

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
January 4, 2005 (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.

Wyatt Walton, 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

- | | |
|--|---|
| 1. Mary A Wells
t/a Blue Ridge Solutions
File Number 2005-01650 (Disc) | Theresa Polchinski – W
Ed Polchinski – W
Cecilia Walsh – W |
| 2. Mary A Wells
t/a Blue Ridge Solutions
File Number 2004-01283 (Disc) | Theresa Polchinski – C |
| 3. Mary A Wells
t/a Blue Ridge Solutions
File Number 2004-02520 (Disc) | None |
| 4. Mary A Wells
t/a Blue Ridge Solutions
File Number 2004-02101 (Disc) | Cecilia Walsh – C |
| 5. James F. Booker
t/a Booker Construction
File Number 2004-00837 (Disc) | Booker – R
Beverly Leatherbury – R Atty
Wayde Fowler – C
Thomas Pruitt – W |

6. James F. Booker
t/a Booker Construction
File Number 2004-00716 (Disc)

Booker – R
Beverly Leatherbury – R Atty
John Castagna – C
Christine Castagna – C
Thomas Pruitt – W
Brian Johnson – W
David Drummond – W
Daniel Ewing – W
David Fluhart – W

7. Wilmer N. Ricks
t/a W N Ricks
File Number 2004-03329 (Disc)

Ricks – R

8. Darren L Frost & David T Steckley
t/a Frost Foundations
File Number 2004-01523 (Disc)

John Acors – C
Terrance Fellingner – W

9. Donald W Cotterell Buildings Inc
File Number 2004-02667 (Disc)

None

The meeting adjourned at 3:00 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: Mary A. Wells, t/a Blue Ridge Solutions

File Number: 2005-01650
License Number: 2705077698

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 16, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mary A. Wells, t/a Blue Ridge Solutions ("Blue Ridge") 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 "Not Deliverable as Addressed, Unable to Forward." The Notice was also mailed, via certified mail, to Blue Ridge at Rt. 2, Box 555, Dillwyn, Virginia 23936. The certified mail was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On January 4, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Theresa and Ed Polchinski ("the Polchinskis") and Cecillia Walsh ("Walsh"), Witnesses; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member. Neither Mary Wells, Responsible Management for Blue Ridge, nor anyone on behalf of Blue Ridge 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)

In March 2003, Theresa Polchinski ("Polchinski") entered into a two written contracts with Blue Ridge to perform renovations at Polchinski's residence. Heath signed the contracts on behalf of Blue Ridge. Polchinski paid Heath directly, in cash, towards the contracts.

In April 2003, Blue Ridge provided written proposals to Prudential Insurance to repair water damage in the living room and kitchen at Polchinski's residence. Both proposals

stated checks were to be made payable to Heath. Prudential Insurance paid Heath directly, by check, for the work.

In June 2003, Cecillia Walsh ("Walsh") entered into a written contract and received a written proposal from Blue Ridge to renovate a bathroom and finish construction of a garage at Walsh's residence. Heath signed the contract and proposal on behalf of Blue Ridge. Walsh paid Heath directly, by checks, towards the contract and proposal.

On June 9, 2003, Rajendra Patel ("Patel") received a written proposal from Blue Ridge, in the amount of \$24,508.00, to finish construction of a garage at 3710 Cliffwood Road, Richmond, Virginia 23234. Robert Heath ("Heath") signed the written proposal on behalf of Blue Ridge. On June 9, 2003, Patel paid Heath \$12,254.00 by two checks. On July 9, 2003, Patel signed the proposal from Blue Ridge. Two days later, Patel paid Heath directly, by check, towards the contract.

On July 15, 2003, the Board issued Class C Contractor's license number 2705077698 to Blue Ridge, as a sole proprietorship. Mary A. Wells ("Wells") is the Responsible Management, Qualified Individual, and Designated Employee for the licensee.

On November 26, 2003, Heath spoke with the Board's agent, and informed the Board's agent that Wells was the owner of Blue Ridge, and Heath was the manager. Heath also stated he lived with Wells.

The Board's agent scheduled an interview with both Heath and Wells, to be held on February 3, 2004. On February 2, 2004, Heath contacted the Board's agent and cancelled the interview. The Board's agent scheduled another interview for February 10, 2004. On February 10, 2004, Heath again cancelled the interview. The Board's agent then scheduled an interview for February 17, 2004. On that date, neither Heath nor Wells appeared for the interview. No further communications were received from either Heath or Wells.

William Adams ("Adams"), Wells's father, told the Board's agent that Wells was a contractor, and has been working with Heath for approximately 5-6 years. Adams further stated he believed Heath was in charge of the business.

Polchinski only dealt with Heath, who signed the contracts and performed the work, on the job. Polchinski only met Wells on one occasion. Patel only dealt with Heath on the job, and does not know Wells. The business card for Blue Ridge indicates Robert Heath.

During the IFF, Polchinski stated it was her understanding that Heath was the contractor and only dealt with Heath. Polchinski also stated only met Mary Wells on one or two occasions, but Mary Wells was not performing contracting work.

During the IFF, Walsh stated she never met Mary Wells and only dealt with Robert Heath.

Blue Ridge's acting as or being an ostensible license for undisclosed persons who control or direct, directly or indirectly, the operations of its business is a violation of Board Regulation 18 VAC 50-22-260.B.20. Based on the record and testimony, it appears Robert Heath was acting as the contractor and licensee. Futhermore, it appears Mary Wells is not actively involved in the business. Therefore, I recommend a monetary penalty of \$500.00 and license revocation be imposed.

By: _____
Wyatt Walton
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: October 13, 2004

FILE NUMBER: 2005-01650
RESPONDENT: Mary A. Wells, t/a Blue Ridge Solutions
LICENSE NUMBER: 2705077698
EXPIRATION: July 31, 2005

SUBMITTED BY:
APPROVED BY:

COMMENTS:

Companion File Nos.: 2004-02520, 2004-02101, and 2004-01283.

Mary A. Wells, t/a Blue Ridge Solutions ("Blue Ridge"), was not at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705077698).

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:

During the investigation of File Nos. 2004-01283, 2004-02101, and 2004-02520, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received information regarding Robert Heath and Blue Ridge Solutions.

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

FACTS:

On March 19, 2003, Theresa Polchinski ("Polchinski") entered into a written contract with Blue Ridge, in the amount of \$17,910.00, to perform renovations at 2203 Nortonia Road, Richmond, Virginia 23229. Robert Heath ("Heath") signed the contract on behalf of Blue Ridge. (Exh. W-1-3)

On March 20, 2003, Margaret Eckhaus, on behalf of Polchinski, paid Heath \$8,955.00 by check. (Exh. W-1-7)

On March 24, 2003, Polchinski entered into a second written contract with Blue Ridge, in the amount of \$1,000.00, to perform renovations at 2203 Nortonia Road, Richmond, Virginia 23229. Heath signed the contract on behalf of Blue Ridge. (Exh. W-1-4)
Polchinski paid Heath \$700.00 in cash. (Exh. W-1-1 and W-1-4)

On April 13, 2003, Blue Ridge provided a written proposal to Prudential Insurance, in the amount of \$1,093.84, to repair water damage in the living room at 2203 Nortonia Road, Richmond, Virginia 23229. Blue Ridge also provided a written proposal to Prudential Insurance, in the amount of \$1,010.35, to repair water damage in the kitchen at the 2203 Nortonia Road, Richmond, Virginia 23229. Heath signed both proposals on behalf of Blue Ridge. Both proposals specified, "Check to be made payable to Robert Heath." (Exh. W-1-5 and W-1-6)

On April 14, 2003, Blue Ridge commenced work at 2203 Nortonia Road, Richmond, Virginia 23229. (Exh. W-1-1)

On April 24, 2003, Prudential Insurance paid Heath \$2,004.19 by check. (Exh. W-1-7)

In May 2003, Blue Ridge commenced work at 3710 Cliffwood Road, Richmond, Virginia 23234. (Exh. I-9)

On June 8, 2003, Cecilia Walsh ("Walsh") entered into a written contract with Blue Ridge, in the amount of \$2,722.00, to renovate a bathroom at 10613 Warren Road, Glen Allen, Virginia 23060. Robert Heath ("Heath") signed the contract on behalf of Blue Ridge. (Exh. W-2-2) On June 8, 2003, Walsh paid Heath \$1,573.00 by check. (Exh. W-2-3)

On June 9, 2003, Rajendra Patel ("Patel") received a written proposal from Blue Ridge, in the amount of \$24,508.00, to finish construction of a garage at 3710 Cliffwood Road, Richmond, Virginia 23234. Robert Heath ("Heath") signed the written proposal on behalf of Blue Ridge. (Exh. W-3-2)

On June 9, 2003, Patel paid Heath \$12,254.00 by two checks. (Exh. W-3-1)

On July 9, 2003, Patel accepted and signed the written proposal from Blue Ridge. (Exh. W-3-2)

On July 11, 2003, Patel paid Heath \$2,200.00 by check. (Exh. W-3-1)

On July 15, 2003, Blue Ridge was issued Class C Contractor's license number 2705077698 as a sole proprietorship. Mary A. Wells ("Wells"), individual certificate number 2706129944, is the Responsible Management and Qualified Individual for license number 2705077698. (Exh. I-1)

On July 16, 2003, Blue Ridge commenced work at 10613 Warren Road, Glen Allen, Virginia 23060. Heath told Walsh he would return on September 17, 2003 to resume work, but did not arrive on the scheduled date. (Exh. W-2-1)

On September 3, 2003, Blue Ridge sent Chesterfield County Building Inspection's Department a letter requesting to take over the permit for the garage construction at 3710 Cliffwood Road, Richmond, Virginia 23234. (Exh. I-9)

The last day Blue Ridge performed work at 2203 Nortonia Road, Richmond, Virginia 23229 was October or November 2003. (Exh. I-8)

The last day Blue Ridge performed work at 10613 Warren Road, Glen Allen, Virginia 23060 or contacted Walsh was October 30, 2003. (Exh. W-2-1)

On October 22, 2003, Investigator Janet Creamer, the Board's agent, made a written request to Blue Ridge at the address of record of Rt. 2 Box 1740, Dillwyn, Virginia 23936, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by November 20, 2003. The letter, which was marked "Not Deliverable As Addressed, Unable to Forward", was returned to the Board's agent by the United States Post Service ("USPS"). (Exh. I-2)

The last day Blue Ridge was at 3710 Cliffwood Road, Richmond, Virginia 23234 was November 24, 2003. (Exh. I-9)

On November 26, 2003, Heath stated Wells owned Blue Ridge and Heath was the manager. Heath also stated he lived with Wells. (Exh. I-7)

On November 26, 2003, Heath told the Board's agent the post office changed post office box numbers and the new box office address is Rt. 2 Box 555, Dillwyn, Virginia 23936. (Exh. I-7)

On November 26, 2003, the Board's agent made a written request to Blue Ridge at Rt. 2 Box 555, Dillwyn, Virginia 23936, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested a written response be received by December 16, 2003. (Exh. I-3)

On February 4, 2004, William Adams ("Adams"), the father of Wells, told the Board's agent that Wells was a contractor and has been working with Heath for approximately 5-6 years. Adams also stated that as far as he knew, Heath was in charge of the business. (Exh. I-7)

The Board's agent scheduled an appointment with Heath and Wells to be held at the Department of Professional and Occupational Regulation ("the Department") on February 3, 2004. On February 2, 2004, Heath contacted the Board's agent and cancelled the interview. (Exh. I-7)

The Board's agent scheduled another appointment with Heath and Wells to be held at the Department on February 10, 2004. On February 10, 2004, Heath left a message for the Board's agent and cancelled the interview. (Exh. I-7)

The Board's agent scheduled another appointment with Heath and Wells to be held at the Department on February 17, 2004. Neither Heath nor Wells appeared for the interview, and no further communications were received from either Heath or Wells. (Exh. I-7)

On February 24, 2004, the Board's agent made three written requests to Blue Ridge at the address of record of Rt. 2 Box 1740, Dillwyn, Virginia 23936, via certified mail, and at of Rt. 2 Box 555, Dillwyn, Virginia 23936, via certified mail and first class mail, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent also requested a meeting with Mary Wells of Blue Ridge by March 12, 2004. (Exh. I-4, I-5, and I-6)

On March 1, 2004, the certified mailings, which were marked "Attempted, Not Known," were returned to the Board's agent by the USPS. (Exh. I-4 and I-5)

Between February 17, 2004 and May 6, 2004, the Board's agent left several messages for Blue Ridge at (804) 997-6750. The recording at (804) 997-6750 identified the telephone number as Robert Heath of Blue Ridge Solutions. (Exh. I-7)

A search of directory assistance provided no telephone number for Blue Ridge Solutions, Mary Wells, or Robert Heath in the Dillwyn or surrounding areas. (Exh. I-7)

Polchinski only dealt with Heath on the job. Polchinski met Wells on one occasion; however, Heath signed the contracts and performed the work. (Exh. I-8) Patel only dealt with Heath on the job and does not know Mary Wells. (Exh. I-9)

The business card for Blue Ridge indicates Robert Heath. (Exh. W-3-3)

Heath negotiated and signed the contract, directly received all payments, performed most of the work mentioned in the contracts, responded to the investigator, and scheduled and cancelled interviews with the investigator.

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

Re: Mary A. Wells, t/a Blue Ridge Solutions

File Number: 2004-01283
License Number: 2705077698

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 16, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mary A. Wells, t/a Blue Ridge Solutions ("Blue Ridge") 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 "Not Deliverable as Addressed, Unable to Forward." The Notice was also mailed, via certified mail, to Blue Ridge at Rt. 2, Box 555, Dillwyn, Virginia 23936. The certified mail was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On January 4, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Theresa and Ed Polchinski ("Polchinski"), Complainants; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member. Neither Mary Wells, Responsible Management for Blue Ridge, nor anyone on behalf of Blue Ridge 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)

The last day Blue Ridge performed work at the subject property was in October or November 2003. Blue Ridge failed to construct the deck, and all other work was only half completed.

During the IFF, Theresa Polchinski stated in June 2004 the judge suggested she and Robert Heath, on behalf of Blue Ridge, attempt to resolve the incomplete work by entering into mediation. Polchinski also stated Robert Heath did return to perform some

work, but as of today, there are still numerous items incomplete. Polchinski received two estimates ranging between \$6,900 to \$8,000 to repair and complete the work.

Based on the record and testimony, it appears Blue Ridge abandoned the job because the contract was entered into in March 2003 and the work remains incomplete as of today. Blue Ridge only performed work after repeated telephone calls and mediation, but still has not completed the work contracted for.

Blue Ridge's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

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

Polchinski purchased a \$188.00 shower door for the bathroom, but it was not the correct door. Heath offered to return the door. Heath returned the door, but never brought Polchinski the money/credit for the return.

Based on the record, Blue Ridge failed to refund the money after returning the incorrect door. Blue Ridge's retention or misapplication of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

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

In October 2003, the Board's agent, made a written request to Blue Ridge requesting a written response and supporting documents to the complaint Polchinski filed with the Board. The letter was returned to the Board's agent by the United States Postal Service, indicating the letter was not deliverable.

On November 26, 2003, Heath spoke with the Board's agent and provided the Board's agent with a second mailing address for Blue Ridge. On that date, the Board's agent made a written request to Blue Ridge at the second address.

The Board's agent scheduled an interview with both Heath and Wells, to be held on February 3, 2004. On February 2, 2004, Heath contacted the Board's agent and cancelled the interview. The Board's agent scheduled another interview for February 10, 2004. On February 10, 2004, Heath again cancelled the interview. The Board's agent then scheduled an interview for February 17, 2004. On that date, neither Heath nor Wells appeared for the interview. No further communications were received from either Heath or Wells. The Board's agent made additional attempts, by certified mail and by telephone, to contact Blue Ridge. The Board's agent's certified mailings were returned to the Board's agent by the United States Postal Service. The Board's agent also left several messages for Blue Ridge.

Blue Ridge's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

By: _____
Wyatt Walton
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: July 12, 2004 (revised October 6, 2004)

FILE NUMBER: 2004-01283
RESPONDENT: Mary A. Wells, t/a Blue Ridge Solutions
LICENSE NUMBER: 2705077698
EXPIRATION: July 31, 2005

SUBMITTED BY: Janet P. Creamer
APPROVED BY: Wayne Mozingo

COMMENTS:

Companion File Nos.: 2004-02520 and 2004-02101.

Mary A. Wells, t/a Blue Ridge Solutions ("Blue Ridge"), was not at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705077698).

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 22, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Ed and Theresa Polchinski ("the Polchinskis") regarding Robert Heath and Blue Ridge Solutions. (Exh. C-1)

On March 19, 2003, Theresa Polchinski ("Polchinski") entered into a written contract with Blue Ridge, in the amount of \$17,910.00, to perform renovations at 2203 Nortonia Road, Richmond, Virginia 23229. Robert Heath ("Heath") signed the contract on behalf of Blue Ridge. (Exh. C-4)

On March 20, 2003, Margaret Eckhaus, on behalf of Polchinski, paid Heath \$8,955.00 by check. (Exh. C-8)

On March 24, 2003, Polchinski entered into a second written contract with Blue Ridge, in the amount of \$1,000.00, to perform renovations at the subject property. Heath signed the contract on behalf of Blue Ridge. (Exh. C-5) Polchinski paid Heath \$700.00 in cash. (Exh. C-3 and C-5)

On April 13, 2003, Blue Ridge provided a written proposal to Prudential Insurance, in the amount of \$1,093.84, to repair water damage in the living room at the subject property. Blue Ridge also provided a written proposal to Prudential Insurance, in the amount of \$1,010.35, to repair water damage in the kitchen at the subject property. Heath signed both proposals on behalf of Blue Ridge. Both proposals specified, "Check to be made payable to Robert Heath." (Exh. C-6 and C-7)

On April 14, 2003, Blue Ridge commenced work at the subject property. (Exh. C-1)

On April 24, 2003, Prudential Insurance paid Heath \$2,004.19 by check. (Exh. C-8)

On July 15, 2003, Blue Ridge was issued Class C Contractor's license number 2705077698 as a sole proprietorship. Mary A. Wells ("Wells"), individual tracking number 2706129944, is the Responsible Management and Qualified Individual for license number 2705077698. (Exh. I-1)

The last day Blue Ridge performed work at the subject property was October or November 2003. (Exh. I-10)

1. 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:

As of October 22, 2003, Blue Ridge failed to construct the deck and all other work was only half completed. (Exh. I-10)

2. 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:

Polchinski purchased a \$188.00 shower door for the bathroom, but it was not the correct door. Heath offered to return the door. Heath returned the door but never brought Polchinski the money/credit for the return. (Exh. I-10)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On October 22, 2003, Investigator Janet Creamer, the Board's agent, made a written request to Blue Ridge at the address of record of Rt. 2 Box 1740, Dillwyn, Virginia 23936, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by November 20, 2003. (Exh. I-4)

The letter, which was marked "Not Deliverable As Addressed, Unable to Forward", was returned to the Board's agent by the United States Post Service ("USPS"). (Exh. I-4)

On November 26, 2003, Heath told the Board's agent the post office changed post office box numbers and the new box office address is Rt. 2 Box 555, Dillwyn, Virginia 23936. (Exh. I-9)

On November 26, 2003, the Board's agent made a written request to Blue Ridge at Rt. 2 Box 555, Dillwyn, Virginia 23936, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested a written response be received by December 16, 2003. (Exh. I-5)

The Board's agent scheduled an appointment with Heath and Wells to be held at the Department of Professional and Occupational Regulation ("the Department") on February

3, 2004. On February 2, 2004, Heath contacted the Board's agent and cancelled the interview. (Exh. I-9)

The Board's agent scheduled another appointment with Heath and Wells to be held at the Department on February 10, 2004. On February 10, 2004, Heath left a message for the Board's agent and cancelled the interview. (Exh. I-9)

The Board's agent scheduled another appointment with Heath and Wells to be held at the Department on February 17, 2004. Neither Heath nor Wells appeared for the interview, and no further communications were received from either Heath or Wells. (Exh. I-9)

On February 24, 2004, the Board's agent made three written requests to Blue Ridge at the address of record of Rt. 2 Box 1740, Dillwyn, Virginia 23936, via certified mail, and at of Rt. 2 Box 555, Dillwyn, Virginia 23936, via certified mail and first class mail, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent also requested a meeting with Mary Wells of Blue Ridge by March 12, 2004. (Exh. I-6, I-7, and I-8)

On March 1, 2004, the certified mailings, which were marked "Attempted, Not Known," were returned to the Board's agent by the USPS. (Exh. I-6 and I-7)

On March 17, 2004, the first class mailing, which was marked "Not Deliverable As Addressed – Unable to Forward," sent to Rt. 2 Box 555, Dillwyn, Virginia 23936, was returned to the Board's agent by the USPS. (Exh. I-8)

Between February 17, 2004 and May 6, 2004, the Board's agent left several messages for Blue Ridge at (804) 997-6750. The recording at (804) 997-6750 identified the telephone number as Robert Heath of Blue Ridge Solutions. (Exh. I-9)

A search of directory assistance provided no telephone number for Blue Ridge Solutions, Mary Wells, or Robert Heath in the Dillwyn or surrounding areas. (Exh. I-9)

As of July 12, 2004, Blue Ridge failed to respond to the investigator.

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

Re: Mary A. Wells, t/a Blue Ridge Solutions

File Number: 2004-02520
License Number: 2705077698

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 16, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mary A. Wells, t/a Blue Ridge Solutions ("Blue Ridge") 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 "Not Deliverable as Addressed, Unable to Forward." The Notice was also mailed, via certified mail, to Blue Ridge at Rt. 2, Box 555, Dillwyn, Virginia 23936. The certified mail was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On January 4, 2005, 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 Wyatt Walton, Presiding Board Member. Neither Mary Wells, Responsible Management for Blue Ridge, nor anyone on behalf of Blue Ridge 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)

In May 2003, Blue Ridge began work at the residence of Rajendra Patel ("Patel").

Blue Ridge poured the concrete floor and framed the garage. In September 2003, Blue Ridge sent the Chesterfield County Building Inspections Department a letter requesting Blue Ridge take over the permit for the garage construction at the subject property.

The last day Blue Ridge performed work at Patel's residence was on November 24, 2003. As of January 2004, Blue Ridge failed to complete the work. As of February 2004, Patel was in the process of completing the work on his own.

Blue Ridge's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Based on the record, it appears Blue Ridge's actions are egregious. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

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

Patel entered into a written contract with Blue Ridge, in the amount to \$24,508.00, to finish construction of a garage at the subject property. Patel paid Heath a total of \$14,454.00 towards the contract. The last day Blue Ridge performed work at Patel's residence was on November 24, 2003. As of December 2003, Blue Ridge failed to return funds received for work not performed.

Blue Ridge's retention of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. Based on the record, it appears Blue Ridge's actions are egregious. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In October 2003, the Board's agent, made a written request to Blue Ridge requesting a written response and supporting documents to the complaint filed with the Board. The letter was returned to the Board's agent by the United States Postal Service, indicating the letter was not deliverable.

On November 26, 2003, Heath spoke with the Board's agent, and informed the Board's agent that Wells was the owner of Blue Ridge, and Heath was the manager. Heath also stated he lived with Wells. Heath provided the Board's agent with a second mailing address for Blue Ridge. On that date, the Board's agent made a written request to Blue Ridge at the second address.

The Board's agent scheduled an interview with both Heath and Wells, to be held on February 3, 2004. On February 2, 2004, Heath contacted the Board's agent and cancelled the interview. The Board's agent scheduled another interview for February 10, 2004. On February 10, 2004, Heath again cancelled the interview. The Board's agent then scheduled an interview for February 17, 2004. On that date, neither Heath nor Wells appeared for the interview. No further communications were received from either Heath or Wells. The Board's agent made additional attempts, by certified mail and by telephone, to contact Blue Ridge. The Board's agent's certified mailings were returned to the Board's agent by the United States Postal Service. The Board's agent also left several messages for Blue Ridge.

Blue Ridge's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend that a monetary penalty of \$1,500.00 and license revocation be imposed.

By: _____
Wyatt Walton
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: July 12, 2004 (revised October 6, 2004)

FILE NUMBER: 2004-02520
RESPONDENT: Mary A. Wells, t/a Blue Ridge Solutions
LICENSE NUMBER: 2705077698
EXPIRATION: July 31, 2005

SUBMITTED BY: Janet P. Creamer
APPROVED BY: Wayne Mozingo

COMMENTS:

Companion File Nos.: 2004-01283 and 2004-02101.

Mary A. Wells, t/a Blue Ridge Solutions ("Blue Ridge"), was not at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705077698).

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 December 15, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Rajendra Patel ("Patel") regarding Blue Ridge. (Exh. C-1)

In May 2003, Blue Ridge commenced work at 3710 Cliffwood Road, Richmond, Virginia 23234. (Exh. I-10)

On June 9, 2003, Patel entered into a written contract with Blue Ridge, in the amount of \$24,508.00, to finish construction of a garage at the subject property. Robert Heath ("Heath") signed the contract on behalf of Blue Ridge. (Exh. C-2)

On June 9, 2003, Patel paid Heath \$12,254.00 by two checks. On July 11, 2003, Patel paid Heath \$2,200.00 by check. (Exh. C-1 and C-2)

In July 2003, Blue Ridge poured the concrete floor and framed the garage. (Exh. C-1)

On September 3, 2003, Blue Ridge sent Chesterfield County Building Inspection's Department a letter requesting to take over the permit for the garage construction at the subject property. (Exh. I-10)

On July 15, 2003, Blue Ridge was issued Class C Contractor's license number 2705077698 as a sole proprietorship. Mary A. Wells ("Wells"), individual certificate number 2706129944, is the Responsible Management and Qualified Individual for license number 2705077698. (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:

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

FACTS:

The last day Blue Ridge was at the subject property was November 24, 2003. As of January 6, 2004, Blue Ridge failed to complete the work. (Exh. I-10)

As of February 4, 2004, Patel was in the process of completing the garage on his own. (Exh. I-10)

2. 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:

As of December 15, 2003, Blue Ridge failed to return funds received for work not performed or performed only in part.

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On October 22, 2003, Investigator Janet Creamer, the Board's agent, made a written request to Blue Ridge at the address of record of Rt. 2 Box 1740, Dillwyn, Virginia 23936, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by November 20, 2003. (Exh. I-4)

The letter, which was marked "Not Deliverable As Addressed, Unable to Forward", was returned to the Board's agent by the United States Post Service ("USPS"). (Exh. I-4)

On November 26, 2003, Heath told the Board's agent the post office changed post office box numbers and the new box office address is Rt. 2 Box 555, Dillwyn, Virginia 23936. (Exh. I-9)

On November 26, 2003, the Board's agent made a written request to Blue Ridge at Rt. 2 Box 555, Dillwyn, Virginia 23936, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested a written response be received by December 16, 2003. (Exh. I-5)

The Board's agent scheduled an appointment with Heath and Wells to be held at the Department of Professional and Occupational Regulation ("the Department") on February 3, 2004. On February 2, 2004, Heath contacted the Board's agent and cancelled the interview. (Exh. I-9)

The Board's agent scheduled another appointment with Heath and Wells to be held at the Department on February 10, 2004. On February 10, 2004, Heath left a message for the Board's agent and cancelled the interview. (Exh. I-9)

The Board's agent scheduled another appointment with Heath and Wells to be held at the Department on February 17, 2004. Neither Heath nor Wells appeared for the interview, and no further communications were received from either Heath or Wells. (Exh. I-9)

On February 24, 2004, the Board's agent made three written requests to Blue Ridge at the address of record of Rt. 2 Box 1740, Dillwyn, Virginia 23936, via certified mail, and at

of Rt. 2 Box 555, Dillwyn, Virginia 23936, via certified mail and first class mail, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent also requested a meeting with Mary Wells of Blue Ridge by March 12, 2004. (Exh. I-6, I-7, and I-8)

On March 1, 2004, the certified mailings, which were marked "Attempted, Not Known," were returned to the Board's agent by the USPS. (Exh. I-6 and I-7)

On March 17, 2004, the first class mailing, which was marked "Not Deliverable As Addressed – Unable to Forward," sent to Rt. 2 Box 555, Dillwyn, Virginia 23936, was returned to the Board's agent by the USPS. (Exh. I-8)

Between February 17, 2004 and May 6, 2004, the Board's agent left several messages for Blue Ridge at (804) 997-6750. The recording at (804) 997-6750 identified the telephone number as Robert Heath of Blue Ridge Solutions. (Exh. I-9)

A search of directory assistance provided no telephone number for Blue Ridge Solutions, Mary Wells, or Robert Heath in the Dillwyn or surrounding areas. (Exh. I-9)

As of July 12, 2004, Blue Ridge failed to respond to the investigator.

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

Re: Mary A. Wells, t/a Blue Ridge Solutions

File Number: 2004-02101
License Number: 2705077698

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 16, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mary A. Wells, t/a Blue Ridge Solutions ("Blue Ridge") 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 "Not Deliverable as Addressed, Unable to Forward." The Notice was also mailed, via certified mail, to Blue Ridge at Rt. 2, Box 555, Dillwyn, Virginia 23936. The certified mail was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On January 4, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Cecillia Walsh ("Walsh"), Complainant; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member. Neither Mary Wells, Responsible Management for Blue Ridge, nor anyone on behalf of Blue Ridge 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)

On July 16, 2003, Blue Ridge began work at Walsh's residence. Robert Heath ("Heath") told Walsh he would return to the subject property on September 17, 2003 to resume work. Heath did not return on that date. Walsh then left several messages for Heath regarding completion of the work. Heath failed to respond to Walsh's messages.

On October 6, 2003, Walsh's attorney sent Blue Ridge a letter requesting the work be completed by October 17, 2003. The last day Blue Ridge performed work at Walsh's residence, or contacted Walsh, was on October 30, 2003. Walsh hired other contractors

to complete the work. In April 2004, Walsh informed the Board's agent that the work was completed.

During the IFF, Walsh stated Heath removed the tub and did not return to perform any additional work. Walsh also stated she made several attempts to contact Heath regarding completion of the work. Heath did not respond to the deadline set by her attorney. Walsh hired an electrician and plumber and completed the remaining work herself.

Blue Ridge's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

In October 2003, the Board's agent, made a written request to Blue Ridge requesting a written response and supporting documents to a complaint filed with the Board. The letter was returned to the Board's agent by the United States Postal Service, indicating the letter was not deliverable.

On November 26, 2003, Heath spoke with the Board's agent, and informed the Board's agent that Wells was the owner of Blue Ridge, and Heath was the manager. Heath also stated he lived with Wells. Heath provided the Board's agent with a second mailing address for Blue Ridge. On that date, the Board's agent made a written request to Blue Ridge at the second address.

The Board's agent scheduled an interview with both Heath and Wells, to be held on February 3, 2004. On February 2, 2004, Heath contacted the Board's agent and cancelled the interview. The Board's agent scheduled another interview for February 10, 2004. On February 10, 2004, Heath again cancelled the interview. The Board's agent then scheduled an interview for February 17, 2004. On that date, neither Heath nor Wells appeared for the interview. No further communications were received from either Heath or Wells. The Board's agent made additional attempts, by certified mail and by telephone, to contact Blue Ridge. The Board's agent's certified mailings were returned to the Board's agent by the United States Postal Service. The Board's agent also left several messages for Blue Ridge.

Blue Ridge's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

By: _____

Wyatt Walton
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: July 12, 2004 (revised October 6, 2004)

FILE NUMBER: 2004-02101
RESPONDENT: Mary A. Wells, t/a Blue Ridge Solutions
LICENSE NUMBER: 2705077698
EXPIRATION: July 31, 2005

SUBMITTED BY: Janet P. Creamer
APPROVED BY: Wayne Mozingo

COMMENTS:

Companion File Nos.: 2004-02520 and 2004-01283.

Mary A. Wells, t/a Blue Ridge Solutions ("Blue Ridge"), was not at all times material to this matter a licensed Class C Contractor in Virginia (No. 2705077698).

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 November 14, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Cecelia Walsh ("Walsh") regarding Blue Ridge Solutions. (Exh. C-1)

On June 8, 2003, Walsh entered into a written contract with Blue Ridge, in the amount of \$2,722.00, to renovate a bathroom at 10613 Warren Road, Glen Allen, Virginia 23060. Robert Heath ("Heath") signed the contract on behalf of Blue Ridge. (Exh. C-2) On June 8, 2003, Walsh paid Heath \$1,573.00 by check. (Exh. C-3)

On July 15, 2003, Blue Ridge was issued Class C Contractor's license number 2705077698 as a sole proprietorship. Mary A. Wells ("Wells"), individual tracking number

2706129944, is the Responsible Management and Qualified Individual for license number 2705077698. (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:

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

FACTS:

On July 16, 2003, Blue Ridge commenced work at the subject property. (Exh. C-1)
Heath told Walsh he would return to the subject property on September 17, 2003 to resume work, but did not arrive on the scheduled date. (Exh. C-1)

Between September 29 and October 4, 2003, Walsh left messages for Heath regarding completion of the work. Heath failed to respond to Walsh's messages. (Exh. C-1)

On October 6, 2003, Edwin Bischoff, attorney representing Walsh, sent Blue Ridge a letter requesting the work be completed by October 17, 2003. (Exh. C-4)

The last day Blue Ridge performed work or contacted Walsh was October 30, 2003. (Exh. C-1) Walsh hired other contractors to complete the work. (Exh. I-8) In a written letter dated April 28, 2004, Walsh informed the Board's agent the work was completed. (Exh. C-6)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On October 22, 2003, Investigator Janet Creamer, the Board's agent, made a written request to Blue Ridge at the address of record of Rt. 2 Box 1740, Dillwyn, Virginia 23936, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by November 20, 2003. (Exh. I-3)

The letter, which was marked "Not Deliverable As Addressed, Unable to Forward", was returned to the Board's agent by the United States Post Service ("USPS"). (Exh. I-3)

On November 26, 2003, Heath told the Board's agent the post office changed post office box numbers and the new box office address is Rt. 2 Box 555, Dillwyn, Virginia 23936. (Exh. I-8)

On November 26, 2003, the Board's agent made a written request to Blue Ridge at Rt. 2 Box 555, Dillwyn, Virginia 23936, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested a written response be received by December 16, 2003. (Exh. I-4)

The Board's agent scheduled an appointment with Heath and Wells to be held at the Department of Professional and Occupational Regulation ("the Department") on February 3, 2004. On February 2, 2004, Heath contacted the Board's agent and cancelled the interview. (Exh. I-8)

The Board's agent scheduled another appointment with Heath and Wells to be held at the Department on February 10, 2004. On February 10, 2004, Heath left a message for the Board's agent and cancelled the interview. (Exh. I-8)

The Board's agent scheduled another appointment with Heath and Wells to be held at the Department on February 17, 2004. Neither Heath nor Wells appeared for the interview, and no further communications were received from either Heath or Wells. (Exh. I-8)

On February 24, 2004, the Board's agent made three written requests to Blue Ridge at the address of record of Rt. 2 Box 1740, Dillwyn, Virginia 23936, via certified mail, and at of Rt. 2 Box 555, Dillwyn, Virginia 23936, via certified mail and first class mail, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent also requested a meeting with Mary Wells of Blue Ridge by March 12, 2004. (Exh. I-5, I-6, and I-7)

On March 1, 2004, the certified mailings, which were marked "Attempted, Not Known," were returned to the Board's agent by the USPS. (Exh. I-5 and I-6)

Between February 17, 2004 and May 6, 2004, the Board's agent left several messages for Blue Ridge at (804) 997-6750. The recording at (804) 997-6750 identified the telephone number as Robert Heath of Blue Ridge Solutions. (Exh. I-8)

A search of directory assistance provided no telephone number for Blue Ridge Solutions, Mary Wells, or Robert Heath in the Dillwyn or surrounding areas. (Exh. I-8)

As of July 12, 2004, Blue Ridge failed to respond to the investigator.

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

Re: James F. Booker, t/a Booker Construction

File Number: 2004-00837
License Number: 2705040250

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to James F. Booker ("Booker"), t/a Booker Construction to the address of record. The Notice included the Informal Fact-Finding Conference Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On November 3, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Booker, through his attorney. The certified mail was signed for and received.

On January 4, 2005, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: James Booker, Respondent; Beverly Leatherbury ("Leatherbury"), Attorney for Respondent; Wayde Fowler ("Fowler"), Complainant; Thomas Pruitt ("Pruitt"), Witness; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member.

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 September 1, 2001)

In June 2002, Wayde and Penny Fowler ("the Fowlers") entered into a written contract with Booker to construct and addition and perform additional renovations at the subject property. The contract was signed by the Fowlers, but not by Booker.

During the IFF, Booker admitted he did not provide the Fowlers with a contract signed by both the Fowlers and Booker.

Booker's failure to provide the Fowlers with a fully executed copy of the contract, signed by all parties, prior to beginning work is a violation of Board Regulation 18 VAC 50-22-

260.B.8. Therefore, I recommend a monetary penalty of \$300.00 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)

The contract used by Booker in the transaction failed to contain two of the minimum provisions required by the Board. During the IFF, Booker admitted the contract did not contain the minimum provisions.

Booker's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$300.00 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)

During construction, Thomas C. Pruitt ("Pruitt"), a licensed master electrician, performed the electrical rough-in work at the subject property. Pruitt performed the work as Pruitt Electric. In March 2003 and November 2003, Booker paid Pruitt Electric for the work performed at the subject property. Pruitt obtained his Class C Contractor's license number 2705084340 on April 5, 2004. Pruitt was not a licensed contractor at the time he performed the electrical work.

During the IFF, Booker admitted he hired Pruitt to perform electrical work. Booker stated he had worked with Pruitt for couple of years and did not ask Pruitt whether Pruitt was a licensed contractor before hiring him to perform work at the subject property. Booker's action of contracting with an improperly licensed subcontractor in the delivery of contracting services is a violation of Board Regulation 18 VAC 50-22-260.B.29. Therefore, I recommend a monetary penalty of \$300.00 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: _____
Wyatt Walton
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: April 26, 2004 (revised August 23, 2004)
RE: 2004-00837; James F Booker t/a Booker Construction

BACKGROUND:

On August 15, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Wayde and Penny Fowler ("the Fowlers") regarding James F. Booker ("Booker"), t/a Booker Construction. (Exh. C-1)

On June 18, 2002, the Fowlers entered into a written contract with Booker, in the amount of \$67,950.00, to construct an addition and additional renovations at 17206 Elliott Lane, Onancock, Virginia. The contract was signed by the Fowlers, but not Booker. (Exh. C-2 and R-1)

In November 2002, Booker commenced work. On August 4, 2003, the Fowlers terminated the contract because of "poor quality of workmanship and other unacceptable circumstances." (Exh. C-1)

1. Violation of Code of Virginia or Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260.B.8

FACTS:

Bush failed to provide the Fowlers with a fully executed copy of the contract, signed by all parties, prior to commencement of work.

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

18 VAC 50-22-260.B.9

FACTS:

The contract used by Booker in the transaction failed to contain subsections: (a) when work is to begin and the estimated completion date and (h) contractor's license expiration date, and specialty services. (Exh. C-2)

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

18 VAC 50-22-260.B.29

FACTS:

On July 7, 1995, Thomas C. Pruitt Jr. was issued master electrician tradesman's license number 2710018071. (Exh. I-5)

Thomas C. Pruitt Jr., t/a Pruitt Electric, performed the electrical rough-in at the subject property. (Exh. I-4)

On March 12, 2003, Middle Department Inspection Agency ("MDIA") inspected the electrical work at the subject property. The inspection report indicated Pruitt Electric, license number 2710018071, as the applicant. (Exh. W-3)

On March 17, 2003, Booker paid Pruitt Electric \$1,337.50. (Exh. W-2)

On July 5, 2003, Pruitt Electric sent Booker an invoice, in the amount of \$1,462.50, for work performed at the subject property. (Exh. W-1)

On November 10, 2003, Booker paid Pruitt Electric \$1,337.50. (Exh. W-2)

On April 5, 2004, Thomas C. Pruitt Jr., t/a Pruitt Electric, was issued Class C Contractor's license number 2705084340. (Exh. I-5)

Booker contracted with an improperly licensed subcontractor in the delivery of contracting services.

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

Re: James F. Booker, t/a Booker Construction

File Number: 2004-00716
License Number: 2705040250

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to James F. Booker ("Booker"), t/a Booker 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 November 3, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Booker to the address of record. The certified mail was signed and received.

On January 4, 2005, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: James Booker, Respondent; Beverly Leatherbury ("Leatherbury"), Attorney for Respondent; John and Christine Castagna ("the Castagnas"), Complainants; David Fluhart ("Fluhart"), Thomas Pruitt ("Thomas Pruitt"), Brian Johnson ("Johnson"), David Drummond ("Drummond"), and Daniel Ewing ("Ewing"), Witnesses; Jennifer Kazzie, Staff Member; and Wyatt Walton, 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)

The contract used in the transaction failed to contain two of the provisions required by the Board. During the IFF, Booker admitted the contract did not contain the minimum provisions.

Booker's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$300.00 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)

In March 2002, the Castagnas entered into a written contract with Booker to construct a new residence at the subject property. The contract was signed by the Castagnas and Booker, but Booker failed to provide the Castagnas with a fully executed copy of the contract prior to beginning work.

During the IFF, Booker admitted he did not provide the Castagnas with a contract after it was signed by both parties. Booker's failure to provide a fully executed contract to the Castagnas is a violation of Board Regulation 18 VAC 50-22-260.B.10. Therefore, I recommend a monetary penalty of \$300.00 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)

In September 2002, Booker commenced work. During construction, Booker did not construct a half bath and entry garage door, move the window in the master bathroom, and extend the deck.

In February 2003, the Castagnas sent Booker a fax regarding changes to the contract. Booker provided the Castagnas with a change order for the requested modifications; however the change order was not signed by either party.

In a response to the Board's agent, Booker stated the half bath was intentionally not included when building the foundation, a change with which the Castagnas agreed. Booker stated the Castagnas later requested Booker not construct the half bath, for budgetary reasons, but subsequently changed their minds. Booker stated he constructed the half bath. Regarding the garage entry door, Booker stated that at the onset of framing the entry door was left out. Booker told John Castagna about the error, and both agreed to place an electrical service in the opening, and offset the cost of the door against the cost of extra windows. Regarding the window in the master bathroom, Booker stated the Castagnas decided to install an operable window next to the toilet, rather than a fixed window. Booker further stated this change came after all of the siding was installed.

Booker stated he attempted to install the window without removing the siding, but it looked poor and Booker repaired the siding and continued work on the remainder of the work.

During the IFF, Booker stated several modifications to the plans were made and admitted he did not use written change orders for the modifications. Booker's failure to obtain written change orders, signed by all parties, for changes to the scope of work is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$300.00 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 construction, Thomas C. Pruitt, Jr. ("Pruitt"), a licensed master electrician, performed work at the subject property. Pruitt performed the work as Pruitt Electric. In May 2003, Pruitt Electric sent Booker an invoice for work to be performed at the subject property. Booker paid Pruitt Electric towards the invoice. In September, October, and December 2003, Castagna paid Pruitt Electric for work performed at the subject property. Pruitt obtained his Class C Contractor's license number 2705084340 on April 5, 2004. Pruitt was not a licensed contractor at the time he performed the electrical work.

During the IFF, Booker admitted he hired Pruitt to perform electrical work. Booker stated he had worked with Pruitt for couple of years and did not ask Pruitt whether Pruitt was a licensed contractor before hiring him to perform work at the subject property. Booker's action of contracting with an improperly licensed subcontractor is a violation of Board Regulation 18 VAC 50-22-260.B.29. Therefore, I recommend a monetary penalty of \$300.00 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 5: Board Regulation (Effective September 1, 2001)

During construction, Booker constructed the main interior support wall 2' off, which made the great room and kitchen larger, and the dining room, foyer, and bedroom shorter. The support wall was constructed 2' forward, which caused the interior steps to come too close to the door. As a result, Booker installed a smaller door than as specified in the plans, and as required by the building code. The Castagnas hired an inspector to inspect the subject property, the inspector notified the Castagnas of several incomplete or incorrect items. In August 2003, the Castagnas had the Department of Building,

Planning, and Zoning for Accomack County inspect the subject property to review possible building code violations. David Fluhart ("Fluhart") listed observations regarding the file and site visit, which included several building code violations. In February 2004, the Castagnas notified the Board's agent of several problems with the work Booker performed.

Based on the record, there were several modifications to the plans. Booker feels he constructed the home according to the plans, including the modifications; however, the Castagnas feel the home was improperly constructed because it was not constructed according to the plans. Many of the deviations from the plans were not documented.

While there was significant difference of opinion of whether the work would have been done in a satisfactory manner, the fact that construction was not in accordance with the plans, not complete, and no documentation was provided to justify the changes and incompleteness of the work, I feel Booker was responsible for the quality of the work. The Castagnas provided documentation indicating there was poor and inadequate workmanship.

Booker's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$2,000.00 be imposed.

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

Booker last performed work at the subject property on June 26, 2003. After this date, Booker failed to return within thirty (30) days to perform the contracted work. Booker left numerous items unfinished.

There were opposing and contradictory sides as to whether Booker abandoned the job or whether he was fired. Although testimony was presented that Booker was fired, Booker provided no written documentation as for the reasons and justifications for leaving the job. However, Booker has been in the business for several years and brought subcontractors as witnesses to testify on his behalf.

Booker's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 be imposed.

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

During the IFF, Booker stated he was paid approximately \$91,000.00 of the \$158,300.00 contract price and his expenses totaled over \$120,000.00. Booker also stated the home was seventy (70) percent complete at the time he stopped working on the project.

It is not possible at this time to determine exactly who was ahead from a dollar and cent standpoint at the time the relationship ended. A civil suit is in progress to determine this. Therefore, I recommend Count 7 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.16.

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

In February 2004, the Board's agent contacted Booker regarding a copy of the building plans and the contract. During the conversation, Booker told the Board's agent that he did not have a copy of either the plans or the contract.

During the IFF, Booker stated he did not keep a copy of the plans because he left the plans on the project at the time the relationship ended. Booker's failure to maintain all documents relating to a contract for a period of five years is a violation of Board Regulation 18 VAC 50-22-260.B.11. Therefore, I recommend a monetary penalty of \$100.00 be imposed.

Count 9: Board Regulation (Effective January 1, 2003)

In August 2003 and February 2004, the Board's agent made written requests to Booker, requesting a written response and supporting documents the complaint filed with the Board. The February 2004 request specified that Booker provide the Board's agent with a copy of the plans and drawings, as well as change order or contract addenda. The Board's agent also made a verbal request to Booker to send copies of the plans and change orders. Booker agreed to the request. Booker sent the Board's agent the requested information, except the plans or the contract. The Board's agent contacted Booker regarding the missing documents. Booker told the Board's agent he did not have a copy of the plans or the contract.

During the IFF, Booker stated he did not keep a copy of the plans because he left the plans on the project at the time the relationship ended. Therefore, Booker did not have the documents and was not able to produce the plans requested by the investigator. Booker's failure to produce documents which he was required to maintain to the Board's agent is a violation of Board Regulation 18 VAC 50-22-260.B.12. Therefore, I recommend a monetary penalty of \$100.00 be imposed.

By: _____
Wyatt Walton
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 13, 2004 (revised August 23, 2004)

FILE NUMBER: 2004-00716
RESPONDENT: James F. Booker, t/a Booker Construction
LICENSE NUMBER: 2705040250
EXPIRATION: July 31, 2005

SUBMITTED BY: Robert Hansel
APPROVED BY: David Dorner

COMMENTS:

Investigator Hansel made a site visit on January 14, 2004. Regulant James Booker was cooperative throughout the investigation.

James F. Booker, t/a Booker Construction ("Booker") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705040250).

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 August 7, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from John and Christine Castagna ("the Castagnas") regarding James F. Booker ("Booker"), t/a Booker Construction. (Exh. C-1)

On March 23, 2002, the Castagnas entered into a written contract with Booker, in the amount of \$158,300.00, to construct a new residence at 29275 Harborton Road, Pungoteague, Virginia. (NOTE: The contract submitted by the Castagnas is not signed but the parties agree the contract was signed.) (Exh. C-1, C-2, and R-1)

On August 1, 2002, Booker obtained builder permit number B2002-0648 for the construction of the home at the subject property. (Exh. W-1)

On September 6, 2002, Booker commenced work. (Exh. C-1 and I-8)

On November 16, 2002, John Castagna and Booker entered into a written change order, in the amount of \$11,500.00, for modifications to cost and the scope of the work contracted for. (Exh. C-6)

1. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

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

- a. When work is to begin and the estimated completion date;
- h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The contract used by Booker in the transaction failed to contain: (a) when work is to begin and the estimated completion date and (h) contractor's license expiration date, and 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:

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

FACTS:

Booker failed to provide the Castagnas with a fully executed copy of the contract prior to commencement of work.

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:

During the construction, Booker did not construct a half bath and entry garage door, move the window in the master bath, and extend the deck 8'. (Exh. C-1)

On February 3, 2003, the Castagnas sent Booker a fax regarding modifications to the contract. (Exh. C-4 and R-5)

On February 3, 2003, Booker provided the Castagnas with a written change order for the modifications requested; however, the written change order was not signed by either Booker or the Castagnas. (Exh. R-6)

In a written response dated August 26, 2003, Booker stated "The ½ bath next to the master bedroom was intentionally not included when we built the foundation." Booker stated he "proposed that we create an 'L' shape configuration that wrapped the corner of the kitchen" instead of the ½ bath protruding into the garage. Booker stated the Castagnas agreed but later requested Booker omit the ½ bath because of concerns with the budget. Booker stated the Castagnas later requested Booker to build the ½ bath and Booker built the bathroom in the corner of the garage in a cantilevered structure with the intent of blocking up the underside on top of the concrete garage slab. (Exh. R-1)

Booker also stated he realized at the onset of framing that the masonry had left out the garage entry door. When Booker told John Castagna about the error, Booker and John Castagna agreed to place the electrical service in the opening and use the cost of the door to offset the cost of extra windows. (Exh. R-1)

Booker further stated the Castagnas "decided to do away with the fixed window opting to install an operable window next to the toilet in the master bathroom." Booker stated this change was after all the siding was installed and the change required removing the siding. Booker stated he tried to install the window without removing the siding, but it looked poor and Booker repaired the siding and continued work on the remainder of the exterior and interior work. (Exh. R-1)

Booker failed to use written change orders, signed by all parties, for modifications to the scope of the work to be performed.

4. 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 July 7, 1995, Thomas C. Pruitt Jr. was issued master electrician tradesman's license number 2710018071. (Exh. I-15)

Thomas C. Pruitt Jr., t/a Pruitt Electric, performed the electrical rough-in at the subject property. (Exh. I-13)

On May 7, 2003, Pruitt Electric sent Booker an invoice, in the amount of \$6,900.00, for electrical work to be performed at the subject property. (Exh. R-7) On May 19, 2003, Booker paid Pruitt Electric \$3,450.00. (Exh. R-7 and R-8)

On September 9, 2003, Castagna paid Pruitt Electric \$500.00. On October 6, 2003, Castagna paid Pruitt Electric \$1,000.00. On December 3, 2003, Castagna paid Pruitt Electric \$327.00. (Exh. I-13)

On April 5, 2004, Thomas C. Pruitt Jr., t/a Pruitt Electric, was issued Class C Contractor's license number 2705084340. (Exh. I-15)

Booker contracted with an improperly licensed subcontractor in the delivery of contracting services.

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:

During the construction, Booker constructed the main interior support wall 2' off, which caused the great room and kitchen to be 2' larger and the dining room, foyer, and bedroom to be 2' shorter. The support wall was constructed 2' forward, which caused the interior steps to upstairs to come too close to the front door. (Exh. C-1 and C-7) As a result, Booker installed a 34" door instead of a 36" door, as specified in the plans and required by Section 311.1 of CABO. (Exh. C-1, C-7, and W-2)

At the request of the Castagnas, Fast Track Commercial ("Fast Track") inspected the subject property. In a letter dated September 23, 2003, Fast Track noted several incomplete and/or incorrect items. (Exh. C-12)

On August 29, 2003, at the request of the Castagnas, the County of Accomack Department of Building, Planning and Zoning inspected the single family dwelling under construction at the subject property to review possible building code violations. In a letter dated September 26, 2003, David Fluhart ("Fluhart"), Director, listed observations regarding the file and site visit of the subject property, which include several building code violations. (Exh. W-2)

On February 28, 2004, the Castagnas noted the following problems with the work performed by Booker:

- Front door was not installed to plans or code
- No piers installed under the back deck
- 3 ½ inches out of square
- front door ordered incorrectly to be a right opening swing was installed to swing on the left side, which voided the warranty
- shower/tub adjoining bedroom #2 was cracked during installation
- Ten piers not installed per plans
- One installed pier is constructed of wood vice the required 16" x 16" MAS pier
- Approximately 16 of the first floor door casings are too wide and the doors do not fit properly into their cases and leave an approximately 1 to 1 ½ inch gap in each door in relation to the casing, which results in none of the doors properly latching
- Grade surrounding the house slopes toward the house. (Exh. I-6)

6. 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 last day Booker performed work at the subject property was June 26, 2003. (Exh. I-8)

After June 26, 2003, Booker failed to return within 30 days to perform the work contracted for, including but not limited to:

- Install two sets of steps into the house
- purchase and install vinyl rails at the front porch and back deck

- purchase and install front vinyl shutters
- purchase and install a garage door
- install garage door framing
- install ridge vents
- install approximately 40 sq. feet of roofing material at the East and West valley at the back of house and kitchen area
- install screens on all windows
- install bridging between floor joists
- install seven additional piers under the house and five piers under the deck
- install hurricane straps from piers to beams on columns
- install insulation under house
- install missing insulation in attic
- complete installation of master bath rough-in and installation of faucets
- purchase and install shower head, tub, and fixtures for bath between bedroom #2 and bedroom/study
- complete rough-in of kitchen
- complete installation of fixtures and installation of dishwasher
- install water heater
- install generator sub-panel
- complete installation of ceiling fan fixtures, recess lighting, receptacles and wall switches, garbage disposal wiring, flood lights, recessed lighting fixtures at front porch, 2 carriage lights each at back deck and exterior garage door
- trim windows throughout
- hang doors throughout
- install baseboards throughout
- paint interior final coat throughout
- install shelves in bedroom #2 closets and over washer/dryer
- install range hood
- complete framing the opening from the great room to the kitchen
- install doors to the dining room, linen closet, bath, bedroom, and 3 doors in the attic
- install pipe for the flue of the ventless fireplace
- install the framed opening to the foyer
- complete installation of the stairs
- install stair hand rail
- install floor covering throughout, and purchase and install ceiling fans. (Exh. I-8)

7. Board Regulation (Effective September 1, 2001)

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 December 4, 2002, Castagna paid Booker \$15,000.00 by check. On January 24, 2003, Castagna paid Booker \$22,000.00 by check. On February 26, 2003, Castagna paid Booker \$10,000.00 by check. On April 4, 2003, Castagna paid Booker \$25,000.00 by check. On May 2, 2003, Castagna paid Booker \$9,500.00 by check. On May 14, 2003, Castagna paid Booker \$9,500.00 by check. On June 20, 2003, Castagna paid Booker 3,400.00 by check. On August 25, 2003, Castagna paid Booker \$3,100.00 by check. On August 29, 2003, Castagna paid Booker \$12,830.75 by three checks. (Exh. I-W-1)

In addition, the Castagnas purchased fixtures and materials. (Exh. C-9)

8. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.

FACTS:

On February 27, 2004, the Board's agent contacted Booker regarding a copy of the plans. During the conversation, Booker told the Board's agent that he did not have a copy of the contract and stated "They have mysteriously disappeared. They may have been stolen." (Exh. I-7)

Booker failed to maintain all documents relating to a contract for a period of five years.

9. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

FACTS:

On August 18, 2003, Investigator Paul Whitlow, the Board's agent, made a written request to Booker at the address of record of 16198 Warehouse Road, Melfa, Virginia 23410, requesting a written response and supporting documents regarding the complaint filed with the Board. The Board's agent requested the response be received by September 3, 2003. (Exh. I-1)

On February 9, 2004, Investigator Robert Hansel, the Board's agent, made a second written request to Booker at the address of record of 16198 Warehouse Road, Melfa, Virginia 23410, requesting Booker provide a copy of the plans and drawings and all change orders, addendums, etc. The Board's agent requested the documents be received by February 24, 2004. (Exh. I-2)

On February 10, 2004, during a telephone conversation, the Board's agent made a verbal request to Booker to send copies of the plans and change orders. Booker agreed to send the Board's agent copies of the plans and change orders. (Exh. I-6)

In a letter dated February 20, 2004, Booker stated "Enclosed is the information you requested. As to the drawings for the house, they were on the job site at the time Mr. Castagna abandoned the contract." (Exh. R-2)

On February 24, 2004, the Board's agent received a package from Booker; however it did not contain a set of plans or the contract. (Exh. I-7)

On February 27, 2004, the Board's agent contacted Booker and asked about a copy of the plans. Booker told the Board's agent that he did not have a set of plans because when the Castagnas fired him, he did not go back to get his set of plans. Booker also told the Board's agent that he did not have a copy of the contract and stated "They have mysteriously disappeared. They may have been stolen." (Exh. I-7)

Booker failed to produce documents, which Booker was required to maintain, to the Board's agent.

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

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

File Number: 2004-03329
License Number: 2705079912

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On September 29, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Wilmer N. Ricks ("Ricks"), t/a W N Ricks to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

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

The following individuals participated at the IFF: Roslyn Ridley ("Ridley"), Complainant; Joe Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Ricks nor anyone on his behalf appeared at the IFF.

On November 17, 2004, a letter to reconvene the IFF was mailed, via certified mail, to Ricks to the address of record. The certified mail was signed and received.

On January 4, 2005, the IFF was reconvened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Wilmer Ricks, Respondent; Jennifer Kazzie, Staff Member; and Wyatt Walton, 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)

In October 2003, in the Richmond City General District Court, Ridley was awarded a \$4,047.00 judgment against Ricks. During the IFF, Ridley stated Ricks has not satisfied the judgment.

During the IFF, Ricks stated Ridley obtained the judgment by presenting a fraudulent contract, which he claims he did not sign. Ricks also stated he left the courtroom prior to the case being heard and when he returned to the courtroom, the case was in progress and about to conclude.

The judgment remains outstanding and Ricks has not attempted to contest the judgment through the courts. Ricks'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 \$1,500.00 be imposed.

By: _____
Wyatt Walton
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 22, 2004 (revised September 20, 2004)

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

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

COMMENTS:

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

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

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

BACKGROUND:

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

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

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

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

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

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

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

Re: Darren L. Frost & David T. Steckley, t/a Frost Foundations

File Number: 2004-01523
License Number: 2705045600

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 17, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Darren L. Frost & David T. Steckley, t/a Frost Foundations ("Frost Foundations") 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 January 4, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: John Acors ("Acors"), Complainant; Terrance Fellingner ("Fellingner"), Witness; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member. Neither Darren Frost nor anyone on behalf of Frost Foundations appeared at the IFF.

RECOMMENDATION

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

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

John Acors ("Acors") received an estimate from Frost Foundations to construct a concrete foundation, walls, front porch, garage slab, and steps at the subject property. Acors did not sign the estimate; however, Frost Foundations performed the work and was paid by Acors for the work.

During the IFF, Acors stated he received a written estimate, but he verbally accepted the contract.

Frost Foundations's failure to fully execute the contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. 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 this order.

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

The contract used in the transaction failed to contain six of the provisions required by the Board's regulations.

Frost Foundations's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. 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 this order.

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

In October 2002, Frost Foundations commenced work at the subject property. During that month, the County of Spotsylvania approved the footing and wall inspections. After Frost Foundations performed the work, Acors noticed cracks in the foundation. On August 29, 2003, Terrance Fellingner ("Fellingner"), Spotsylvania County Code Enforcement Officer, issued a Notice to Comply to Frost Foundations for the foundation work. Fellingner directed Frost Foundations to repair the foundation and call for an inspection within seven (7) days. On November 24, 2003, Fellingner issued a Notice of Violation to Frost Foundations for failure to remedy the defective work. Frost Foundations failed to abate the building code violations.

During the IFF, Fellingner stated Darren Frost was uncooperative and failed to abate the building code violations. Acors stated he abated the building code violations himself.

Frost Foundations's failure to abate building code violations is a violation of Board Regulation 18 VAC 50-22-260.B.25. Therefore, I recommend a monetary penalty of \$750.00 be imposed.

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

In February 2004, the Board's agent made a written request to Frost Foundations requesting a written response and supporting documents to the complaint filed with the Board. In April 2004, the Board's agent made a second request. Frost Foundations failed to produce the requested documents.

Frost Foundations's failure to produce documents requested by the Board's agent is a violation of Board Regulation 18 VAC 50-22-260.B.12. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

By: _____

Wyatt Walton
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 9, 2004 (revised September 6, 2004)

FILE NUMBER: 2004-01523
RESPONDENT: Darren L. Frost & David Steckley, t/a Frost Foundations
LICENSE NUMBER: 2705045600
EXPIRATION: July 31, 2006

SUBMITTED BY: Carolyn D. Wright
APPROVED BY:

COMMENTS:

None.

Darren L. Frost & David Steckley, t/a Frost Foundations ("Frost Foundations"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705045600).

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 6, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from John W. Acors ("Acors") regarding Frost Foundations. (Exh. C-1)

Acors received a written estimate from Frost Foundations to construct a concrete foundation and walls, front porch, garage slab, and steps at 7730 Joes Lane, Spotsylvania, Virginia. (Exh. C-2)

In October 2002, Frost Foundations commenced work. (Exh. I-2)

On October 15, 2002, the County of Spotsylvania approved the footing inspection. On October 17, 2002, the County of Spotsylvania approved the wall inspection. (Exh. C-5)
On October 17, 2002, Frost Foundations sent Acors an invoice, in the amount of \$15,262.00, for work performed at the subject property. (Exh. C-2)

After Frost Foundations performed the work, Acors noticed cracks began to appear in the foundation. (Exh. C-3 and I-2)

On December 21, 2002, Acors paid Frost Foundations \$15,000.00 by check. On January 3, 2003, Acors paid Frost Foundations \$2,500.00 by check. (Exh. C-3)

On January 8, 2003, Frost Foundations sent Acors an invoice, in the amount of \$4,152.00, for work performed at the subject property. (Exh. C-2)

1. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

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:

Acors did not sign the written estimate. (Exh. C-2)

Frost Foundations failed to obtain Acors' signature on a written contract prior to the commencement of work or acceptance of payments.

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 license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contracts used by Frost Foundations failed to contain subsections: (a), (d), (e), (f), (h), and (i). (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:

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

FACTS:

On August 29, 2003, Terrence L. Fellingner ("Fellinger"), Spotsylvania County Code Enforcement Officer, issued a Notice to Comply to Frost Foundations for the foundation being incapable of supporting loads imposed, in violation of CABO Section 401.2. Fellingner directed Frost Foundations to repair the foundation per the engineer's design and call for an inspection within seven (7) days. (Exh. C-1 and W-1)

On November 24, 2003, Fellingner issued a Notice of Violation to Frost Foundations for failure to remedy defective work as directed by the Building Official in a reasonable time, in violation of Section 121.2 of the Virginia Uniform Statewide Building Code, and for foundation incapable of supporting loads imposed, in violation of CABO Section 401.2. (Exh. W-1)

As of August 6, 2004, Frost Foundations failed to abate the building code violations. (Exh. I-2)

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

FACTS:

On February 5, 2004, Investigator Carolyn D. Wright, the Board's agent, made a written request to Frost Foundations at the address of record of 75-C Cool Spring Road, Fredericksburg, Virginia 22405, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by February 23, 2004. (Exh. I-1)

On April 5, 2004, the Board's agent made a second written request to Frost Foundations, via facsimile, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by April 19, 2004. (Exh. I-1)

As of August 9, 2004, Frost Foundations failed to produce the requested documents.

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

Re: Donald W. Cotterell Builders Inc.

File Number: 2004-02667

License Number: 2705037488

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 17, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Donald W. Cotterell Builders Inc. ("Cotterell") 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 January 4, 2005, 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 Wyatt Walton, Presiding Board Member. Neither Donald Cotterell, Responsible Management for Cotterell, nor anyone on behalf of Cotterell 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)

In December 2002, Soloman Irving ("Irving") purchased a new constructed home from Cotterell at the subject property. Over several months, Irving attempted to contact Cotterell regarding repairs. In November 2003, Cotterell told Irving the subcontractors would be contacted regarding the repairs. In December 2003, Irving later sent Cotterell letters regarding the necessary repairs. Cotterell then promised Irving he would contact the subcontractors and have the repairs done. Cotterell failed to honor the warranty and make the repairs.

Cotterell's failure to honor a warranty is a violation of Board Regulation 18 VAC 50-22-260.B.30. 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.

By: _____
Wyatt Walton
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 2, 2004 (revised September 10, 2004)

FILE NUMBER: 2004-02667
RESPONDENT: Donald W. Cotterell Builders, Inc.
LICENSE NUMBER: 2705037488
EXPIRATION: February 28, 2005

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

Donald W. Cotterell Builders, Inc. ("Cotterell") was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705037488).

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 5, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Soloman Irving ("Irving") regarding Cotterell. (Exh. C-1)

On December 18, 2002, Irving purchased a newly constructed home from Cotterell, in the amount of \$287,050.00, at 1008 Long Beeches Avenue, Chesapeake, Virginia. (Exh. C-1 and C-2)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

Over several months, Irving attempted to contact Cotterell regarding repairs. (Exh. C-1)

In November 2003, Cotterell told Irving the subcontractors would be contacted regarding the repairs. (Exh. C-1)

On December 10, 2003, Irving sent Cotterell a letter, via regular mail and certified mail, regarding the necessary repairs. On January 3, 2004, the certified letter was delivered. (Exh. C-3)

On December 17, 2003, Irving sent Cotterell a second letter regarding the fireplace. (Exh. C-4)

On December 22, 2003, Irving called Cotterell. During the conversation, Cotterell promised Irving he would contact the subcontractors and have the repairs done. (Exh. C-1)

As of December 30, 2003, Cotterell failed to honor the warranty and make repairs to the new construction home.

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT**

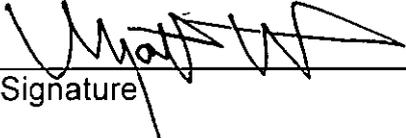
**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

1. Name: Wyatt Walton
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on January 4, 2005
5. Nature of Personal Interest Affected by Transaction: NONE

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.


Signature

01-04-05
Date