

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
January 12, 2005 (10:30 a.m.)**

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

Mark Franko, presiding officer, presided. No Board members were present.

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

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

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

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

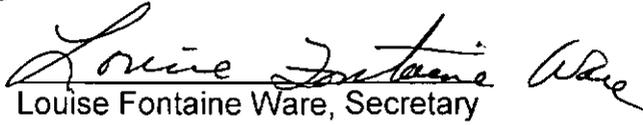
Participants

- | | |
|---|---|
| 1. William Lloyd Cross
File Number 2004-02673 (Disc) | Cross – R |
| 2. Moore Paving Inc.
File Number 2004-00045 (Disc) | Walter David Moore – R
Lawrence Jeffries – W |
| 3. George O. Tyner
t/a Tyner Construction
File Number 2004-04140 (Disc) | Tyner – R
Lynn Nelson – C |
| 4. Wiltshire Incorporated
t/a The Greener Side
File Number 2004-02655 (Disc) | Jonathan Stiehm – C
Kevin Stiehm – W |
| 5. Charles B. McCauley
t/a Mechanical Advantage Co.
File Number 2003-01530 (Disc) | Rand Gaber – C |

The meeting adjourned at 2:55 p.m.

BOARD FOR CONTRACTORS


Mark D. Kniser, Chairman


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

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

Re: William Lloyd Cross

File Number: 2004-02673
License Number: 2710015635

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 1, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to William Lloyd Cross ("Cross") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 12, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: William Cross, Respondent; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer.

RECOMMENDATION

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

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

In December 2003, Cross filed a complaint against R. Triplett ("Triplett"), an unlicensed contractor, for whom Cross was working with. In his complaint, Cross indicated he was going to obtain a permit for Triplett's project because he knew Triplett did not have a license.

During the IFF, Cross stated he was friends with Rod Triplett for twenty years. Cross also stated for a couple of years he contracted jobs together with Triplett, Cross would pull the permit, and Cross and Triplett would perform the work together. Cross also stated he was aware Triplett did not have a license for years because Triplett had lost the license.

Cross's action of aiding an unlicensed contractor is a violation of Board \$1,000.00 and remedial education be imposed.

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

By: _____

Mark Franko
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Contractors - Tradesman
DATE: August 11, 2004 (revised August 20, 2004 and November
5, 2004)

FILE NUMBER: 2004-02673
RESPONDENT: William L. Cross
LICENSE NUMBER: 2710015635
EXPIRATION: February 28, 2005

SUBMITTED BY: Investigator Noelle B. Phillips

COMMENTS:

Based on the review of this complaint, one unlicensed case file was opened with Cross as the complainant (File No. 2004-02640) and this disciplinary case file was opened with Cross as the respondent.

William Lloyd Cross became a licensed Class B contractor (2705022288) in 1994, obtaining his Master Gas Fitter and HVAC certifications (2710015635) in 1995.

William Lloyd Cross ("Cross") was at all times material to this matter a licensed Master Tradesman in Virginia (No. 2710015635).

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

BACKGROUND:

On December 23, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Cross regarding R. Triplett.

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of § 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual

FACTS:

On the complaint dated December 23, 2003, Cross stated "I was going to get the permit for the job because Mr. Triplett doesn't have a contractor's license." Cross further stated "I know he has not had a contractor's license for some time now." (Exh. C-1)

In a written response dated February 3, 2004, Cross stated "I have to acknowledge it was a mistake to do any work, even as a subcontractor, when I knew that the proper permit had not been obtained by the contractor." Cross further stated "I substantially completed the job in mid-December, 2003 . . ." (Exh. R-1)

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

Re: Moore Paving Inc, t/a Moore Paving Inc
Midlothian, VA 23113

File Number 2004-00045
License Number 2705062750

CONSENT ORDER

Respondent Moore Paving Inc, t/a Moore Paving Inc ("Moore Paving Inc") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's 2003 Regulations provides:

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

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

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

On August 18, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Moore Paving Inc. ("Moore Paving") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On September 28, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Clytaemnastra Jeffries ("Jeffries") Complainant; Lawrence Jeffries, Witness; Joe Haughwout, Staff Member; and Charles Falwell, Presiding Board Member. Neither Walter Moore, Responsible Management for Moore Paving, nor anyone on its behalf appeared at the IFF.

On November 5, 2004, a letter to reconvene the IFF was mailed, via certified mail, to Moore Paving to the address of record. The certified mail was signed for and received.

On December 10, 2004, a letter to reschedule the reconvening of the IFF was mailed, via certified mail, to Moore Paving to the address of record. The certified mail was signed for and received.

On January 12, 2005, the IFF reconvened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Walter Moore ("Moore"), Responsible Management for Moore Paving, Respondent; Lawrence Jeffries, Witness; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Board Officer.

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

During the IFF, Moore stated he was convicted in early 2004 and incarcerated. Moore also stated the conviction was retried on November 30, 2004, and he was subsequently found not guilty.

Moore acknowledged the corporation was terminated. Moore stated he was incarcerated and could not apply for a new license during that time.

Moore stated the contract has not been revised. Moore also stated Moore Paving has been not operating because he was trying to get the criminal matter cleared up.

Moore stated the driveway had been there for several years and the base was sufficient. Moore stated the basketball area was too muddy for him to pave and he would return after the area dried out. Moore also stated he was not paid by the Jeffries for the basketball area. Moore further stated he did not avoid the Jeffries, but his phone was disconnected and his address did change because of his incarceration.

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

By signing this Consent Order, Moore Paving Inc acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Moore Paving Inc consents to the following term(s):

	Count 1	18 VAC 50-22-210	\$500.00
	Count 2	18 VAC 50-22-260.B.9	\$250.00
	Count 3	18 VAC 50-22-260.B.15	\$1,000.00

	TOTAL		\$1,750.00

The Board agrees to waive the imposition of the \$500.00 monetary penalty for Count 1 provided Moore Paving Inc either applies for a new license or reinstate its corporation and provide the Board with documentation of reinstatement of the corporation within thirty (30) days of the effective date of this order. If Moore Paving Inc fails to apply for a new license or reinstate its corporation and provide documentation, then the monetary penalty will be automatically imposed.

The Board agrees to waive the imposition of the \$1,000.00 monetary penalty for Count 3 provided Moore Paving Inc seals the driveway at the subject property and provides the Board with proof of completion within ninety (90) days of the effective date of this order. If Moore Paving Inc fails to seal the driveway and provide proof of completion, then the monetary penalty will be automatically imposed.

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

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

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

SEEN AND AGREED TO:

Moore Paving Inc
t/a Moore Paving Inc

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2005.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

EEO

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: July 12, 2004 (revised August 13, 2004)

FILE NUMBER: 2004-00045
RESPONDENT: Moore Paving Inc.
LICENSE NUMBER: 2705062750
EXPIRATION: 9/30/2005

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

COMMENTS:

The case was originally investigated by Investigator Becky C. Angelilli and later reassigned to Investigator Renee H. Popielarz.

Moore Paving Inc. ("Moore") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705062750).

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

BACKGROUND:

On June 19, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Clytaemnastra Jeffries ("Jeffries") regarding Moore. (Exh. C-1)

On March 9, 2003, Jeffries entered into a written contract with Moore, in the amount of \$2,750.00, to pave an asphalt driveway and install an asphalt basketball play area at 11900 Beechwood Forest Drive, Chesterfield, Virginia. (Exh. C-2)

1. Board Regulation (Effective January 1, 2003)

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

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

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

FACTS:

On April 11, 2001, Moore Paving Inc. became incorporated in Virginia. (Exh. I-1)

On September 27, 2001, Moore was issued Class B Contractor's license number 2705062750 as a corporation. (Exh. I-2)

On September 2, 2003, Moore Paving Inc. was terminated by the State Corporation Commission. (Exh. I-1)

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

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;

- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- f. Disclosure of the cancellation rights of the parties;
- h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
- i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Moore in the transaction failed to contain: (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:

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

FACTS:

On March 9, 2003, Moore commenced work. (Exh. C-1) The last day Moore was at the subject property was March 2003. (Exh. I-3 and I-4) Jeffries last spoke to Moore in early June 2003. (Exh. I-5)

On July 20, 2003, another contractor finished the basketball court at the subject property. (Exh. I-3)

As of September 15, 2003, Moore has not contacted Jeffries regarding completion of the work. (Exh. I-3)

As of October 17, 2003, Moore failed to seal the driveway. (Exh. I-4)

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

Re: George O. Tyner, t/a Tyner Construction

File Number: 2004-04140
License Number: 2705009839

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 1, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to George O. Tyner ("Tyner"), t/a Tyner 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 for and received.

On January 12, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: George Tyner, Respondent; Lynn Nelson ("Nelson"), Complainant; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer.

RECOMMENDATION

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

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

In March 1992, the Board for Contractors issued Class B contractor's license number 2705009839 to Tyner as a sole proprietorship. In July 2000, Tyner's business incorporated as Tyner Construction Inc. Tyner did not apply for a license as a corporation.

During the IFF, Tyner stated he was not aware the Board's regulations required him obtain a new license to operate as a corporation.

Tyner's failure to apply for a new license within thirty (30) days of a change of business entity is a violation of Board Regulation 18 VAC 50-22-210.3. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

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

Tyner's licensed trade name is Tyner Construction, but the name on the contract reflects Tyner Construction Inc.

During the IFF, Tyner stated he hired an attorney to incorporate the company and he assumed the attorney took care of everything.

Tyner's failure to operate in the name in which the license is issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

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

In February 2004, Nelson received a contract to remodel the master bathroom, and perform other renovations, at the subject property. The proposal was not signed by either Nelson or Tyner. However, Nelson paid Tyner, and Tyner began construction.

During the IFF, Tyner stated the contract was not signed at the time it was presented because modifications were made later. Tyner stated, at the time he received payment, he noted on the contract the money received and signed the document.

During the IFF, Nelson stated she initialed the changes made on the contract.

There are no signatures on the contract on the lines reading "Authorized Signature" or "Acceptance Signature."

Tyner's failure to fully execute the contract prior to beginning work or accepting payments is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$400.00 be imposed.

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

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

During the IFF, Tyner stated after he found out the provisions were missing, he revised the contract. Tyner provided a revised contract.

Tyner'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 \$100.00 be imposed.

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

In February 2004, Tyner commenced work at the subject property. As of May 2004, Tyner had not obtained the required building permit, in violation of the building code.

During the IFF, Tyner admitted he did not obtain a permit as required.

Tyner's failure to obtain a building permit is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$750.00 be imposed.

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

In March 2004, Nelson provided Tyner with a letter regarding the lack of progress on the project, and requested a new schedule for completion of the work. Tyner told Nelson he had been injured from a fall, and did not know when he would be able to continue work. Tyner has not worked at the subject property since March 18, 2004.

During the IFF, Nelson stated Tyner told her on March 19, 2004, that Tyner fell off his ladder and would return after he was better. Nelson also requested Tyner produce documentation of injuries, but Tyner did not produce the documentation.

During the IFF, Tyner stated he was not able to complete the work because he was injured when he fell off a ladder, but he intended to finish the job.

Tyner's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

Nelson paid Tyner a total of \$4,051.19 towards the contract amount of \$5,847.00. After Tyner informed Nelson about his injury, and his uncertainty about returning to work, Nelson requested Tyner return materials and refund most of her money. Nelson later requested Tyner return only \$2,000.00 of what she had paid. Tyner has returned Nelson monies he received for work he did not perform, or performed only in part.

During the IFF, Nelson stated she requested Tyner return \$2,000.00 and materials taken from the property.

During the IFF, Tyner stated he kept the money as money to use towards the work and income.

Tyner's retention of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

In October 2004, in the Virginia Beach General District Court, Nelson obtained a judgment against Tyner, in the amount of \$3,361.07. Tyner has failed to satisfy the judgment.

During the IFF, Nelson stated Tyner's attorney offered to refund \$2,000.00 immediately prior to the civil trial. Nelson also stated she did not accept the refund.

During the IFF, Tyner stated he did not have the money to satisfy the judgment.

Tyner's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____
Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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 27, 2004 (revised November 4, 2004)

FILE NUMBER: 2004-04140
RESPONDENT: George O. Tyner, t/a Tyner Construction
LICENSE NUMBER: 2705009839
EXPIRATION: March 31, 2006

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

George O. Tyner ("Tyner"), t/a Tyner Construction, was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705009839).

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

BACKGROUND:

On April 12, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Lynn Nelson ("Nelson") regarding Tyner. (Exh. C-1)

On February 17, 2004, Nelson received a written proposal and acceptance ("the contract"), in the amount of \$5,847.00, from Tyner Construction Inc. to remodel the master bath and perform other renovations at 1424 Rylands, Virginia Beach, Virginia. The contract indicated "Lic. # 2705 009839." The contract was not signed by either Nelson or Tyner. (Exh. C-2)

On February 17, 2004, Nelson paid Tyner \$2,000.00 by check. (Exh. C-4)

On February 18, 2004, Tyner commenced work. (Exh. C-1 and C-3)

On March 5, 2004, Nelson paid Tyner \$2,051.19 by check. (Exh. C-4)

On March 31, 1992, Tyner was issued Class B contractor's license number 2705009839 as a sole proprietorship. (Exh. I-4)

On July 18, 2000, Tyner Construction Inc. became incorporated in Virginia. (Exh. I-3)

1. Board Regulation (Effective January 1, 2003)

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

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

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

FACTS:

Tyner failed to apply for a new license within 30 days of a change in the business entity.

2. Board Regulation (Effective January 1, 2003)

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

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

FACTS:

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

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

Tyner failed to sign the contract and obtain Nelson's signature prior to commencement of work and acceptance of payments.

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Tyner failed to contain subsections: (a), (d), (e), (h) and (i). (Exh. C-2)

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

As of May 3, 2004, Tyner failed to obtain a required building permit, in violation of Section 111.1 of the Uniform Statewide Building Code, for the work performed at the subject property. (Exh. I-1)

6. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On March 4, 2004, Nelson provided Tyner with a letter regarding the lack of progress and requested Tyner provide a new schedule for completion of the project. (Exh. C-1)

On March 19, 2004, Tyner told Nelson he had fallen from the ladder and was in excruciating pain. Tyner also told Nelson he did not know when he would be able to return to the job to continue. (Exh. C-10)

In an email dated July 15, 2004, Timothy Sceviour ("Sceviour"), attorney representing Tyner, stated "Mr. Tyner was not able to timely complete the job because he fell off a ladder and sustained injuries while on this job." (Exh. R-1)

The last day Tyner performed work at the subject property was March 18, 2004. (Exh. C-1)

7. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In addition to the facts outline in Count 6:

On March 26, 2004, Nelson left a message for Tyner requesting Tyner return materials and refund of most of her money. (Exh. C-1)

On March 30, 2004, Nelson sent Tyner a letter, via certified mail, requesting Tyner refund \$2,000.00 because it appeared Tyner had "no intentions of finishing" the work. (Exh. C-3)

As of April 12, 2004, Tyner failed to refund money received for work not performed or performed only in part. (Exh. C-1)

8. 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 18, 2004, in the Virginia Beach General District Court, Nelson was awarded a \$3,361.07 judgment against Tyner Construction Inc. As of November 4, 2004, Tyner failed to satisfy the judgment. (Exh. I-2)

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

Re: Wiltshire Incorporated, t/a The Greener Side

File Number: 2004-02655
License Number: 2705035759

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 30, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Wiltshire Incorporated ("Wiltshire"), t/a The Greener Side 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 "Attempted, Not Known."

On January 12, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jonathan Stiehm ("Stiehm"); Complainant; Kevin Stiehm, Witness; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Robert Wiltshire, Responsible Management for Wiltshire, nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

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

During the IFF, Stiehm stated he spoke to Doug Lockwood, a consultant for Wiltshire, regarding the landscaping work to be performed at the subject property. Doug Lockwood told Stiehm the work would commence in three weeks after Stiehm paid a 50% deposit. Stiehm stated he paid the deposit and never heard from either Doug Lockwood or anyone from Wiltshire. Stiehm further stated he filed a police report with the James City County and intends to file a civil suit.

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

The contract used in the transaction failed to include four of the provisions required by the Board's regulations. Wiltshire'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 \$500.00 be imposed.

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

In August 2003, Stiehm entered into a contract with Wiltshire to install landscaping at the subject property. Stiehm left several messages for Wiltshire to set up an appointment to begin work, but Wiltshire did not respond. Wiltshire later contacted Stiehm and told him work would begin on September 12, 2003. Wiltshire never commenced work at the subject property.

Wiltshire'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 \$2,500.00 and license revocation be imposed.

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

Stiehm paid Wiltshire \$11,835.00 towards the contract amount of \$23,670.00. Wiltshire never returned any money to Stiehm, and never performed work. Wiltshire's retention of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In January 2004 and February 2004, the Board's agent requested Wiltshire provide a written response and supporting documents to the complaint filed with the Board. The Board's agent made requests to Wiltshire at its address of record, the address on the contract used in the transaction, and to its registered agent's address. Wiltshire failed to respond to the Board's agent.

Wiltshire'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 be imposed.

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

The contract used in the transaction contained an address that the Board's records indicate was changed in December 2000. The United States Postal Service certified Wiltshire was no longer at either the address on the contract or the address of record.

Wiltshire's failure to inform the board, in writing, of a change of address within thirty (30) days of a change is a violation of Board Regulation 18 VAC 50-22-230.B. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

By: _____
Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 16, 2004 (revised October 25, 2004)

FILE NUMBER: 2004-02655
RESPONDENT: Wiltshire Incorporated, t/a The Greener Side
LICENSE NUMBER: 2705035759
EXPIRATION: November 30, 2004

SUBMITTED BY: Shelby Smith-Hill
APPROVED BY: David C. Dorner

COMMENTS:

According to a former employee, Wiltshire went bankrupt in September 2003.

On February 20, 2004, the Board's agent visited 1568 Penniman Road, Williamsburg, Virginia, 539 Second Street, Williamsburg, Virginia, and 107 Greenbrier Court, Williamsburg, Virginia to verify whether Wiltshire was still operating from each location. The Board's agent found the business closed and observed a blocked driveway.

Wiltshire Incorporated ("Wiltshire"), t/a The Greener Side, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705035759).

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

On August 1, 2003, Stiehm entered into a written contract with Wiltshire, in the amount of \$23,670.00, to install landscaping at 104 Boguey Drive, Williamsburg, Virginia. (Exh. 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:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - h. Contractor's address, license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The contract used by Wiltshire in the transaction failed to contain subsections: (a), (d), (e), and (h). (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In August 2003, Stiehm left several messages for Wiltshire to set up an appointment, but Wiltshire did not respond. (Exh. C-1 and I-9)

On September 7, 2003, Wiltshire contacted Stiehm and told him work would begin on September 12, 2003. (Exh. C-1 and I-9)

Between the second week of September 2003 and the middle of October 2003, Stiehm left several messages for Wiltshire, but Wiltshire did not respond. (Exh. C-1 and I-9)

As of February 11, 2004, Wiltshire failed to commence work at the subject property. (Exh. I-9)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In addition to the facts in Count 2:

On August 16, 2003, Stiehm paid Wiltshire \$11,835.00 by check. (Exh. C-3)

As of December 30, 2003, Wiltshire failed to return funds received for work not performed. (Exh. C-1)

4. 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 January 12, 2004, Investigator Shelby Smith-Hill, the Board's agent, made a written request to Robert C. Wiltshire, President of Wiltshire, at 107 Greenbrier Court, Williamsburg, Virginia 23185, and to Wiltshire at the address of record of 1568 Penniman Road, Williamsburg, Virginia 23185, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by January 28, 2004. (Exh. I-1)

On January 20, 2004, the letter sent to Wiltshire was returned by the United States Postal Service ("USPS") and marked "Moved Left No Address – Unable to Forward." (Exh. I-3)

On January 21, 2004, the letter sent to Robert C. Wiltshire was returned by the USPS and marked "Not Deliverable As Addressed – Unable To Forward." The envelope also had a

hand-written note indicating Robert Wiltshire was "not at this address – moved 5 years ago."
(Exh. I-2)

On February 4, 2004, the Board's agent made a written request to Wiltshire at the address on the contract of 539 Second Street, Williamsburg, Virginia 23185, 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 16, 2004. (Exh. I-4)

On February 13, 2004, the Williamsburg Postmaster certified Wiltshire moved and left no forwarding address from 1568 Penniman Road, Williamsburg, Virginia 23185 and 539 Second Street, Williamsburg, Virginia 23185. (Exh. I-6)

On February 17, 2004, the letter sent to 539 Second Street, Williamsburg, Virginia 23185 was returned by the USPS and marked "Moved Left No Address – Unable to Forward."
(Exh. I-5)

On February 19, 2004, the Board's agent made a written request to J. Stephen Roberts ("Roberts"), the registered agent for Wiltshire, at the registered agent's address of 905 Richmond Road, Williamsburg, Virginia 23185, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by March 4, 2004. (Exh. I-7)

As of August 16, 2004, Wiltshire failed to respond to an investigator seeking information in the investigation of a complaint filed with the Board.

5. Board Regulation (Effective January 1, 2003)

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

- B. Any change of address shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of address.

FACTS:

In addition to the facts contained in Count 4:

The contract used by Wiltshire in the transaction indicated the address for Wiltshire was 539 Second Street, Williamsburg, Virginia 23185. (Exh. C-2)

On December 18, 2000, the address of record for Wiltshire was changed from 539 Second Street, Williamsburg, Virginia 23185 to 1568 Penniman Road, Williamsburg, Virginia 23185. As of December 31, 2003, Wiltshire failed to report, in writing, a change of address to the Board within thirty (30) days of the change. (Exh. I-8)

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

Re: Charles B. McCauley, t/a Mechanical Advantage Co.

File Number: 2003-01530
License Number: 2705056125

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 1, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Charles B. McCauley ("McCauley"), t/a Mechanical Advantage Co. to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 12, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Rand Gaber ("Gaber"), Complainant; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Charles McCauley nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

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

In October 2001, McCauley obtained a mechanical permit to install a roof top heat pump at the subject property. McCauley installed the heat pump. In March 2002, Gaber performed a final inspection of the work, and rejected it. Gaber sent the inspection results to McCauley, but McCauley failed to respond. In March 2003, McCauley told the Board's agent he would check on the problem at the subject property, correct it, and get a final inspection. McCauley failed to do so.

During the IFF, Gaber stated he performed an inspection on another unit in March 2002 and was aware of an open permit for the subject property. Gaber stated he pulled the permit information and discovered an inspection was not performed. Gaber inspected the heat pump at the subject property and found several problems with the heat pump installed. Gaber also stated he faxed the results of the inspection to the contractor, attempted to contact the contractor by telephone, and sent a certified letter to the contractor. Gaber did

not receive a response from McCauley. Gaber further stated he was at the property this morning and noticed the building code violations have not been abated.

Gaber described the dangers involved with the building code violations. Gaber stated the improper breaker would cause the unit to burn up instead of shut down. Gaber stated the mechanical code requires a smoke detector on units over 2000 CFM. Gaber stated failure to install a smoke detector would not alert of overheating and would not shut off the unit. Gaber stated the unit also did not have a ground. Gaber confirmed because the violations involved electrical are hazardous in nature.

McCauley's failure to make corrections to the heat pump and obtain an approved final inspection is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

By: _____
Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 21, 2004 (revised May 6, 2004, July 7, 2004, and
November 9, 2004)

FILE NUMBER: 2003-01530
RESPONDENT: Charles B. McCauley, t/a Mechanical Advantage Co.
LICENSE NUMBER: 2705056125
EXPIRATION: June 30, 2006

SUBMITTED BY: Robert Hansel
APPROVED BY: David Dorner

COMMENTS:

None.

Charles B. McCauley ("McCauley"), t/a Mechanical Advantage Co., was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705056125).

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 26, 2002, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Rand R. Gaber ("Gaber"), Building Inspector for the City of Fairfax, regarding McCauley. (Exh. C-1)

On October 25, 2001, McCauley obtained mechanical permit number M-01-041646 to install a 5 ton roof top heat pump at 9650 Main Street, Fairfax, Virginia. (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:

6. Misconduct in the practice of contracting.

FACTS:

On March 14, 2002, Gaber was on the roof at or near the subject property and knew the permit was still open, so he performed a final inspection of the subject property. (Exh. C-1)
Gaber rejected the inspection for the following reasons:

- No equipment ground – cut off of wire going to disconnect NEC 250-50
- RTU on 50 amp breaker – max allowed 25 amp
- If unit is over 2000 CFM provide smoke detector/test. (Exh. C-3)

On March 15, 2002, Gaber sent, via facsimile, the results of the inspection to McCauley, but McCauley failed to respond. On March 25, 2002, Gaber resent, via facsimile, the results of the inspection to McCauley, but McCauley failed to respond. (Exh. C-1)

On October 28, 2002, Gaber sent, via certified mail, a letter to McCauley regarding the rejected final inspection, but the certified letter was returned. (Exh. C-1 and C-4)

On March 19, 2003, McCauley stated he would check on the problem at the subject property, correct the problem, and get a final inspection. (Exh. I-1)

As of August 14, 2003, McCauley failed to make corrections and obtain an approved final inspection. (Exh C-6)

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

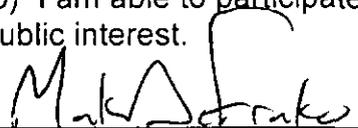
**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

1. Name: Mark Franko
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on January 12, 2005
5. Nature of Personal Interest Affected by Transaction: _____

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

1/12/05

Date