

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
December 8, 2004**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Ruth Ann Wall, presiding officer, presided. No Board members were present.

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

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

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

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

Participants

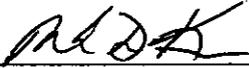
- | | |
|---|---|
| 1. Wes Young Enterprises Inc.
File Number 2004-04723 (Disc) | H. Pierce Anderson – C |
| 2. Johnson Unlimited LLC
File Number 2004-04590 (Disc)
(No Decision Made) | David Johnson – R
Sheila Johnson – W
Kelly Bierbauer – C
Daniel Breene – W |
| 3. Larry Gayle Elliott
t/a Cross Timbers Concrete
File Number 2004-04998 (Disc) | None |
| 4. Joseph R Van Dyke Sr.
t/a Piedmont Deck & Remodeling Co.
File Number 2004-03520 (Disc) | Van Dyke – R |
| 5. Alan C Williams
t/a Exterior Forensics Group
File Number 2004-01837 (Disc) | Williams – R
Jeffrey Costa – W |
| 6. Kevin Robert Reynolds
File Number 2004-03725 (Trades) | Reynolds – R |

7. Jeffrey Douglas Greenberg
t/a Hunt Country Paving
File Number 2004-04747 (Disc)

Greenberg – R

The meeting adjourned at 2:00 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: Wes Young Enterprises Inc.

File Number: 2004-04723
License Number: 2705028435

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 5, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Wes Young Enterprises Inc. 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 marked "Unclaimed."

On December 8, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Harry Anderson; Complainant; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

Neither Wes Young Enterprises Inc. nor anyone on its 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)

Wes Young Enterprises Inc.'s failure to satisfy a \$115,000 judgment awarded to the Andersons in the Circuit Court of the County of Goochland on February 20, 2004, is a violation of Board Regulation 18 VAC 50-22-260.B.28. During the IFF, Anderson stated that the Regulant has not made any effort to satisfy the judgment and it remains unpaid. Therefore, I recommend a monetary penalty of \$2,500 and license revocation be imposed.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Contractors
DATE: August 17, 2004 (revised September 15, 2004)

FILE NUMBER: 2004-04723
RESPONDENT: Wes Young Enterprises Inc.
LICENSE NUMBER: 2701028435
EXPIRATION: May 31, 2005

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

COMMENTS:

Following the investigation of File Number 2002-02828, the complainants obtained a judgment against Wes Young Enterprises Inc. As a result, this separate file was set up regarding the judgment.

Wes Young Enterprises Inc. ("Young") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2701028435). (Exh. I-1)

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

BACKGROUND:

On April 14, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Robert B. Parkerson ("Parkerson"), attorney representing Harry and Debra Anderson ("the Andersons"), regarding Young. (Exh. C-1)

On December 5, 2000, the Andersons entered into a written contract with Young, in the amount of \$200,155.00, to construct an addition at 2462 Shady Oaks Trail, Maidens, Virginia 23102. (Exh. C-3)

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 February 20, 2004, in the Circuit Court of the County of Goochland, the Andersons were awarded a \$115,000.00 judgment against Wes Young Enterprises Inc. The judgment indicated "We the jury find in the favor of the Defendants [the Andersons] that the Plaintiff [Young] breached the contract between the parties by failing to construct the improvements in a manner so as to be free of structural defects or in a good and workmanlike manner so as to pass without objection in the construction trade and committed fraud or misrepresentation . . ." (Exh. C-2)

In a written response received June 30, 2004, Young stated "I admit that a judgment was entered against Wes Young Enterprises, Inc., at the trial of the matter on February 6, 2004, in Goochland County Circuit Court." (Exh. R-1)

As of August 17, 2004, Young failed to satisfy the judgment. (Exh. I-2)

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

Re: Larry Gayle Elliott, t/a Cross Timbers Concrete

File Number: 2004-04998
License Number: 2705075443

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 5, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Larry Gayle Elliott, t/a Cross Timbers Concrete ("Elliott") 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. A delivery of the certified mail was attempted, but has not been claimed. The certified mail has not been returned by the United States Postal Service.

On December 8, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

Neither Larry Gayle Elliott, t/a Cross Timbers Concrete 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)

Elliott's failure to operate in the name for which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. The contract identified the name Cross Timbers Concrete and Restoration Inc.; conversely, the licensing records indicate Larry Gayle Elliott, t/a Cross Timbers Concrete. Therefore, I recommend a monetary penalty of \$500.00, remedial education, and six month suspension 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)

Elliott'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 \$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)

Elliott was paid a \$822.00 deposit by the Complainant for construction of a stamped concrete patio. The work was never performed. Elliott's failure to refund the deposit is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000, remedial education, and six month suspension 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 (Effective January 1, 2003)

On July 19, 2004, in the Chesterfield County General District Court, the Mullalys were awarded an \$822.00 judgment against Elliott. As of August 11, 2004, Elliott failed to satisfy the judgment. Elliott's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,500, remedial education, and six month suspension 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.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 12, 2004 (revised September 15, 2004)

FILE NUMBER: 2004-04998
RESPONDENT: Larry Gayle Elliot, t/a Cross Timbers Concrete
LICENSE NUMBER: 2705075443
EXPIRATION: July 31, 2005

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

COMMENTS:

The contract indicates a date of April 19, 2003. The year was preprinted on the form. The actual date is April 19, 2004 as indicated by the deposit check. (Exh. C-2, C-3, and R-2)

The license record indicates a spelling of Elliot; however, according to the response from Larry Elliott, his last name should have the spelling of Elliott. (Exh. R-1 and I-3)

Larry Gayle Elliot, t/a Cross Timbers Concrete ("Cross Timbers"), was at all times material to this matter a licensed Class B Contractor in Virginia (No. 2705075443).

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

BACKGROUND:

On June 11, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Daniel and Kandi Mullaly ("the Mullalys") regarding Cross Timbers Concrete and Restoration Inc. (Exh. C-1)

On April 19, 2004, the Mullalys entered into a written contract with Cross Timbers Concrete and Restoration Inc., in the amount of \$2,740.00, to construct a stamped concrete patio at 11113 Bondurant Drive, Chesterfield, Virginia. (Exh. C-2 and R-2)

On April 19, 2004 the Mullalys paid Cross Timbers \$822.00 by check. (Exh. C-3)

In a written response dated July 27, 2004, Cross Timbers acknowledged the contract entered into with the Mullalys and work performed at the subject property. (Exh. R-1)

On July 18, 2003, Elliot was issued Class B Contractor's license number 2705075443 as a sole proprietorship. Larry Elliott, individual certificate number 2706012845, is the Designated Employee, Qualified Individual, and Responsible Management for license number 2705075443. (Exh. I-3)

1. Board Regulation (Effective January 1, 2003)

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.

FACTS:

On July 26, 2004, a search of the State Corporation Commission records revealed Cross Timbers Concrete & Restoration Inc. was not incorporated in the Commonwealth of Virginia. (Exh. I-1)

Cross Timbers failed to operate in the name in which the license was 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;

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

FACTS:

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

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On May 18, 2004, the Mullalys verbally requested Cross Timbers return the \$822.00 deposit. Cross Timbers agreed to refund the \$822.00 deposit to the Mullalys on May 21, 2004. (Exh. C-1)

On May 21, 2004, Cross Timbers told the Mullalys the deposit would not be refunded. (Exh. C-1)

On May 23, 2004, Cross Timbers agreed to refund the deposit to the Mullalys on May 24, 2004. (Exh. C-1)

As of August 11, 2004, Cross Timbers failed to commence work and return the funds received for work not performed. (Exh. I-4)

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On July 19, 2004, in the Chesterfield County General District Court, the Mullalys were awarded an \$822.00 judgment against Larry Elliott. (Exh. I-2)

As of August 11, 2004, Larry Elliott failed to satisfy the judgment. (Exh. I-2 and I-4)

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

Re: Joseph R Van Dyke Sr, t/a Piedmont Deck & Remodeling Co
Haymarket, VA 20169

File Number 2004-03520
License Number 2705070704

CONSENT ORDER

Respondent Joseph R Van Dyke Sr, t/a Piedmont Deck & Remodeling Co ("Joseph R Van Dyke Sr") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's 2003 Regulations provides:

18 VAC 50-22-200. Remedial education, revocation or suspension; fines.

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

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

On November 5, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Joseph R Van Dyke Sr at 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 8, 2004, the Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation in Richmond, Virginia.

The following individuals participated at the conference: Joseph R Van Dyke Sr, Respondent; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

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

During the IFF, Joseph R Van Dyke Sr ("Van Dyke") stated he had serious health problems between July 2003 and November 2003, which ended in bankruptcy. Van Dyke also stated he advised Kim Snead to find another contractor to perform the work because of his health problems and lack of manpower, but she told him she would wait for him. Van Dyke indicated Snead is a creditor and currently receiving payments through the bankruptcy trustee.

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

By signing this Consent Order, Joseph R Van Dyke Sr acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Joseph R Van Dyke Sr consents to the following term(s):

	Count 1	18 VAC 50-22-260.B.27	\$0.00
	Count 2	18 VAC 50-22-260.B.8	\$0.00
	Count 3	18 VAC 50-22-260.B.9	\$0.00
	Count 4	18 VAC 50-22-260.B.15	\$0.00
	Count 5	18 VAC 50-22-260.B.16	\$0.00

	TOTAL		\$0.00

In addition, Joseph R Van Dyke Sr agrees to voluntary revocation of his license for violation of Count 1, Count 2, Count 3, Count 4, and Count 5.

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

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

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

SEEN AND AGREED TO:

Joseph R Van Dyke Sr
t/a Piedmont Deck & Remodeling Co

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

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

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2004.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

EEO

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 6, 2004 (revised September 9, 2004)

FILE NUMBER: 2004-03520
RESPONDENT: Joseph R. Van Dyke Sr., t/a Piedmont Deck & Remodeling
Co.
LICENSE NUMBER: 2705070704
EXPIRATION: August 31, 2004

SUBMITTED BY: Carolyn D. Wright
APPROVED BY:

COMMENTS:

None.

Joseph R. Van Dyke Sr. ("Van Dyke"), t/a Piedmont Deck & Remodeling Co., was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705070704).

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

BACKGROUND:

On February 25, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Kim Snead ("Snead") regarding Van Dyke. (Exh. C-1)

On August 20, 2003, Van Dyke provided Snead with a written proposal ("the contract"), in the amount of \$7,900.00, to construct a deck at 5016 Signature Place, Haymarket, Virginia. The contract was signed by Van Dyke but not Snead. (Exh. C-2)

On August 20, 2003, Snead paid Van Dyke \$2,600.00 by check. (Exh. C-3)

On August 20, 2003, Van Dyke provided Sneed with an invoice. The invoice indicated the contract price of \$7,900.00, a \$2,633.00 deposit paid, and a balance of \$5,267.00. (Exh. C-2)

On August 28, 2002, Van Dyke was issued Class C Contractor's license number 2705070704. (Exh. I-3)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

Van Dyke practiced in class of license for which he is not licensed.

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:

Van Dyke failed to obtain Sneed's signature on the contract prior to the commencement of work and acceptance of payments.

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:
 - f. Disclosure of the cancellation rights of the parties and
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The contract used by Van Dyke in the transaction failed to contain subsections: (f) and (h). (Exh. C-2)

4. 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 "Work should commenced within 4-5 weeks and completion shall be within 10 working days." (Exh. C-2)

Snead contacted Van Dyke regarding when the work would start. Van Dyke assured Snead the deck would be completed. (Exh. C-1)

In a email sent to Snead on August 17, 2003, Van Dyke stated "Sorry for the delay. I have been very busy for the last several weeks. I will do your job for \$7,900.00 with Evergrain and scews." (Exh. C-4)

In January 2004, Snead contacted Van Dyke requesting a refund. Snead also told Van Dyke she would relieve Van Dyke of any contractual obligations. (Exh. C-1)

As of March 18, 2004, Van Dyke failed to commence work. (Exh. I-1)

5. 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:

In January 2004, Snead contacted Van Dyke requesting a refund. Van Dyke told Snead he would do what he could. (Exh. C-1)

A week later, Van Dyke contacted Snead. Van Dyke told Snead he could not refund the money and he had turned over all documents to a bankruptcy lawyer. (Exh. C-1)

In February 2004, Snead requested Van Dyke return the deposit. Van Dyke told Snead he did not have the money. (Exh. I-1)

On March 30, 2004, Van Dyke admitted he deposited the money received from Snead into his company checking account and paid other bills with the money. (Exh. I-2)

As of August 5, 2004, Van Dyke failed to return funds received for work not performed. Van Dyke filed for bankruptcy and Snead is listed as a creditor. (Exh. I-1)

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

Re: Alan C. Williams, t/a Exterior Forensics Group

File Number: 2004-01837
License Number: 2705053706

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 5, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Alan C. Williams, t/a Exterior Forensics Group ("Williams") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On December 8, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Alan C. Williams, Respondent; Jeffrey Costa, Witness; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

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)

During the IFF, Williams acknowledged that he was the sole stock-holder of Coastal Services Incorporated, which on July 13, 2000, became incorporated in the Commonwealth of Virginia. Furthermore, in a letter dated December 8, 2003, Williams stated that he is the sole owner of Exterior Forensics Group. Williams also noted during the IFF that he has not applied for a contractor's license for Coastal Services Incorporated. He is planning on obtaining a Class A contractor's license for Coastal Services Incorporated and will subsequently apply for a license. Williams actions are in violation of Board Regulation 18 VAC 50-22-210. 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 2: Board Regulation (Effective January 1, 2003)

During the IFF, Williams acknowledged that he was the sole stock holder of Coastal Services Incorporated, which on July 13, 2000, became incorporated in the Commonwealth of Virginia. Furthermore, in a letter dated December 8, 2003, Williams stated that he is the sole owner of Exterior Forensics Group. Williams also noted during the IFF that he has not applied for a contractor's license for Coastal Services Incorporated. He is planning on obtaining a Class A contractor's license for Coastal Services Incorporated and will subsequently apply for a license. Williams actions are in violation of Board Regulation 18 VAC 50-22-210. 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 3: Board Regulation (Effective January 1, 2003)

Williams' failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. During the IFF, Williams noted that his contract contains two of the four deficient items noted by the investigator within the Report of Findings. Specifically, subsection (d) is covered by paragraph A on page two and subsection (i) is covered by paragraph h on page three of the contract. 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 the order.

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

During the IFF, Williams explained that of the three change orders, one was not accepted, the remaining two were accepted by Johnson. Therefore, I recommend Count 4 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.31.

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

Williams failure to obtain a building permit prior to constructing a two-story deck is a violation of Board Regulation 18 VAC 50-22-260.B.6. During the IFF, Williams acknowledged that he

did not obtain a building permit and that this was an error on his part. Williams further stated that a building permit was previously obtained for the construction of an addition to the house, which he had already completed. Williams acknowledged that he was unaware that a second building permit was required for the construction of the two-story deck. 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 the order.

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

During the IFF, Williams explained the Grace Bituthene membrane was installed on the top-level of the open two-story deck. However, tar paper was also installed on top of the membrane, which prevented exposure to UV sunlight. Therefore, I recommend Count 6 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.5.

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

Based upon the record and Williams' testimony during the IFF, it appears the siding was installed within the parameters of the installation guidelines, as outlined in the October, 2004, installation instructions submitted by Williams. Mr. Johnson also requested caulk to correct gaps and cracks, which contradicts Johnson's previous complaint that the siding was installed without a gap. Therefore, I recommend Count 7 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.5.

Count 8: Board Regulation (Effective January 1, 2003)

Jeffrey Costa, Building Inspector for the City of Virginia Beach, inspected the work performed by Williams on March 26, 2004, and identified seven building code violations. Williams noted during the IFF that stairway, footing inspection, winders tread at stairway, and Guardrail balusters were a result of not obtaining a permit for the two-story deck. Williams explained that he removed the improper nails and installed galvanized nails, which corrected the problem. The ceiling fan installation was undertaken solely by the Johnson and, therefore, Williams was not responsible to obtain a permit. Costa noted that a framing inspection was not necessarily required, depending on the scope of work. Specifically, the work performed was under 100 square feet and, per Costa, a framing inspection was not required. Williams' actions are a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$1,000 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 9: Board Regulation (Effective January 1, 2003)

On October 12, 2003, Pete Sessa, Home Inspector, inspected Williams' work and identified nine recommended corrections. During the IFF, Williams stated he corrected everything that Johnson allowed Williams to correct. Therefore, I recommend Count 9 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.6.

Count 10: Board Regulation (Effective January 1, 2003)

During the IFF, Williams was informed by Johnson that he was not going to pay the remaining balance. Upon learning that Johnson was not going to pay, Williams did not attempt to complete the few remaining punch-list items. Therefore, I recommend Count 10 of this file be closed with a finding of no violation of 18 VAC 18 VAC 50-22-260.B.14.

Count 11: Board Regulation (Effective January 1, 2003)

During the IFF, Williams acknowledged that he failed to obtain a final inspection for the EIFS removal and wood replacement on the existing deck, in violation of Section 114.4 of the Uniform Statewide Building Code ("USBC"). Costa also stated during the IFF that a final inspection has not been obtained. Williams' failure to obtain a building permit for the two-story deck is a violation of Board Regulation 18 VAC 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$1,000 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 12: Board Regulation (Effective January 1, 2003)

On October 12, 2003, Pete Sessa, Home Inspector, inspected Williams' work and identified nine recommended corrections. During the IFF, Williams stated he corrected everything that Johnson allowed Williams to correct. Therefore, I recommend Count 12 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.6.

By:

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 9, 2004 (revised September 8, 2004)

FILE NUMBER: 2004-01837
RESPONDENT: Alan C. Williams, t/a Exterior Forensics Group
LICENSE NUMBER: 2705053706
EXPIRATION: January 31, 2006

SUBMITTED BY: Valerie J. Matney
APPROVED BY: David C. Dorner

COMMENTS:

The file was originally docketed against Coastal Services Inc. Alan C. Williams told the Board's agent that he is the principal of Exterior Forensics Group and Coastal Services Inc., but was unaware of the licensing requirements for the use of different names and entities. Alan C. Williams told the Board's agent that he understood the licensing requirements; however, the licensing records do not reveal a contractor's license for Coastal Services Inc.

Alan C. Williams ("Williams"), t/a Exterior Forensics Group, was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705053706.)

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 regulation(s):

BACKGROUND:

On October 31, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Mark and Pamela Johnson ("the Johnsons") regarding Coastal Services Inc. and Alan C. Williams. (Exh. C-1)

On December 8, 2002, the Johnsons entered into a written contract with Coastal Services Inc., in the amount of \$36,000.00, to remove EIFS siding, install HardiPlank siding and thin

brick, and replace decking on the rear deck at 2240 Sandy Woods Lane, Virginia Beach, Virginia. The contract was signed by Alan Williams on behalf of Coastal Services Inc. (Exh. C-2)

On December 8, 2002, Williams commenced work. (Exh. I-3)

On February 3, 2003, Williams obtained building permit number 200301322BO for the work to be performed at the subject property. (Exh. W-1)

On March 7, 2003, Coastal Services Inc. provided the Johnsons with a written proposal ("change order"), in the amount of \$3,800.00, to construct a two level deck and add wainscoting. The proposal was not signed by either Coastal Services Inc. or the Johnsons. (Exh. C-3 and R-3)

On March 7, 2003, Coastal Services Inc. provided the Johnsons with a second written proposal ("change order"), in the amount of \$1,000.00, to prepare fascia and soffit by caulking all holes, gaps, and cracks and installing trim paint. The proposal was not signed by either Coastal Services Inc. or the Johnsons. (Exh. C-4 and R-4)

On January 31, 2000, Williams was issued Class B Contractor's license number 2705053706 as a sole proprietorship. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

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

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

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

FACTS:

On July 13, 2000, Coastal Services Incorporated became incorporated in the Commonwealth of Virginia. Alan C. Williams is the President of the corporation. (Exh. I-4)

In a written response dated December 8, 2003, Alan Williams stated "I am the sole owner of Coastal Services, Incorporated as well as Exterior Forensic Group." Williams further stated "I

have now read the regulations and understand that a new license is required when a change of entity is made." (Exh. R-1)

2. Board Regulation (Effective September 1, 2001)

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.

FACTS:

Williams failed to operate under the name in which the license is issued.

3. 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;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Williams in the transaction failed to contain subsections: (d), (f), (h), and (i). (Exh. C-2)

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

Mark Johnson verbally agreed to the change order for the two level deck and wainscoting. Mark Johnson later verbally agreed to the change order for the fascia and soffit work because Williams had already painted about ¾ of the fascia prior to the change order being presented to the Johnsons. (Exh. I-2)

Between March 2003 and May 2003, Williams performed the work according to the change orders. (Exh. I-2)

In a written response dated February 13, 2004, Alan Williams stated "There were three changes involved – one he ok'd, one he wanted to think about (he gave me a verbal to proceed at a later date and we did complete the work) and the last one he said 'no'. We did complete the two items he ok'd but we did not proceed with the third proposal." (Exh. R-2)

Williams failed to obtain written change orders, signed by all parties, for changes to the scope of the work to be performed.

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:

As of January 28, 2004, Williams failed to obtain a building permit prior to constructing the two story deck at the subject property, in violation of Section 111.1 of the USBC. (Exh. W-2)

On March 26, 2004, Jeffrey A. Costa ("Costa"), Code Inspector Building Supervisor for the City of Virginia Beach, inspected the subject property at the request of Mark Johnson. Costa noted "no permit obtained for rebuilt and new 2 stories deck with stairway." (Exh. W-3)

6. 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:

Williams installed Grace Bituthene membrane in the flooring of the open top level of the two story deck. (Exh. C-5)

The Grace Construction Products' specifications state, "Do not apply Bituthene membranes in areas where they will be permanently exposed to sunlight, weather or traffic." (Exh. W-5)

7. 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:

Williams installed the siding without a gap between the siding and the trim. (Exh. C-5)

In a letter dated July 29, 2003, John Aaron, Territory Manager for James Hardie Siding Products stated "The siding is cut too tight to the windows. Prior installation is an 1/8" gap at all joints butting to products that will expand and contract. The same holds true for the butts at the corner boards." (Exh. W-4)

On March 26, 2004, Jeffrey A. Costa ("Costa"), Code Inspector Building Supervisor for the City of Virginia Beach, inspected the subject property at the request of Mark Johnson. Costa noted "Mr. Johnson's other concern was that the contractor did not installed the Hardiplank lap siding according to the manufacturer's instruction and some of the caulking were missing. After thorough inspection of the product installed, he was correct." (Exh. W-3)

8. Board Regulation (Effective January 1, 2003)

- B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On March 26, 2004, Jeffrey A. Costa ("Costa"), Code Inspector Building Supervisor for the City of Virginia Beach, inspected the subject property at the request of Mark Johnson. Costa noted the following violations:

- Stairway may be in violation for setback requirement
- No footing inspection for deck support
- Improper nails used for the job
- No permit for ceiling fan and new wiring

- Winders tread at stairway not to code
- Guardrail balusters space opening not to code
- No frame inspection for replaced defective wood. (Exh. W-3)

9. 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 October 12, 2003, Williams and the Johnsons met with Pete Sessa ("Sessa"), a home inspector, at the subject property. (Exh. C-7) Sessa inspected the work performed by Williams and made several recommendations, which Williams verbally agreed to perform. (Exh. C-6 and C-7)

In a written response dated February 13, 2004, Alan Williams stated "I did agree to fix the items outlined by Pete Sessa." (Exh. R-2)

As of April 4, 2004, Williams only corrected items 3 and 9 on the list. (Exh. C-6 and C-7)

10. Board Regulation (Effective January 1, 2003)

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 last day Williams performed work at the subject property or contacted the Johnsons was November 6, 2003. (Exh. C-8 and I-3)

In a written response dated December 8, 2003, Alan Williams stated "I believe I have faithfully and competently completed the contract work and much, much more." (Exh. R-1)

11. 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:

As of November 26, 2003, Williams failed to obtain a final inspection for the EIFS removal and wood replacement on the existing deck, in violation of Section 114.4 of the Uniform Statewide Building Code ("USBC"). (Exh. W-1)

On March 26, 2004, Jeffrey A. Costa ("Costa"), Code Inspector Building Supervisor for the City of Virginia Beach, inspected the subject property at the request of Mark Johnson. Costa noted "No final inspection." (Exh. W-3)

12. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In a written response dated February 13, 2004, Alan Williams stated "I did complete the items in question (we started the work within one week of our meeting as I agreed) with the exception of the door." (Exh. R-2)

As of April 4, 2004, Williams only corrected items 3 and 9 on the list. (Exh. C-6 and C-7)

Williams provided false 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: Kevin Robert Reynolds

File Number: 2004-03725
License Number: 2710029931

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 6, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Reynolds to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

A letter acknowledging that the IFF was rescheduled was mailed, via certified mail, to Reynolds to the address of record. The certified mail was signed for and received.

On December 8, 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 Reynolds, Respondent; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

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)

On January 25, 2003, in the Circuit Court of Prince William County, Reynolds pleaded guilty and was convicted of taking indecent liberties with a child, a Felony, in violation of Section 18.2-67.3 of the Code of Virginia is a violation of Board Regulation 18 VAC 50-30-190. Therefore, I recommend remedial education and no monetary 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)

On January 25, 2003, in the Circuit Court of Prince William County, Reynolds pleaded guilty and was convicted of taking indecent liberties with a child, a Felony, in violation of Section 18.2-67.3 of the Code of Virginia. His attorney, Anthony Kostelecky, notified the Board of Reynolds' conviction on March 8, 2004. Reynolds' failure to inform the Board, within 30 days, of the Felony conviction is a violation of Board Regulation 18 VAC 50-30-190. 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 the order.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors (Tradesman)
DATE: July 29, 2004 (revised September 9, 2004 and September
13, 2004)

FILE NUMBER: 2004-03725
RESPONDENT: Kevin Robert Reynolds
LICENSE NUMBER: 2710029931
EXPIRATION: December 31, 2004

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

COMMENTS:

None.

Kevin Robert Reynolds ("Reynolds") was at all times material to this matter a licensed tradesman in Virginia (No. 2710029931).

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 March 11, 2004, the Compliance and Investigations Division of the Department of Professional and Occupational Regulation received information from Eric Olson, Executive Director for the Board for Contractors ("the Board"), regarding Reynolds. (Exh. I-1)

On May 27, 2003, the Board received information regarding Reynolds' criminal conviction as a part his contractor's application. Reynolds requested an Informal Fact-Finding Conference ("IFF") regarding the application. As a result, File Number 2004-02432 was opened and IFF was held regarding the criminal conviction. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered convictions for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

FACTS:

On December 5, 1996, Reynolds was issued Master Tradesman license number 2710029931. (Exh. I-2)

On January 25, 2003, in the Circuit Court of Prince William County, Reynolds pleaded guilty and was convicted of taking indecent liberties with a child, a Felony, in violation of Section 18.2-67.3 of the Code of Virginia. There is no appeal pending and the time for appeal has lapsed. (Exh. R-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession.

FACTS:

In a letter dated March 8, 2004, Anthony Kostelecky ("Kostelecky"), attorney representing Reynolds, notified the Board of Reynolds' criminal conviction. (Exh. R-1)

In a written response dated July 12, 2004, Kostelecky conceded Reynolds' failure to report the criminal conviction to the Board. (Exh. R-3)

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

Re: Jeffrey Douglas Greenberg, t/a Hunt Country Paving

File Number: 2004-04747
License Number: 2705074661

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 5, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Jeffrey Douglas Greenberg, t/a Hunt Country Paving ("Greenberg") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On December 8, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jeffrey Douglas Greeneberg, Respondent; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

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)

Greenberg made a proposal on April 27, 2004, to install a parking lot for Robert Tolbert, in the amount of \$34,170, at 7336 Riley Road, Warrenton, Virginia. At the time the proposal was prepared, however, Greenberg was a Class C contractor. Greenberg acknowledged during the IFF that he had, at the time the proposal was formulated, had passed two of the three tests required for obtaining a Class A license. Greenberg's also acknowledged that the proposal was prepared by an employee who was not familiar with the Board regulations. Upon reviewing the proposal, Greenberg refused to sign it and informed his employee of the error. Greenberg also stated that paving work was never performed. Greenberg has since obtained a Class A contractor's license. Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.27

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

Greenberg made a proposal on April 27, 2004, to perform paving work for Robert Tolbert in the amount of \$34,170. The company name identified on the proposal was "Hunt Country Asphalt & Paving, LLC." Conversely, the license is issued to "Jeffrey Douglas Greenberg, t/a Hunt Country Paving." During the IFF, Greenberg acknowledged that the inclusion of LLC on the proposal was an honest mistake. Therefore, I recommend Count 2 of this file be closed with a finding of no violation of 18 VAC 18 VAC 50-22-230.A.

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

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

FILE NUMBER: 2004-04747
RESPONDENT: Jeffrey Douglas Greenberg, t/a Hunt Country Paving
LICENSE NUMBER: 2705074661
EXPIRATION: April 30, 2005

SUBMITTED BY: Diana Santoni-Bell
APPROVED BY: Kimberly Freiberger

COMMENTS:

None.

Jeffrey Douglas Greenberg ("Greenberg"), t/a Hunt Country Paving, was at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705074661).

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

BACKGROUND:

On May 20, 2004 the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from ASAP Paving regarding Greenberg. (Exh. C-1)

On April 27, 2004, Robert Tolbert of Covenant Baptist Church of Warrenton received a written proposal from Jeff Greenberg, t/a Hunt Country Asphalt & Paving LLC, in the amount of \$34,170.00, to install a parking lot at 7336 Riley Road, Warrenton, Virginia. (Exh. W-1)

On April 3, 2003, Greenberg was issued Class C contractor's license number 2705074661 as a sole proprietorship. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In a written response dated June 14, 2004, Hunt stated, "We were waiting until we obtained the Class A to execute this document with Mr. Tolbert." Hunt further stated, "I specifically did not execute this document because of our license class limitation . . ." (Exh. R-1)

On June 29, 2004, Jeffrey D Greenberg, t/a Hunt Country Paving, was issued Class A contractor's license number 2705086275 as a sole proprietorship. (Exh. I-2)

2. Board Regulation (Effective January 1, 2003)

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.

FACTS:

Greenberg failed to operate under the name in which the license is issued.

STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT

TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government

1. Name: Ruth Ann Wall
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on December 8, 2004
5. Nature of Personal Interest Affected by Transaction: _____

Cross Timely did my reporting

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.

Ruth Ann Wall
Signature

12-08-04
Date