Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
December 7, 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.

Robert Burch, Board Member, presided. No other Board members were present.

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

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

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

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

	Participants
1. Roger Simmons t/a Simmons Renovations File Number 2004-03175 (Disc)	None
2. Eric Tyrone Carson t/a C & C Concrete and Masonry File Number 2003-03311 (Disc)	Teresa Hollenbaugh – C Landa Artis – W
3. W E Harris Construction Inc. File Number 2004-03082 (Disc)	Jerry Sanner – C Beth Sanner – C
4. Christopher Patete t/a Sturdy Built MFG File Number 2004-00251 (Disc)	Patete – R Kevin McNally – R Atty Walter Marston – R Atty Evan Chapple – C Holly Chapple – C James Gillis – W Lonnie Walters – W
5. Christopher Patete t/a Sturdy Built MFG File Number 2003-02576 (Disc)	Patete – R Kevin McNally – R Atty Walter Marston – R Atty

	Brenda Kay Baker – C James Gillis – W Lonnie Walters – W
6. Star Construction Company Inc. File Number 2004-00032 (Disc)	Ronald Robinson – R Ignatius Jordan – C (by phone) Barbara Jordan – C (by phone)
7. Cybernetica Inc. t/a Clemson Construction Company File Number 2004-00574 (Disc)	Barry Clemson – R Randall Holden – C Dan Cholewa – W
8. Martin G. Condrey t/a Marty's Roofing File Number 2004-01264 (Disc)	Condrey – R Carl DeBernard – C Jacquelyn DeBernard – W Carl DeBernard Jr. – W
9. Property Damage Specialists Inc. t/a Paul Davis Systems of Northern VA File Number 2004-01580 (Disc)	Kevin Crawford – R Helene Eisenhauer – C

The meeting adjourned at 3:45 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: Roger Simmons, t/a Simmons Renovations

File Number: 2004-03175
License Number: 2705080552

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 25, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Roger Simmons ("Simmons"), t/a Simmons Renovations to the address of record. The Notice included the Informal Fact-Finding Conference Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On December 7, 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 Robert Burch, Presiding Board Member. Neither Simmons nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

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

Simmons's failure to obtain a Class B license in order to perform work in excess of the $7,500.00 of a Class C license is a violation of Board Regulation 18 VAC 50-22-260.B.27. On November 3, 2003, the Board issued Class C contractor's license number 2705080552 to Simmons. On November 26, 2003, Maxey entered into a written contract with Simmons, in the amount of $7,780.00, to build an addition at the subject property. Therefore, I recommend a monetary penalty of $1,500.00 be imposed.

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

Simmons's action of performing work in a classification or specialty service for which he was not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Simmons's license lists only home improvement contracting ("HIC") and roofing contracting ("ROC")

specialties. The contract used in the transaction specified Simmons would perform foundation work. Therefore, I recommend a monetary penalty of $1,500.00 be imposed.

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

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

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

Simmons's failure to obtain the required building permit for work performed is a violation of Board Regulation 18 VAC 50-22-260.B.6. Simmons applied for a permit, but the plans submitted with the permit were insufficient. As of June 12, 2004, Simmons failed to obtain the required permit for work performed at the subject property. Therefore, I recommend that a monetary penalty of $1,000.00 and license revocation be imposed.

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

Simmons's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. On December 20, 2003, Simmons stopped work at the subject property. Maxey made several attempts to contact Simmons regarding completion of the work. Simmons did not respond. Simmons last performed work at the subject property at the end of March 2004. In a letter to the Board's agent, Simmons stated he was unable to do any work because his trailer was broken into, and all of his tools were stolen. As of May 18, 2004, Simmons failed to install sheet rock, shingles and vinyl siding; as well as replace gutters and soffitt and facia. Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

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

Simmons's failure to return funds received for work not performed, or performed in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Maxey paid Simmons $3,290.00 on November 26, 2003, and again paid Simmons $3,290.00 on December 21, 2003. On April 19, 2004, Simmons promised to return one of the payments received to Maxey for the work not completed. On April 30, 2004, Simmons informed the Board's agent that he would refund some money to Maxey on May 7, 2004. As of May 18, 2004, Simmons failed to return the money. Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

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

Simmons's action of providing false or misleading information to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Simmons informed the Board's agent that he would refund some money to Maxey on May 7, 2004. Simmons never returned the money. Therefore, I recommend a monetary penalty of $1,500.00 and license revocation be imposed.

By: _____
Robert Burch
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Board for Contractors
DATE: May 19, 2004 (revised August 19, 2004)
RE: 2004-03175; Roger Simmons, t/a Simmons Renovations

BACKGROUND:

On February 5, 2004, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Terrie Maxey ("Maxey") regarding F & S Renovations. (Exh. C-1)

On November 26, 2003, Maxey entered into a written contract with F & S Renovations, in the amount of $7,780.00, to build an addition at 7175 Lakeshore Drive, Quinton, Virginia. The contract indicated Roger D. Simmons Jr., t/a F & S Renovations, and was signed by Roger D. Simmons Jr. (Exh. C-2)

On November 3, 2003, Roger Simmons ("Simmons"), t/a F & S Rentovation, was issued Class C Contractor's license number 2705080552 with the home improvement contracting ("HIC") and roofing contracting ("ROC") specialties. On February 27, 2004, the trade name was changed to F & S Renovation. On March 2, 2004, the trade name was changed to Simmons Renovations. (Exh. I-1)

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

18 VAC 50-22-260.B.27

FACTS:
Simmons failed to obtain a Class B license in order to perform work in excess of the $7,500.00 limit of a Class C license.

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

18 VAC 50-22-260.B.27

FACTS:
The contract specified "Block foundation to connect new room addition to existing house (3 sides)." (Exh. C-2)

Simmons performed work in a classification and specialty service for which Simmons is not licensed.

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 Simmons in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (d) a "plain-language" exculpatory clause, (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, (h) contractor's license 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. (Exh. C-2)

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

18 VAC 50-22-260.B.6

FACTS:

Simmons applied for a permit but the plans were insufficient. As of June 12, 2004, Simmons failed to obtain a required building permit for work performed at the subject property, in violation of Section 111.1 of the Uniform Statewide Building Code. (Exh. I-2)

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

18 VAC 50-22-260.B.14

FACTS:

On December 20, 2003, Simmons stopped work at the subject property. (Exh. C-1)

Maxey made several attempts to contact Simmons regarding the completion of the project; however, Simmons failed to respond. (Exh. C-1)

The last Simmons performed work at the subject property was the end of March 2004. (Exh. I-4)

In a written response dated February 25, 2004, Simmons stated "Shortly after Christmas, my trailer was broken into and all of my tools were stolen. So I was unable to do any work at that time." (Exh. R-1)

As of May 18, 2004, Simmons failed to install sheet rock, shingles, and vinyl siding and replace 25' of gutters and 10' of soffitt and facia. (Exh. I-4)

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

18 VAC 50-22-260.B.16

FACTS:

On November 26, 2003, Maxey paid Simmons $3,290.00 by check. (Exh. C-3) On December 21, 2003, Maxey paid Simmons $3,290.00 by check. (Exh. C-4)

On April 19, 2004, Simmons promised to return one of the payments to Maxey for the work not completed. (Exh. I-4)

On April 30, 2004, the Board's agent received a message from Simmons that he would refund some money to Maxey on May 7, 2004. (Exh. I-3)

As of May 18, 2004, Simmons failed to return funds received for work not performed or performed in part. (Exh. I-5)

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

18 VAC 50-22-260.B.13

FACTS:

On April 30, 2004, the Board's agent received a message from Simmons that he would refund some money to Maxey on May 7, 2004. (Exh. I-3)

As of May 18, 2004, Simmons failed to return funds received for work not performed or performed in part. (Exh. I-5)

Simmons provided false and misleading information to an investigator seeking information in the investigation of a complaint filed with the Board.

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: Eric Tyrone Carson, t/a C & C Concrete and Masonry

File Number: 2003-03311
License Number: 2705071392

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 25, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Eric Tyrone Carson ("Carson"), t/a C & C Concrete and Masonry 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 December 7, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Teresa Hollenbaugh (formerly known as Teresa Kohlenhoefer), Complainant; Landa Artis, Witness; Joe Haughwout, Staff Member; and Robert Burch, Presiding Board Member. Neither Carson 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)

Carson'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 $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 the order.

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

Carson's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. On April 28, 2003, Kohlenhoefer entered into a written contract with Carson to remove a fireplace, install a window, and perform renovation work at the subject property. On May 2, 2003, Kohlenhoefer called for the first inspection. On May 5, 2003, an inspector for the Hampton City Codes and Compliance office inspected the work done on the porch. The inspector later told Kohlenhoefer that the work failed inspection. On May 29, 2003, Kohlenhoefer notified Carson by letter that the work did not meet city code. Kohlenhoefer requested Carson reimburse her $7,047.53 for materials to obtain another contractor to repair and finish the work.

Carson's failure to correspond with the building official and Teresa Kohlenfoefer demonstrates negligence in reference to complete the contract as signed. Therefore, I recommend a monetary penalty of $1,500.00 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 the order.

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

Carson's failure to satisfy a judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. On September 15, 2003, in the Hampton City General District Court, Kohlenhoefer obtained a $3,853.00 judgment against Carson. As of May 6, 2004, Carson has not satisfied the judgment. Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

By: _____

Robert Burch
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 26, 2004 (revised September 3, 2004)

FILE NUMBER: 2003-03311
RESPONDENT: Eric Tyrone Carson, t/a C&C Concrete and Masonry
LICENSE NUMBER: 2705071392
EXPIRATION: October 31, 2004

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

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Eric Tyrone Carson ("Carson"), t/a C&C Concrete and Masonry, was at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705071392).

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 May 30, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Teresa Kohlenhoefer" ("Kohlenhoefer") regarding Carson. (Exh. C-1)

On February 20, 2003, Kohlenhoefer obtained building permit number B-03-00298 for work to be performed at the subject property. (Exh. I-1)

On April 28 2003, Kohlenhoefer entered into a written contract with Carson, in the amount of $3,910.00, to remove a fireplace, install a window, and perform renovation work at 1772 Revere Drive, Hampton, Virginia. (Exh. C-2)

On May 1, 2003, Kohlenhoefer paid Carson $1,955.00. On May 6, 2003, Kohlenhoefer paid Carson $980.00. (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:

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 Carson in the transaction failed to contain subsections: (a), (e), and (h). (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:

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

FACTS:
On May 2, 2003, Kohlenhoefer called for the first inspection. (Exh. C-1)

On May 5, 2003, L. Messick ("Messick") of the Hampton City Codes and Compliance went to the subject property and inspected the work done on the porch. (Exh. C-1)

At the request of Kohlenhoefer, Messick returned to the subject property on May 27, 2003. Messick told Kohlenhoefer the work failed inspection on May 5, 2003. (Exh. C-1)

On May 29, 2003, Kohlenhoefer notified Carson by letter that the work did not meet city code. Kohlenhoefer requested Carson reimburse $7,047.53 for materials and to obtain another contractor to repair and finish the work. (Exh. C-3)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On September 15, 2003, in the Hampton General District Court, Hollenbaugh (formerly Kohlenhoefer) was awarded a $3,853.00 judgment against Carson. As of May 6, 2004, Carson failed to satisfy the judgment. (Exh. I-2)

IN THE

COMMONWEALTH OF VIRGINIA

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BOARD FOR CONTRACTORS

Re: W E Harris Construction Inc.

File Number: 2004-03082
License Number: 2705074123

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 25, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to W.E. Harris Construction Inc. ("Harris Construction") 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 December 7, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jerry and Beth Sanner; Complainants; Joe Haughwout, Staff Member; and Robert Burch, Presiding Board Member. Neither William Harris nor anyone on behalf of Harris Construction appeared at the IFF.

RECOMMENDATION

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

Count 1: <u>Board Regulation (Effective January 1, 2003)</u>

Harris Construction's action of making a false representation to the Jerry and Beth Sanner ("the Sanners") is a violation of Board Regulation 18 VAC 50-22-260.B.17. In June 2003, the Board issued Class C Contractor's license number 2705074123 to Harris Construction. Harris Construction provided the Sanners with a copy of its license, which indicated Harris Construction held a Class B license.

During the IFF, the Sanners stated Harris Construction presented the Sanners with plans, blueprints, references, and a copy of its license indicating it had a Class B contractor's license. The Sanners further stated after signing the contract with Harris Construction they checked with the Better Business Bureau, State Corporation Commission, and the Board for Contractors and discovered Harris Construction lied about its license. Therefore, I recommend a monetary penalty of $1,500.00 and license revocation be imposed.

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

Harris Construction's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. The contract used in the transaction failed to contain two of the required provisions. Therefore, I recommend a monetary penalty of $100.00 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 the order.

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

Harris Construction's action of practicing in a class of license for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. In June 2003, the Board issued Class C Contractor's license number 2705074123 to Harris Construction. On October 13, 2003, the Sanners entered into a written contract with Harris Construction, in the amount of $60,000.00, to construct an addition at the subject property. In a written response to the Board's agent, Harris Construction stated the contract written with the Sanners was to provide to the bank with documentation of the project's cost. Harris Construction further stated it would be paid a consulting fee at the end of the job not to exceed $7,500.00. The Sanners paid Harris Construction a total of $19,000.00 towards the contract. Therefore, I recommend a monetary penalty of $1,000.00 and license revocation be imposed.

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

Harris Construction's action of practicing in a classification or specialty service for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Harris Construction's license indicates only a home improvement contracting ("HIC") specialty. Harris Construction contracted to build an addition at the subject property. In December 2003 and January 2004, Harris Construction dug footing, poured concrete, and installed a brick foundation. The HIC specialty does not provide for foundation work. Therefore, I recommend a monetary penalty of $1,000.00 and license revocation be imposed.

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

Harris Construction's violation of building codes is a violation of Board Regulation 18 VAC 50-22-260.B.6. On January 15, 2004, an inspection of the foundation was disapproved because of grading, in violation of Section 409.4 of the CABO Code, and the plans were not on the job site, in violation of Section 111.5.4 of the Uniform Statewide Building Code. As of February 17, 2004, no other inspections were conducted at the subject property. During the IFF, the Sanners stated the footing inspection has not been approved. Therefore, I recommend a monetary penalty of $1,000.00 and license revocation be imposed.

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

Harris Construction's failure to complete work and comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. The contract specified work would begin ninety (90) days from the date of contract, and would be completed thirty (30) days thereafter. Harris Construction began work on October 31, 2003. As of January 13, 2004, Harris Construction only completed the footings and brickwork. During the IFF, the Sanners stated the only work completed by Harris Construction was the brick footings, which have not passed inspection. Therefore, I recommend a monetary penalty of $2,000.00 and license revocation be imposed.

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

Harris Construction's retention of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. The Sanners paid Harris Construction a total of $19,000.00 towards the contract. As of January 13, 2004, Harris Construction completed only the footing and brickwork. On January 28, 2004, the Sanners sent Harris Construction a certified letter requesting Harris Construction return the $19,000.00 within fifteen (15) days. During the IFF, the Sanners stated the total amount of work done was about $12,000.00. The Sanners stated Harris Construction refunded approximately $4,000.00. Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

By: _____

Robert Burch
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: May 26, 2004 (revised September 8, 2004)

FILE NUMBER: 2004-03082
RESPONDENT: W E Harris Construction Inc.
LICENSE NUMBER: 2705074123
EXPIRATION: June 30, 2005

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

COMMENTS:
None.

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W E Harris Construction Inc. ("Harris") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705074123).

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

BACKGROUND:

On January 30, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Jerry and Beth Sanner ("the Sanners") regarding Harris. (Exh. C-1)

On October 13, 2003, the Sanners entered into a written contract with Harris, in the amount of $60,000.00, to construction an addition at 7104 Brooking Way, Mechanicsville, Virginia. (Exh. C-2)

On October 31, 2003, Harris commenced work by removing trees. (Exh. C-1)

On November 3, 2003, the Sanners obtained building permit number 2652-03 for the addition. (Exh. C-1)

On June 11, 2003, Harris was issued Class C Contractor's license number 2705074123 with the home improvement contracting ("HIC") specialty service. (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:

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

FACTS:
Harris faxed a copy of its license to the Sanners. (Exh. C-1) *The license provided by* Harris indicated it was a Class B Contractor's license. (Exh. C-3)

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:

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 Harris in the transaction failed to contain subsections: (e) and (h). (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:

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

FACTS:

In a written response dated February 24, 2004, Harris stated "the written agreement before you, between Jerry & Beth Sander was for them to provide documentation to their bank to shown how much the project would cost." Harris further stated "By assisting them with this project we agreed that I would be paid a consulting fee at the end of the job that would not exceed over $7,500.00." (Exh. R-1)

Section 54.1-1100 of the Code of Virginia specifies Class C contractors perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over $1,000.00 but less than $7,500.00.

Harris practiced in a class of license for which it is not licensed.

4. Board Regulation (Effective January 1, 2003)

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:

According 18 VAC 50-22-20, home improvement contracting ("HIC") means that service which provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property. The definition also states "The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions."

Harris practiced in a classification and/or specialty service for which it is not licensed.

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On January 15, 2004, the foundation inspection was disapproved because of grading, in violation of Section 409.4 of the CABO Code, and the plans were not on the job site, in violation of Section 111.5.4 of the Uniform Statewide Building Code. (Exh. I-2 and I-3)

As of February 17, 2004, no other inspections were conducted at the subject property. (Exh. I-2)

6. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The contract specified "Estimated commencement of work – 90 days from date" and "Estimated completion of work – 30 days thereafter." (Exh. C-2)

On December 1, 2003, Harris dug the footings and poured the concrete. On December 20, 2003, Harris installed the brick foundation. On January 13, 2004, Harris completed the brick posts for the front porch. (Exh. C-1)

Harris failed to complete the work and comply with the terms of the contract.

7. 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 October 14, 2003, the Sanners paid Harris $9,500.00 by check. On November 10, 2003, the Sanners paid Harris $9,500.00 by check. (Exh. C-1)

As of January 13, 2004, Harris only completed the footings and brickwork. (Exh. C-1)

On January 28, 2004, the Sanners sent Harris a certified letter requesting Harris return $19,000.00 within fifteen (15) days. (Exh. C-1)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: Christopher Patete, t/a Sturdy Built MFG

File Number: 2004-00251
License Number: 2701027175

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 26, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Christopher Patete, t/a Sturdy Built MFG ("Sturdy Built") 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 December 7, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Christopher Patete, Respondent; Kevin McNally and Walter Marston, Attorneys for Respondent; Evan and Holly Chapple, Complainants; James Gillis and Lonnie Walters, Witnesses; Joe Haughwout, Staff Member; and Robert Burch, 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:

On September 8, 2002, Evan and Holly Chapple ("the Chapples") entered into a written contract with Sturdy Built to construct an addition at the subject property.

Count 1: <u>Board Regulation (Effective September 1, 2001)</u>

Sturdy Built'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 two of the required subsections.

During the IFF, McNally stated subsection d is on the contract and subsection e is satisfied because the contract specifies the homeowner is responsible for the permit. McNally also stated Patete will conform its contract to include its license expiration and specialty services. Therefore, I recommend a monetary penalty of $100.00 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)

Sturdy Built's failure to obtain written change orders, signed by both parties, to modify the scope of the work performed, materials, and cost of the original contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. On May 15, 2003, Sturdy Built sent the Chapples an Additional Work Authorization for additional materials.

During the IFF, Evan Chapple stated the May 15, 2003, Additional Work Authorization was signed but the Chapples signed it under duress. Therefore, I recommend Count 2 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.31.

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

Sturdy Built's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Between May 28, 2003, and June 24, 2003, the Chapples made several attempts to contact Sturdy Built regarding the completion of work and punch list items to be repaired at the subject property. On June 10, 2003, the Chapples provided Sturdy Built with a punch list of items to be repaired. On April 1, 2004, the Chapples sent Sturdy Built a letter regarding permission to enter the property to correct building code violations and address punch list items.

The transcript will indicate numerous emails were sent by Sturdy Built and the Chapples in an effort to gain permission to perform the work on the punch list. The Chapples granted Sturdy Built permission to enter their property. Patete testified the punch list had been completed; however, the Chappels stated the punch list items had not been completed. *Therefore, I recommend a monetary penalty of $2,000.00 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 4: Board Regulation (Effective September 1, 2001)

Sturdy Built's violation of the building code is a violation of Board Regulation 18 VAC 50-22-260.B.6. On June 12, 2003, a framing inspection was scheduled. On June 26, 2003, the Loudoun County Department of Building and Development performed an inspection of the subject property. On June 30, 2003, the Department issued a Notice of Violation to Evan Chapple because the approved construction documents did not match the existing structure.

On July 3, 2003, the Department issued a Notice of Violation ("the Notice") to Sturdy Built for four building code violations. On April 30, 2004, the Department performed an inspection of the subject property. On May 5, 2004, the Department sent Sturdy Built and the Chapples a letter regarding corrections to address from the July 3, 2003, Notice of Violation. On June 7, 2004, the Department sent Sturdy Built a letter as notification that the violations cited in the July 3, 2003, Notice were remedied.

During the IFF, Jim Gillis ("Gillis") stated he requested Sturdy Built provide plans for the structure actually built at the subject property because the approved plans did not match. Gillis also stated after Sturdy Built failed to provide the plans he issued the Notice, which Sturdy Built appealed. Gillis further stated the appeals board decided Sturdy Built was responsible for providing the revised plans, Sturdy Built did abate the Notice, and the framing inspection was approved.

Although the building code violations were abated, the main issue in regard to the building code violations stem from Sturdy Built not following the Uniform Statewide Building Code requiring an approved set of building plans on site. Therefore, I recommend a monetary penalty of $2,500.00 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.

By: _____
Robert Burch
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: September 1, 2004 (revised October 1, 2004)

FILE NUMBER: 2004-00251
RESPONDENT: Christopher Patete, t/a Sturdy Built MFG
LICENSE NUMBER: 2701027175
EXPIRATION: December 31, 2005

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

****

Christopher Patete, t/a Sturdy Built MFG ("Sturdy Built"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2701027175).

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

BACKGROUND:

On July 8, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Evan and Holly Chapple ("the Chapples") regarding Sturdy Built. (Exh. C-1)

On September 8, 2002, the Chapples entered into a written contract with Sturdy Built, in the amount $75,612.00, to construct an addition at 41872 Stumptown Road, Leesburg, Virginia. (Exh. C-2 and R-2)

On November 14, 2002, Sturdy Built sent the Chapples an Additional Work Authorization, in the amount of $11,080.00, for additional materials and modifications to the scope of the work to be performed. (Exh. C-2)

On November 29, 2002, Evan Chapple provided Sturdy Built with a contract addendum for additional work to be performed. (Exh. C-2) On November 30, 2002, Sturdy Built accepted and signed the November 29, 2002, contract addendum. (Exh. R-2)

On December 2, 2002, Evan Chapple accepted and signed the November 14, 2002, Additional Work Authorization. (Exh. R-2)

On May 15, 2003, Sturdy Built sent the Chapples an Additional Work Authorization, in the amount of $1,235.00, for additional materials. (Exh. R-2)

****

1. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

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 Sturdy Built failed to contain subsections: (e) and (h). (Exh. C-2 and R-2)

2. 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:

Sturdy Built failed to obtain written change orders, signed by both parties, for modifications to the scope of the work to be performed, materials, and cost of the original contract.

3. 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:

Between May 28, 2003 and June 24, 2003, the Chapples made several attempts to contact Sturdy Built regarding the completion of the work and punch list items to be repaired at the subject property. (Exh. C-1 and C-3)

On June 10, 2003, the Chapples provided Sturdy Built with a punch list of items to be repaired. (Exh. C-3)

On April 1, 2004, the Chapples sent Sturdy Built a letter as notification of "permission to enter our property" to correct building code violations and resolve the outstanding punch list items. (Exh. C-3)

4. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On June 12, 2003, a framing inspection was scheduled. (Exh. I-2)

On June 26, 2003, the Loudoun County Department of Building and Development performed a site inspection of the subject property. (Exh. C-5)

On June 30, 2003, James Gillis ("Gillis") of the Loudoun County Department of Building and Development issued a Notice of Violation to Evan Chapple because the approved construction documents do not match existing structure, in violation of Section 109.5.4 of the Virginia Uniform Statewide Building Code ("USBC"). Gillis directed Evan Chapple to contact him on or before July 7, 2003 to arrange correction of the building code violation. (Exh. C-5)

On July 3, 2003, Gillis issued a Notice of Violation to Sturdy Built for the following building code violations:

1. USBC Section 109.5.4 – Plans incomplete
2. USBC Section 111.1 – Construction documents for area(s) not included in approval documents shall be prepared by....professional licensed in the Commonwealth of Virginia
3. CABO 403.1 – Footings for structural beams not sufficient to support load
4. CABO 601.2 – Gable ends not capable of accommodating loads.

Gillis directed Sturdy Built to contact him on or before July 10, 2003, to arrange correction of the building code violations. (Exh. C-6)

On April 30, 2004, the Loudoun County Department of Building and Development performed a site inspection of the subject property. (Exh. I-1)

On May 5, 2004, Gillis sent Sturdy Built and the Chapples a letter regarding corrections needed to address the July 3, 2003, Notice of Violation. (Exh. I-1)

On June 7, 2004, Gillis sent Sturdy Built a letter as notification that the violations cited in the July 3, 2003, Notice of Violation have been remedied. (Exh. R-1)

As of October 1, 2004, Sturdy Built failed to obtain a framing and final inspection. (Exh. I-2)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: Christopher Patete, t/a Sturdy Built MFG

File Number: 2003-02576
License Number: 2701027175

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 26, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Christopher Patete, t/a Sturdy Built MFG ("Sturdy Built") 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 December 7, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Christopher Patete, Respondent; Kevin McNally and Walter Marston, Attorneys for Respondent; Brenda Kay Baker, Complainant; James Gillis and Lonnie Walters, Witnesses; Joe Haughwout, Staff Member; and Robert Burch, 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:

In June 2001, Baker entered into a written contract with Sturdy Built to construct a two-car garage and second level storage area at the subject property.

Count 1: <u>Board Regulation (Effective September 1, 2001)</u>

Sturdy Built'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 subsections.

During the IFF, McNally stated subsection d is on the contract and subsection e is satisfied because the contract specifies the homeowner is responsible for the permit. McNally also stated Patete will conform its contract to include its license expiration and specialty services. Therefore, I recommend a monetary penalty of $100.00 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)

Sturdy Built's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. On May 10, 2002, Danny Cox, Loudoun County Department of Building and Development, inspected the two-story garage at the subject property. In a letter dated May 15, 2002, Cox noted several building code violations found. In a letter dated January 13, 2003, James Gillis, Loudoun County Department of Building and Development, informed Baker of several building code violations, and directed Baker to arrange correction of the violations. D. Anthony Beale, a professional engineer, conducted an evaluation of the construction at the subject property. Beale noted many structural issues and deficiencies, as well as architectural and grading issues, found at the subject property.

The main issue in regard to the building code violations stem from Sturdy Built not following the Uniform Statewide Building Code requiring an approved set of building plans on site. Therefore, I recommend a monetary penalty of $2,500.00 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 3: Board Regulation (Effective September 1, 2001)

Sturdy Built's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. On July 27, 2001, Baker paid Sturdy Built $5,523.00. On August 15, 2001, Baker paid Sturdy Built $16,036.00. The contract specified Sturdy Built would substantially complete the work within sixty (60) business days. As of March 24, 2003, Sturdy Built failed to correct building code violations and complete construction of the two-car garage at the subject property.

During the IFF, Baker testified Patete has not come to the subject property to inspect the structure and Sturdy Built has made no effort to complete the work.

During the IFF, Patete testified the reason behind the work stoppage was an incorrect permit for the structure built at the subject property.

During the IFF, Gillis testified there were numerous correspondences from his office in reference to the violations cited in May 2002 and January 2003. Gillis also testified no

plans were approved for the structure built by Sturdy Built. Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

By: _____
Robert Burch
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 11, 2004

FILE NUMBER: 2003-02576
RESPONDENT: Christopher Patete, t/a Sturdy Built MFG
LICENSE NUMBER: 2701027175
EXPIRATION: December 31, 2005

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

****

Christopher Patete, t/a Sturdy Built MFG ("Sturdy Built"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2701027175).

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 25, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Brenda Kay Baker ("Baker") regarding Sturdy Built. (Exh. C-1)

On June 2, 2001, Baker entered into a written contract with Sturdy Built, in the amount of $20,077.00, to construct a two-car garage and second level storage area at 206 East Williamsburg Road, Sterling, Virginia 20164. (Exh. C-2) On June 2, 2001, Baker paid Sturdy Built $500.00 by check. (Exh. C-1 and C-2)

Baker obtained building permit number B09063 for the work to be performed at the subject property. (Exh. C-1)

On July 27, 2001, Baker and Sturdy Built agreed to a written change order, in the amount of $2,790.00, to change the sub-floor and siding. (Exh. C-3)

On July 24, 2001, Baker paid Sturdy Built $5,523.00 by check. (Exh. C-4) On August 15, 2001, Baker paid Sturdy Built $16,036.00. (Exh. C-5)

****

1. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;

e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;

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

FACTS:

The contract used by Sturdy Built failed to contain subsections: (d), (e), and (h) contractor's license number, expiration dated, 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:

On May 10, 2002, Danny Cox ("Cox"), Building Inspector for Loudoun County, inspected the two-story garage at the subject property. In a letter dated May 15, 2002, Cox noted several building code violations found. (Exh. C-7)

In a letter dated January 13, 2003, James Gillis ("Gillis"), Building Inspector for Loudoun County, informed Baker of several building code violations at the subject property. Gillis directed Baker to arrange correction of the building code violations by January 16, 2003. (Exh. C-6)

D. Anthony Beale, P.E., of Advance Engineers Ltd., conducted a visual evaluation of the construction of the partially completed two story garage at the subject property. In a letter dated April 19, 2003, Beale outlined many structural issues and deficiencies, as well as other architectural and grading issues, found at the subject property. (Exh. C-8)

3. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

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

FACTS:

The contract specified "Upon the Owner's satisfaction of the conditions set forth elsewhere in this Contract relating to the Notice to Proceed, down payment, building permits and approved plans, and providing weather permits, Sturdy Built shall use its best efforts to substantially complete the work within 60 business days." (Exh. C-2)

As of March 24, 2003, Sturdy Built failed to correct the building code violations and complete construction of the two-car garage with storage loft at the subject property. (Exh. C-1)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: Star Construction Company Inc.

File Number: 2004-00032
License Number: 2705051566

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 26, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Star Construction Company Inc. ("Star Construction") 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 December 7, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Ronald Robinson ("Robinson"), on behalf of Star Construction, Respondent; Ignatius and Barbara Jordan (by telephone), Complainants; Joe Haughwout, Staff Member; and Robert Burch, 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)

Star Construction's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. On October 26, 2001, Star Construction entered into a written contract, in the amount of $3,500.00, with Ignatius and Barbara Jordan ("the Jordans") to perform renovations at the subject property. On November 21, 2001, the Jordans paid Ron Robinson $2,000.00. Two days later, on November 23, 2001, the Jordans paid Ron Robinson $1,800.00. On November 24, 2001, Star Construction entered into a second written contract, in the amount of $5,001.72, with the Jordans to perform renovations at the subject property. On May 23, 2003, in the Virginia Beach General District Court, the Jordans obtained a judgment in the amount of $7,127.30 against Ron Robinson.

During the IFF, Robinson stated he entered into three separate contracts with the Jordans. Robinson stated the work stopped because the Jordans refused to pay. Robinson further stated the judgment was against a different entity and he felt he was not responsible for the judgment.

During the IFF, Ignatius Jordan stated the first contract was voided and the second contract was the one contract actually signed by Robinson and the Jordans. Ignatius Jordan also stated the amount of the work Robinson was contracted for was $5,001.72. Ignatius Jordan stated he also paid Robinson $500.00 in cash for the carpet to be installed. Ignatius Jordan stated Robinson has not attempted to make a payment towards the judgment.

The judgment was obtained against Ronald Robinson, individually, and not Star Construction, the corporation and licensee. Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.28.

By: _____

Robert Burch
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: May 17, 2004 (revised August 10, 2004)

FILE NUMBER: 2004-00032
RESPONDENT: Star Construction Company Inc.
LICENSE NUMBER: 2705051566
EXPIRATION: August 31, 2005

SUBMITTED BY: Investigator Wayne J. Ozmore Jr.
APPROVED BY:

COMMENTS:

None.

****

Star Construction Company Inc. ("Star Construction") was at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705051566).

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 June 30, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Ignatius and Barbara Jordan ("the Jordans") regarding Star Construction Co. Inc. (Exh. C-1)

On October 26, 2001, the Jordans entered into a written contract with Ron Robinson, t/a Star Construction Co. Inc., in the amount of $3,500.00, to perform renovations at 5475 Lynnbrook Landing, Virginia Beach, Virginia 23462. (Exh. C-3)

On November 21, 2001, the Jordans paid Ron Robinson $2,000.00 by check. On November 23, 2001, the Jordans paid Ron Robinson $1,800.00 by check. (Exh. C-5)

On November 24, 2001, the Jordans entered into a second written contract with Ron Robinson, t/a Star Construction Co. Inc, in the amount of $5,001.72, to perform additional renovations at the subject property. (Exh. C-2)

On August 30, 1999, Star Construction Company Inc. was issued Class C Contractor's license number 2705051566. Ronald L. Robinson, individual certificate number 2706100762, is the Responsible Management and Qualified Individual for license number 2705051566. (Exh. I-1 and I-2)

****

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 May 23, 2003, in the Virginia Beach General District Court, the Jordans were awarded a $7,127.30 judgment against Ron Robinson. (Exh. C-4 and I-3) As of May 17, 2004, Robinson failed to satisfy the judgment. (Exh. I-3)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: Cybernetica Inc., t/a Clemson Construction Company

File Number: 2004-00574
License Number: 2705070600

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 26, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Cybernetica Inc., t/a Clemson Construction Company ("Clemson Construction") 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 December 7, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Barry Clemson ("Clemson"), on behalf of Clemson Construction, Respondent; Randall Holden ("Holden"), Complainant; Dan Cholewa ("Cholewa"), Witness; Joe Haughwout, Staff Member; and Robert Burch, 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:

On December 9, 2002, Holden entered into a written contract with Clemson Construction to enlarge a front porch at the subject property.

During the IFF, Clemson testified he did not include the contract provisions required by the board's regulations, failed to read the booklet carefully, and concurred with the findings regarding the contract.

Count 1: <u>Board Regulation (Effective September 1, 2001)</u>

Clemson Construction's failure to fully execute the contract prior to commencing work is a violation of Board Regulation 18 VAC 50-22-260.B.8. The contract was signed by Clemson, but not Holden. In January 2003, Clemson Construction commenced work. In a written response to the Board's agent, Clemson admitted he failed to obtain Holden's signature.

During the IFF, Holden testified he did not sign the contract. Therefore, I recommend a monetary penalty of $400.00 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 the order.

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

Clemson Construction's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. The contract used in the transaction failed to contain seven of the required provisions. Therefore, I recommend a monetary penalty of $350.00 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 the order.

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

Clemson Construction's failure to obtain written change orders, signed by all parties, for modifications to the scope of work and estimated completion date is a violation of Board Regulation 18 VAC 50-22-260.B.31. On February 17, 2003, Clemson sent Holden a Memo of Understanding, in the amount of $300.00 plus cost of the extra materials, regarding changes and requirements for the new porch. The memo was signed by Clemson but not signed by Holden. Therefore, I recommend a monetary penalty of $450.00 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 4: Board Regulation (Effective September 1, 2001)

Clemson Construction's failure to abate building code violations is a violation of Board Regulation 18 VAC 50-22-260.B.25. In January 2003, Clemson Construction commenced work. Clemson Construction also obtained a building permit for the work to be performed at the subject property. On June 6, 2003, the final inspection was approved. On June 12, 2003, an inspection revealed the final inspection was mistakenly approved. During the June 12, 2003 inspection, several building code violations were noted. Clemson Construction was notified of the building code violations. On August 25, 2003, Cholewa, Building Inspector for the City of Norfolk, inspected the subject property. The inspection was disapproved. As of February 20, 2004, Clemson Construction failed to obtain an approved final inspection.

During the IFF, Cholewa testified he performed another inspection of the subject property on June 12, 2003. Cholewa stated he contacted Clemson Construction regarding the failed inspection. Cholewa also stated Clemson Construction did not obtain an approved inspection.

During the IFF, Holden testified during his discussion on June 6, 2003, with Clemson in reference to the violations, he was told by Clemson that he would be sued for non-payment. Holden inferred from this comment that Clemson was abandoning the project. Clemson inferred from this discussion that he was no longer going to be paid for his work and Holden no longer wanted him to perform the work. Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

Count 5: Board Regulation (Effective September 1, 2001)

Clemson Construction's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. On March 21, 2003, Clemson Construction installed copper on the protruding ledge on the front of the roof. In May 2003, Holden noticed the pillars were cut on the tops and were uneven. Holden contacted the manufacturer and discovered the cuts must be made on the bottom of the tapered pillars. On May 22, 2003, Holden noticed a hole on either end of the roof and gaps in the middle, back, and sides of the roof. On June 26, 2003, Holden sent Clemson Construction a letter regarding the copper and the pillars' installation. Holden notified Clemson Construction that water was not only entering the trim from the gap in the copper, but also along the edge where the roof did not completely cover the trim.

During the IFF, Clemson testified he did cut the pillars improperly and not according to the manufacturer's instructions. During the IFF, Holden testified he would not pay Clemson Construction because the pillars were cut improperly and Clemson Construction did not give him an explanation of how Clemson would fix the pillars. Therefore, I recommend a monetary penalty of $1,500.00 be imposed.

By: _____
Robert Burch
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: April 19, 2004 (revised August 25, 2004)

FILE NUMBER: 2004-00574
RESPONDENT: Cybernetica, Inc., t/a Clemson Construction Company
LICENSE NUMBER: 2705070600
EXPIRATION: September 30, 2004

SUBMITTED BY: Robert Hansel
APPROVED BY: David Dorner

COMMENTS:

None.

****

Cybernetica Inc., t/a Clemson Construction Company ("Clemson"), was at all times material to this matter a licensed Class B Contractor in Virginia (No. 2705070600).

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 28, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Randall S. Holden ("Holden") regarding Clemson. (Exh. C-1)

On December 9, 2002, Holden entered into a written contract with Clemson, in the amount of $4,937.00, to enlarge a front porch at 614 Maryland Avenue, Norfolk, Virginia 23508. (Exh. C-2 and R-7) The contract was signed by Barry Clemson ("Clemson") on behalf of Clemson, but was signed by not Holden. (Exh. R-7)

In January 2003, Clemson commenced work. (Exh. C-1)

On January 29, 2003, Clemson obtained building permit number 03-951 for the work to be performed at the subject property. (Exh. W-1)

****

1. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

In a written response dated April 8, 2004, Clemson stated "I presented Mr. and Mrs. Holden with a signed copy of the contract. I failed to get their signature on a copy of the contract." (Exh. R-3)

Clemson failed to obtain Holden's signature on the contract prior to commencement of the work. (Exh. C-2 and R-7)

2. 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;

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;
g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;
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 Clemson in the transaction failed to contain subsections: (a) when work is to begin; (d); (e); (f); (g); (h) the contractor's license number, expiration date, class of license, and classification or specialty services; and (i). (Exh. C-2)

3. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

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

FACTS:

The contract specified "Finished porch to be about 5 and a half feet deep and the same width as the existing porch." (Exh. C-2)

The contract also specified "The work shall be completed within five weeks of signing the contract." (Exh. C-2)

On February 17, 2003, Clemson sent Holden a Memo of Understanding ("Memo"), in the amount of $300.00 plus cost of the extra materials, regarding changes and requirements for the new porch. The Memo was not signed by either Clemson or Holden. (Exh. R-4)

On February 19, 2003, Holden and Clemson agreed to a written change order, which established the dimensions of the porch. (Exh. R-5)

Clemson failed to obtain a written change order, signed by all parties, for modifications to scope of the work and the estimated completion date.

4. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

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

FACTS:

On June 6, 2003, the final inspection was approved. (Exh. W-1)

On June 12, 2003, an inspection revealed the final inspection was mistakenly approved. During the June 12, 2003, inspection, the following code violations, in violation of Section R905.1 of the Uniform Statewide Building Code, were observed:

- No step flashing at wall of house
- Exposed roof sheathing and cornice along rake and fascia
- Exposed sheathing at copper water shed
- Sheathing nails backing out thru roofing material.

On June 12, 2003, Clemson was notified of the building code violations. (Exh. W-1)

On August 25, 2003, D. Cholewa, Building Inspector for the City of Norfolk, inspected the subject property. The inspection was disapproved. (Exh. W-1)

As of February 20, 2004, Clemson failed to obtain an approved final inspection after being notified of the building code violations that resulted in the final inspection being disapproved. (Exh. W-1)

5. 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:

On March 21, 2003, Clemson installed copper on the protruding ledge on the front of the roof. (Exh. C-6)

In May 2003, Holden noticed the pillars were cut on the tops and were uneven. (Exh. C-6)

Holden contacted the manufacturer and discovered the cuts must be made on the bottom of the tapered pillars. (Exh. C-6) The manufacturer's installation instructions specified "Cut the bottom of the column shaft as needed to achieve the measurement taken in step 1." The instructions also specified "CAUTION: Because the shaft only is load bearing, its top and bottom edges must be level to achieve full, even contact between load surfaces and shaft." (Exh. C-3)

On May 22, 2003, Holden noticed a hole on either end of the roof and gaps in the middle, back, and sides of the roof. (Exh. C-6)

On June 26, 2003, Holden sent Clemson a letter regarding the copper and pillars installation. Holden notified Clemson that "While looking closely during at it during a heavy rain, it could be seen that water was not only entering the trim from the gap in the copper, but all along the edge, where the roof does not completely cover the trim." (Exh. C-5)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: Martin G. Condrey, t/a Marty's Roofing

File Number: 2004-01264
License Number: 2705036767

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 27, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Martin G. Condrey ("Condrey"), t/a Marty's Roofing 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 December 7, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Condrey, Respondent; Carl DeBernard, Complainant; Jacquelyn DeBernard and Carl DeBernard, Jr., Witnesses; Joe Haughwout, Staff Member; and Robert Burch, 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)

Condrey's action of making a misrepresentation in order to obtain a contract is a violation of Board Regulation 18 VAC 50-22-260.B.17. As a result of water backing up under the shingles, DeBernard contacted Condrey to examine the problem and recommend a course of action. On May 2, 2003, Condrey examined the roof and determined the problem would be corrected with the installation of a new roof. The next day, on May 3, 2003, DeBernard received a written proposal to install a roof at the subject property. On May 5, 2003, DeBernard verbally authorized Condrey to order materials and schedule labor according to the proposal of May 3.

On May 8, 2003, Condrey commenced work. On May 9, 2003, Condrey completed the work, and DeBernard paid Condrey for the work. DeBernard later notified Condrey that water still backed up under the shingles. Condrey told DeBernard the problem was the gutters were installed too high, not the shingles. In a written response to the Board's

agent, Condrey stated the water backing up is the result of gutters above the roof line in the center of the house, causing the shingles to be slightly higher at that point.

During the IFF, Condrey testified on the initial site visit determined based on the age of the roof and missing shingles, the roof needed replacement. During the IFF, DeBernard testified he notified Condrey the roof leaked after the roof was installed. Condrey performed a second site visit and observed the gutter was installed too high. DeBernard had his son-in-law, lower the gutter an inch, per Condrey's instruction, which fixed the problem. Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.17.

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

Condrey'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 May 3, 2003, DeBernard received a written proposal from Condrey to install a roof at the subject property. The proposal was not signed by either Condrey or DeBernard. On May 5, 2003, DeBernard verbally authorized Condrey to begin work. On May 8, 2003, Condrey commenced work. Therefore, I recommend a monetary penalty of $500.00 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 3: Board Regulation (Effective January 1, 2003)

Condrey's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. The contract used in the transaction failed to contain five of the required provisions.

During the IFF, Condrey stated the start and completion dates were provided verbally. Therefore, I recommend a monetary penalty of $250.00 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 4: Board Regulation (Effective January 1, 2003)

Condrey's failure to obtain a written change order, signed by both parties, for a modification to the original contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. The May 3, 2003 proposal specified Condrey would replace four sheets of

plywood. Condrey installed nine sheets of plywood. On May 9, 2003, Condrey sent DeBernard an invoice charging DeBernard for the additional plywood installed.

During the IFF, Condrey testified he did not feel a written change order was necessary because he had a good relationship with DeBernard. Therefore, I recommend a monetary penalty of $450.00 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 5: Board Regulation (Effective January 1, 2003)

Condrey's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. The proposal specified "peal and stick ice shield." While work was performed, DeBernard observed that only felt underlayment was being applied to the back of the roof and not the ice shield. DeBernard asked the foreman about the ice shield, and was told that the ice shield was installed. On August 25, 2003, Old Dominion Home Inspection Services performed an inspection of the roof at the subject property. Old Dominion reported the ice shield was missing on a portion of the left side of the house. Old Dominion also noted two other problems with the work performed by Condrey. As of March 29, 2004, a portion of the peel and stick ice shield was not installed.

During the IFF, DeBernard testified he had Old Dominion perform an inspection of the roof installed by Condrey and it was observed no ice and water shield was installed for approximately 20' at the rear of the house.

During the IFF, Condrey testified DeBernard had instructed Condrey's crew to install ice and water shield to the rake of the roof. This caused a shortage in materials. Condrey further testified Condrey installed the shingles over this area in order to dry-in and complete the project. Condrey testified that he would install ice and water shield if DeBernard agreed to pay for the additional material. Code requires ice and water shield at the eaves of the structure. Therefore, I recommend a monetary penalty of $1,450.00 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.

By: _____
Robert Burch
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: May 20, 2004 (revised August 30, 2004)

FILE NUMBER: 2004-01264
RESPONDENT: Martin G. Condrey, t/a Marty's Roofing
LICENSE NUMBER: 2705036767
EXPIRATION: January 31, 2005

SUBMITTED BY: Robert Hansel
APPROVED BY: David Dorner

COMMENTS:

None.

****

Martin G. Condrey ("Condrey"), t/a Marty's Roofing, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705036767).

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 17, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Carl DeBernard ("DeBernard") regarding Condrey. (Exh. C-1)

On May 3, 2003, DeBernard received a written proposal from Condrey, in the amount of $3,883.04, to install a roof at 29 Glen-Alice Lane, Falmouth, Virginia. The proposal was revised to reflect a reduced price of $22.00 per sheet to replace bad plywood and a free drip edge. The contract price was revised to $3,600.00. The proposal was not signed by either Condrey or DeBernard. (Exh. C-2)

On May 5, 2003, DeBernard verbally authorized Condrey to order the materials and schedule labor according to the May 3, 2003, written proposal. (Exh. C-1)

On May 8, 2003, Condrey commenced work on the project. On May 9, 2003, Condrey completed the work. (Exh. C-1 and I-2)

On May 9, 2003, DeBernard paid Condrey $3,800.00 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:

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

FACTS:

As a result of water backing up under the shingles, DeBernard contacted Condrey to examine the problem and recommend a course of action. (Exh. C-1)

On May 2, 2003, Condrey examined the roof and determined the problem would be corrected with the installation of a new roof. (Exh. C-1)

On May 9, 2003, DeBarnard notified Condrey that water still backed up under the shingles. Condrey told DeBarnard the problem was the gutters were installed too high not the shingles. (Exh. C-1)

In a written response received September 30, 2003, Condrey stated "His water backing up is the result of the gutters that span 70 feet are above the roof line in the center of the house thus causing the shingles to be slightly higher at that point." (Exh. R-1)

2. 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:
Condrey failed to have all parties sign the contract prior to commencement of work.

3. 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;
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 Condrey in the transaction failed to contain subsections: (a), (d), (e), (h) contractor's license expiration date, class of license, and specialty services, and (i). (Exh. C-2)

4. 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 May 3, 2003, proposal indicated "replace bad plywood per sheet" at a cost of $88.00 for four sheets at $22.00 each. (Exh. C-2)

Condrey installed nine sheets of plywood to replace damaged sheathing. (Exh. C-1)

On May 9, 2003, Condrey sent DeBernard an invoice, in the amount of $3,798.00, for work performed at the subject property. The May 9, 2003, invoice indicated the original cost of $140.00 (four plywood sheets at $35.00 each), a credit of $283.04, and an additional charge of $198.00 for "9 replace bad plywood per sheet" at a rate of $22.00 each. (Exh. C-4)

Condrey failed to use a written change order, signed by both DeBernard and Condrey, for a modification to the original contract.

5. 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:

The proposal specified "peal and stick ice shield." (Exh. C-2)

While work was performed, DeBarnard observed that only felt underlayment was being applied to the back of the roof and not the ice shield. DeBarnard asked the foreman about the ice shield. The foreman told DeBarnard the ice shield was installed. (Exh. C-1)

On August 25, 2003, Old Dominion Home Inspection Services ("Old Dominion") performed an inspection of the roof at the subject property. In a report dated August 26, 2003, Old Dominion noted:

- Ice shield was missing on the rear side of house for about the last 20' from the left end.

- There were several nails popped.
- The drip edge on the right side of roof was not lapping properly on the down slope. (Exh. W-1)

As of March 29, 2004, a portion of the peel and stick ice shield was not installed. (Exh. I-2)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: Property Damage Specialists Inc., t/a Paul Davis Systems of Northern VA

File Number: 2004-01580
License Number: 2705053145

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 27, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Property Damage Specialists Inc., t/a Paul Davis Systems of Northern VA ("PDS") 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 December 7, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Kevin Crawford, on behalf of PDS, Respondent; Helene Eisenhauer; Complainant; Joe Haughwout, Staff Member; and Robert Burch, Presiding Board Member.

RECOMMENDATION

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

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

PDS'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. In December 1999, the Board issued Class A Contractor's license number 2705053145 to PDS. Between April 2002 and October 2002, PDS operated under the names Paul Davis Restoration Company, Paul Davis Restoration of Northwest Virginia, or Paul Davis Restoration.

During the IFF, Crawford testified when the company first opened up it called it self Paul Davis Restoration of Northern Virginia. Crawford also stated he contacted his attorney about changing its name to Paul Davis Restoration of Northwest Virginia. Crawford provided the proper documentation required to register with the Board for Contractors its current trading name. Therefore, I recommend a monetary penalty of $100.00 and remedial education be imposed.

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

PDS's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. The contracts used in the transaction failed to contain five of the required provisions.

During the IFF, Crawford stated he was ignorant of the requirements for the contract. Crawford provided a revised contract, which he testified contained the minimal provisions required. Therefore, I recommend a monetary penalty of $100.00 and remedial education be imposed.

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

PDS's action of contracting with an unlicensed subcontractor is a violation of Board Regulation 18 VAC 50-22-260.B.29. In February 2001, the Board issued Class C Contractor's license number 2705061606 to Rodney Brian Cooper, t/a Cooper's Home Improvements, with the home improvement contracting ("HIC") specialty service. In October 2002, PDS had substantially completed work at the subject property. In a written response to the Board's agent, PDS stated it used Cooper on the project to remove the upstairs tub and kitchen sink, because Cooper originally performed plumbing work for Eisenhauer under a previous contractor. Cooper is not a licensed tradesman.

During the IFF, Crawford testified PDS used the subcontractor who previously performed work at the subject property because he thought it would be the most expedient thing to do. As a result of Crawford allowing an unlicensed tradesmen to perform plumbing work at Eisenhauer's property, extensive damage occurred. Therefore, I recommend a monetary penalty of $500.00 and remedial education be imposed.

By: _____
Robert Burch
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:	June 4, 2004 (revised September 7, 2004)
FILE NUMBER:	2004-01580
RESPONDENT:	Property Damage Specialists Inc., t/a Paul Davis Systems of Northern Virginia
LICENSE NUMBER:	2705053145
EXPIRATION:	December 31, 2005
SUBMITTED BY:	Morgan T. Moore
APPROVED BY:	Linda J. Boswell

COMMENTS:
None.

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Property Damage Specialists Inc., t/a Paul Davis Systems of Northern Virginia ("PDS"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705053145).

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

BACKGROUND:

On October 16, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Helene Eisenhauer ("Eisenhauer"), which was forwarded from the office of the Secretary of Commerce, regarding Paul Davis Restoration Company. (Exh. C-1)

On December 3, 1999, PDS was issued Class A Contractor's license number 2705053145. Kevin E. Crawford ("Crawford"), individual certificate number 2706101717, is the Designated Employee, Qualified Individual, and Responsible Management for license number 2705053145. (Exh. I-5)

In February 2002, Eisenhauer contacted Liberty Mutual regarding damages to her residence at 111 Forest Valley Road, Winchester, Virginia 22602. Liberty Mutual recommended Paul Davis Restoration Company. (Exh. C-1)

On April 16, 2002, Eisenhauer entered into a written authorization ("contract") with Paul Davis Restoration to perform structural repairs caused by water damage at the subject property. (Exh. R-2)

On May 2, 2002, Paul Davis Restoration of Northwest Virginia provided Eisenhauer with a written estimate, in the amount of $23,349.19, to repair water damage at the subject property. (Exh. R-3)

On May 2, 2002, Paul Davis Restoration of Northwest Virginia provided Eisenhauer with a written estimate, in the amount of $51,338.29, to repair water damage at the subject property. Paul Davis Restoration of Northwest Virginia provided Eisenhauer with a supplement, in the amount of $4,947.80, to the May 2, 2002, estimate. (Exh. R-3)

On August 26, 2002, Paul Davis Restoration of Northwest Virginia provided Eisenhauer with a written estimate, in the amount of $4,917.17, to repair water damage at the subject property. (Exh. R-3)

On October 24, 2002, PDS substantially completed the work at the subject property and discovered another leak in the basement. (Exh. R-1)

On October 25, 2002, Eisenhauer entered into a second written authorization ("contract") with Paul Davis Restoration to repair water damage at the subject property. The contract indicated license number 2705053145 and was signed by Crawford. (Exh. R-2)

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1. <u>Board Regulation (Effective January 1, 2003)</u>

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

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

<u>FACTS:</u>

PDS failed to operate under the name in which the licensed is issued.

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

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

FACTS:
The contracts used by PDS failed to contain subsections: (a), (d), (e), (f), and (h). (Exh. C-2 and R-5)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:
On February 13, 2001, Rodney Brian Cooper ("Cooper"), t/a Cooper's Home Improvements, was issued Class C Contractor's license number 2705061606 with the home improvement contracting ("HIC") specialty service. (Exh. I-4)

In a written response dated January 6, 2004, PDS stated "We agreed to use Mr. Rodney Cooper (telephone number 540-955-4979) because the contractor (Jack Bealer) that Mrs. Eisenhauer first had on the project had used him to remove the upstairs tub and kitchen sink and we felt it would be the most expedited manner to have him put his work back together at the appropriate time. Although he works as a plumber we do not now believer he has a master certification number." (Exh. R-1)

A search of the licensing records of the Board for Contractors revealed Rodney Cooper is not a licensed tradesman.

STATE AND LOCAL GOVERNMENT CONFLICT OF INTEREST ACT

TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government

1. Name: Robert Burch

2. Title: Presiding Board Member

3. Agency: Board for Contractors

4. Transaction: Informal Fact-Finding Conferences on December 7, 2004

5. Nature of Personal Interest Affected by Transaction: _____

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6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

_____

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Robert O. Burch — Signature

12/4/04 — Date

SW