions. Therefore, I recommend a monetary penalty of \$100.00 and remedial education for each violation be imposed for a total of \$200.00 and remedial education for two violations.

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

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

(TWO COUNTS)

MGM Builders's failure to provide Swift with fully executed copies of the contracts prior to performing work is two violations of Board Regulation 18 VAC 50-22-260.B.10. On August 5, 2002, MGM Builders provided Swift with a written proposal to perform renovation work at Swift's residence. Swift paid MGM Builders and Michael G. Matthews for the work. On October 21, 2002, Swift received an invoice from MGM Builders for work performed under the contract. MGM Builders also provided Swift with a second written proposal to install a fireplace at the subject property. Swift paid MGM Builders and Michael G. Matthews for the work. Therefore, I recommend a monetary penalty of \$100.00 for each violation be imposed for a total of \$200.00 for two violations.

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

MGM Builders's failure to obtain written change orders is a violation of Board Regulation 18 VAC 50-22-260.B.31. On October 21, 2002, Swift received an invoice from MGM Builders for work performed by MGM Builders. The invoice indicated additional work was performed beyond the scope of the original proposal. Therefore, I recommend a monetary penalty of \$150.00 be imposed.

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

MGM Builders's failure to obtain a permit prior to the commencement of work is a violation of Board Regulation 18 VAC 50-22-260.B.6. In February 2003, MGM Builders installed a fireplace and chimney at the subject property. In October 2003, Swift obtained the mechanical permit for the work performed at the subject property. A final inspection was approved in November 2003. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

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

MGM Builders's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. In August 2003, Swift obtained a judgment against MGM Builders, in the amount of \$2,969.50, for funds due to Swift for overpayment. As of May 28, 2004, MGM Builders failed to satisfy the judgment. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

MGM Builders's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. In December 2003, the Board's agent made a written request to MGM Builders, to the address of record, requesting a written response and supporting documents the complaint filed with the Board. On April 2, 2004, The United States Postal Service certified that mail was delivered to the address of record. On April 8, 2004, the Board's agent made a second written request to MGM Builders, to the address of record. On May 3, 2004, the Board's agent made a written request to MGM Builders, via certified mail, to the address of record. The certified mail was signed and received for. MGM Builders failed to respond to the Board's agent's requests. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 7: Board Regulation (Effective January 1, 2003)

MGM Builders'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 50-22-210.3. In October 1988, MGM Builders, corporate identification number 0328504, became incorporated in the Commonwealth of Virginia. In March 1990, the Board for Contractors issued Class A Contractor's license number 2701036302 to MGM Builders as a corporation. In September 2001, the State Corporation Commission purged corporate identification number 0328504 from its records. Therefore, I recommend a monetary penalty of \$150.00 be imposed.

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

Anthony Orange  
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 & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Contractors  
DATE: June 7, 2004 (revised August 17, 2004)

FILE NUMBER: 2004-02087  
RESPONDENT: MGM Builders, Inc.  
LICENSE NUMBER: 2701036302  
EXPIRATION: March 31, 2006

SUBMITTED BY: Investigator Noelle B. Phillips  
APPROVED BY: Investigations Administrator Kevin E. Hoeft

COMMENTS:

None.

\*\*\*\*\*

MGM Builders, Inc. ("MGM Builders") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2701036302).

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 November 6, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Gail Swift ("Swift") regarding MGM Builders. (Exh. C-1)

On August 5, 2002, MGM Builders provided Swift with a written proposal, in the amount of \$9,198.00, to perform renovation work at 2403 Whittington Boulevard, Alexandria, Virginia. (Exh. C-2)

On August 5, 2002, Swift paid MGM Builders \$2,000.00 by check. On August 7, 2002, Swift paid MGM Builders \$5,000.00 by check. On August 25, 2002, Swift paid Michael G. Matthews \$1,500.00 by check and MGM Builders \$3,500.00 by check. (Exh. C-3)

On October 21, 2002, Swift received an invoice from MGM Builders, in the amount of \$11,355.50, for work performed under the contract. The invoice indicated MGM Builders owed Swift \$644.50 as a credit. (Exh. C-4)

On October 21, 2002, Swift paid MGM Builders \$3,000.00 by check. On November 5, 2002, Swift paid MGM Builders \$3,000.00 by check. On November 15, 2002, Swift paid MGM Builders \$2,500.00 by check. On November 25, 2002, Swift paid Michael G. Matthews \$3,500.00 by check. (Exh. C-3)

MGM Builders provided Swift with a second written proposal, in the amount of \$5,500.00, to install a fireplace at the subject property. (Exh. C-5)

On December 16, 2002, Swift paid Michael G. Matthews \$900.00 by check. On January 9, 2003, Swift paid MGM Builders \$1,000.00 by check. On January 23, 2003, Swift paid MGM Builders \$1,000.00 by check. On February 24, 2003, Swift paid MGM Builders \$500.00 by check. (Exh. C-3)

In an undated written letter, received by the Department on November 20, 2003, Swift stated she prepaid MGM Builders "...to complete various tasks such as fabrication and installation of built cabinets and completion of electrical work, etc." Swift further stated that this work was performed by way of a verbal agreement, in the amount of \$3,200.00, as a means of MGM Builders' repayment of previous overpayments made by Swift. (Exh. C-1)

\*\*\*\*\*

1. Board Regulation (Effective September 1, 2001) (TWO COUNTS)

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;
  - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
  - 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 contracts used by MGM Builders in the transactions failed to contain subsections: (a); (b) the amounts and schedule for progress payments including a specific statement on the down payment; (d); (e); (f); (h) contractor's license number, expiration date, and classifications or specialty services; and (i). (Exh. C-2 and C-5)

2. Board Regulation (Effective September 1, 2001) (TWO COUNTS)

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

B. The following are prohibited acts:

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

FACTS:

MGM Builders failed to provide Swift with fully executed copies of the contracts prior to performing the work. (Exh. C-2 and C-5)

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 invoice dated October 21, 2002, indicated MGM Builders performed the following additional work:

- installed a new drywall patch in the guest room;
- demolished fire place and stove area;
- disconnected gas & plumbing pipes, removed the air conditioner, repositioned cables, and removed unwanted hardware;
- performed electrical work;
- demolished the back yard deck;

- moved the laundry room door to the kitchen, and cut in a new opening for the laundry room;
- relocated a cabinet and countertop in the kitchen. (Exh. C-4)

MGM Builders failed to provide written change orders, signed by all parties, for changes to the scope of the work to be performed, material and other costs.

4. 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:

In February 2003, MGM Builders installed a fireplace and chimney at the subject property. (Exh. C-1)

On October 31, 2003, Swift obtained mechanical permit number 03304M0010 for work performed at the subject property. A final inspection was approved on November 3, 2003. (Exh. I-2)

MGM Builders failed to obtain a mechanical permit prior to the commencement of work as required by Section 115.4 of the Virginia Uniform Statewide Building Code.

5. 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 August 6, 2003, in the Fairfax County General District Court, Swift was awarded a \$2,969.50 judgment against MGM Builders for funds due to Swift from overpayment. (Exh. I-11)

As of May 28, 2004, MGM Builders has failed to satisfy the judgment. (Exh. I-10)

6. 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 December 2, 2003, Investigator Noelle Phillips, the Board's agent, made a written request to MGM Builders at the address of record of 8937 Fort Hunt Road, Alexandria, Virginia 22308, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested that the response be received by December 19, 2003. (Exh. I-1)

On April 2, 2004, the United States Postal Service ("USPS") certified mail was delivered to MGM Builders at 8934 Fort Hunt Road, Alexandria, Virginia 22308. (Exh. I-6)

On April 8, 2004, the Board's agent made a second written request to MGM Builders at the address of record of 8937 Fort Hunt Road, Alexandria, Virginia 22308, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested that the response be received by April 23, 2004. (Exh. I-7)

On May 3, 2004, the Board's agent made a written request to MGM Builders, via certified mail, at the address of record of 8937 Fort Hunt Road, Alexandria, Virginia 22308, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested that the response be received by May 14, 2004. (Exh. I-8) On May 12, 2004, the certified mail was signed and received for. (Exh. I-9)

As of June 1, 2004, MGM Builders failed to respond to the Board's agent.

7. Board Regulation (Effective January 1, 2003)

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

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

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

FACTS:

On October 7, 1988, MGM Builders, Inc., corporate identification number 0328504, became incorporated in the Commonwealth of Virginia. (Exh. I-5)

On March 21, 1990, MGM Builders was issued Class A Contractor's license number 2701036302 as a corporation. (Exh. I-12)

On September 30, 2001, the State Corporation Commission purged corporate identification number 0328504 from its records. (Exh. I-5)

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

