

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
February 1, 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.

Ruth Ann Wall, 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

- | | |
|--|--|
| 1. Thomas M Herbert
t/a MJB Enterprizes
File Number 2004-02005 (Disc)
(No Decision) | Herbert – R |
| 2. Mark Joseph King
t/a Laurel Mountain Builders
File Number 2004-04079 (Disc) | Patty Koval – C |
| 3. Mark Joseph King
t/a Laurel Mountain Builders
File Number 2004-05064 (Disc) | Susan Waters – C
Lawrence Waters – W |
| 4. Michael P. Brooker
t/a Hampton Roads Siding & Trim
File Number 2004-03033 (Disc) | None |
| 5. Jimmy L. Lane
t/a Oceanfront Renovations
File Number 2004-03516 (Disc) | Melody Williams – C
Ronald Williams – C |
| 6. Jimmy L. Lane
t/a Oceanfront Renovations
File Number 2005-00102 (Disc) | None |

- | | |
|--|--|
| 7. Tananlor LLC
t/a Newport Construction Services
File Number 2004-01872 (Disc) | None |
| 8. Tananlor LLC
t/a Newport Construction Services
File Number 2004-02923 (Disc) | Robert Fallin – C |
| 9. Shannon Construction Company Inc.
File Number 2004-02193 (Disc) | Herbert Goodman – C
Kay Large – W |
| 10. Loredana L. Henderson
t/a All Around Home Improvements
File Number 2004-02306 (Disc) | Geraldine Harris – C
Paul Warren – C Atty |

The meeting adjourned at 2:35 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: Mark Joseph King, t/a Laurel Mountain Builders

File Number: 2004-04079
License Number: 2705077099

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 Mark Joseph King ("King"), t/a Laurel Mountain Builders to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On February 1, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Patty Koval ("Koval"), Complainant; Joseph Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Mark King, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

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

The contract used in the transaction failed to contain five of the provisions required by the Board's regulation. King'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 that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In September 2003, Koval contracted with King to install a deck at the subject property. In October 2003, King obtained the building permit to construct the deck, and began work several weeks later. In November 2003, the footings and setback were inspected, and rejected. In December 2003, Koval asked King to complete the work. King has not

completed the deck, which, in March 2004, was determined to be 90% complete; and has not obtained a final inspection.

During the IFF, Koval stated the footings were unstable because they had filled with mud and water. Koval further stated the deck is floating, and unusable. Koval also stated that at this time, although she has had several estimates from other contractors to complete the work, the work has not been completed because the contractors did not want to perform the work, or the estimates were too expensive.

King's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Koval paid King \$3,762.50 towards the revised contract amount of \$4,400.00. King did not complete the work, and has failed to return funds received for work not performed, or performed only in part.

During the IFF, Koval stated King has not returned any money.

King's retention of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 30, 2004 (revised October 15, 2004)

FILE NUMBER: 2004-04079
RESPONDENT: Mark Joseph King, t/a Laurel Mountain Builders
LICENSE NUMBER: 2705077099
EXPIRATION: August 31, 2005

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

Mark Joseph King ("King"), t/a Laurel Mountain Builders, was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705077099).

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

On September 27, 2003, Koval entered into a written contract with King, in the amount of \$6,250.00, to install a deck at 14022 Westwind Drive, Culpeper, Virginia 22701. (Exh. C-2)

On September 27, 2003, Koval paid King \$3,125.00 by check. (Exh. C-1)

On October 21, 2003, King obtained building permit number 00094268-2003 to construct the deck at the subject property. (Exh. C-3)

On February 11, 2004, King noted on the contract a \$1,850.00 deduction because of time delay. (Exh. C-2)

On February 19, 2004, Koval paid King \$637.50 by check. (Exh. C-1)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The contract used by King in the transaction failed to contain subsections: a, d, e, f, 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:

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

FACTS:

On November 20, 2003, the setback and footing inspections were rejected. (Exh. I-3)

In December 2003, Koval requested King perform the work. King made several appointments but failed to return to the subject property as scheduled. (Exh. C-1)

King did not perform work on the deck, which was 90% completed, in March 2004. (Exh. C-1)

On March 29, 2004, the setback inspection passed, but the footing inspection failed because no approved drawings on site, post need to be centered on plug, heads up missing lag bolts at band board, and all risers should be same with no more than 3/8" difference. (Exh. I-3)

As of August 30, 2004, King failed to complete the work and obtain a final inspection. (Exh. I-2 and I-3)

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:

As of August 30, 2004, King failed to return funds received for work not performed or performed only in part. (Exh. I-2)

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

Re: Mark Joseph King, t/a Laurel Mountain Builders

File Number: 2004-05064
License Number: 2705077099

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 Mark Joseph King ("King"), t/a Laurel Mountain Builders to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On February 1, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Susan Waters ("Waters"), Complainant; Lawrence Waters, Husband of Complainant; Joseph Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Mark King, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

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

The contract used in the transaction failed to contain five of the provisions required by the Board's regulation. King'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 that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In September 2003, Waters contracted with King to install a deck at the subject property. In October 2003, King obtained the building permit to construct the deck, and began work in November 2003. In November 2003, the footings and setback were inspected, and rejected. Waters made several attempts to contact King regarding the completion of

work. In December 2003, Waters terminated the contract, and completed the work herself.

King's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Waters paid King \$3,750.00 towards the contract amount of \$7,500.00. Despite verbal promises made to Waters, King failed to return funds received for work not performed, or performed only in part.

During the IFF, Waters stated King promised to refund her money, but did not do so. Water also stated that during a civil trial against King, King admitted he owed her the money.

King's retention of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In February 2004, in Culpeper County Combined Court, Waters obtained a judgment against King, in the amount of \$3,750.00. King has failed to satisfy the judgment.

During the IFF, Waters stated King has failed to satisfy the judgment.

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

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 30, 2004 (revised October 15, 2004)

FILE NUMBER: 2004-05064
RESPONDENT: Mark Joseph King, t/a Laurel Mountain Builders
LICENSE NUMBER: 2705077099
EXPIRATION: August 31, 2005

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

Mark Joseph King ("King"), t/a Laurel Mountain Builders, was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705077099).

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

BACKGROUND:

On June 16, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Susan Waters ("Waters") regarding King. (Exh. C-1)

On, September 29, 2003, Waters entered into a written contract with King, in the amount of \$7,500.00, to install a deck at 15501 Bob White Trail, Amissville, Virginia. (Exh. C-2) Upon signing the contract, Waters paid King \$3,750.00 by check. (Exh. C-1 and C-2)

On October 21, 2003, building permit number 9467-2003 was issued for construction of the deck at the subject property. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The contract used by King in the transaction failed to contain subsections: a, d, e, f, 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:

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

FACTS:

Between November 12, 2003 and November 17, 2003, King dug the footing holes at the subject property. (Exh. C-1)

On November 20, 2003, the setback inspection passed and the footing inspection was rejected. (Exh. I-3)

Waters made several attempts to contact King regarding the rejected inspection and completion of the work. (Exh. C-1)

On December 10, 2003, Waters terminated the contract. (Exh. C-1) Waters completed the project herself. (Exh. I-1)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On December 10, 2003, Waters requested King refund the \$3,750.00 deposit. King agreed to refund the money. (Exh. C-1)

Waters made several attempts to contact King regarding the refund. On or about January 12, 2004, King told Waters he would send \$1,875.00 immediately and requested Waters sign a release upon receiving the entire refund. (Exh. C-1)

As of February 2, 2004, King failed to return funds received for work not performed or performed only in part. (Exh. C-1)

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On February 27, 2004, in the Culpeper County Combined Court, Waters was awarded a \$3,750.00 judgment against King. As of June 22, 2004, King failed to satisfy the judgment. (Exh. C-3)

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

Re: Michael P. Brooker, t/a Hampton Roads Siding & Trim

File Number: 2004-03033
License Number: 2705074860

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 Michael P. Brooker ("Brooker"), t/a Hampton Roads Siding & Trim 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 February 1, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the *Department of Professional and Occupational Regulation*.

The following individuals participated at the IFF: Joseph Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Michael Brooker, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

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

In September 1999, in the Commonwealth of Kentucky, Brooker pleaded guilty to fourteen (14) counts of Criminal Possession of a Forged Instrument, Second Degree. In February 2001, in the City of Virginia Beach, Brooker was convicted of obstructing justice, a misdemeanor, and possession of a controlled substance, a felony.

In February 2003, Brooker applied for a Class C contractor's license. In response to application questions regarding his criminal background, Brooker indicated he had never been convicted of any felony, and had not been convicted of any misdemeanor in the preceding three years.

Brooker was granted a license based on the information he provided to the Board. Recently information has been received that Brooker did not truthfully represent himself.

Given the nature of Brooker's prior convictions, Brooker should not hold a contractor's license.

Brooker's failure to disclose criminal convictions on his license application is a violation of Board Regulation 18 VAC 50-22-260.B.2. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

(TWO COUNTS)

The contract used in the transaction failed to contain four of the provisions required by the Board's regulation. Brooker'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 that a monetary penalty of \$2,500.00 be imposed for each count, for a total of \$5,000.00 and license revocation imposed.

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

In September 2003, Duane and Diane Stanfield ("the Stanfields") contracted with Brooker to install siding at the subject property. The siding contract specified work would be completed on September 29, 2003. The Stanfields and Brooker later verbally agreed to extend the completion date into October 2003. In October 2003, the Stanfields and Brooker verbally agreed to changes in the materials to be used, for an additional cost.

Brooker's failure to obtain signed, written change orders to modify the materials, cost, and estimated completion date of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

After Brooker had begun work on the subject property, the Stanfields noticed water leaking into the garage roof, and being trapped under the siding at the front of the garage.

Brooker's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Brooker began work on October 1, 2003, and completed most of the work for the siding contract, with exception to punch list items and window trim, by October 3, 2003. Five days later, the Stanfields contacted Brooker regarding the outstanding punch list items. Brooker told the Stanfields he would meet with them to review the punch list, but never did. The Stanfields made several subsequent attempts to contact Brooker regarding the punch list items, but Brooker did not return to finish the work. Brooker failed to complete the punch list items for the siding contract.

Brooker's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

The Stanfields paid Brooker a total of \$4,912.18 towards the modified siding contract amount of \$5,680.00. The Stanfields also paid \$781.82 directly to Brooker's material supplier and subcontractor. Brooker failed to complete the siding contract, and never returned funds paid by the Stanfields for work not performed.

Brooker's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In October 2003, the Stanfields contracted with Brooker to install windows at the subject property. In January 2004, Brooker promised to deliver the windows to the Stanfields. Brooker did not deliver the windows, and never began work on the window contract.

Brooker's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

The Stanfields paid Brooker \$785.00 as a deposit on the window contract amount of \$1,570.00. Brooker never began work, and never delivered the windows. Brooker failed to return funds paid by the Stanfields for work not performed.

Brooker's retention of funds received for work not performed is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In February 2004, the Board's agent made a request to Brooker for a written response and supporting documents to the complaint filed with the Board. After receiving no response, the Board's agent made additional attempts to contact Brooker by certified mail, by telephone, and in person. Brooker failed to respond to the Board's agent's request for information.

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

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: June 10, 2004 (revised October 26, 2004)

FILE NUMBER: 2004-03033
RESPONDENT: Michael P. Brooker, t/a Hampton Roads Siding & Trim
LICENSE NUMBER: 2705074860
EXPIRATION: May 31, 2005

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

COMMENTS:

None.

Michael P. Brooker, t/a Hampton Roads Siding & Trim ("Hampton Roads Siding"), was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705074860).

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

BACKGROUND:

On January 30, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Duane and Diane Stanfield ("the Stanfields") regarding Hampton Roads Siding. (Exh. C-1)

On April 4, 2003, Hampton Road Siding provided the Standfields with a written quote, in the amount of \$4,930.00, to replace siding at 4749 Post Oak Drive, Virginia Beach, Virginia. (Exh. C-2)

On September 12, 2003, the Stanfields entered into a written contract (the "Siding Contract") with H R Siding & Trim, in the amount of \$5,130.00, to tear off and install new

siding, wrap all wood with white coil, replace soffit and shutters, and install new seamless gutters at the subject property. The Siding Contract was signed by Michael Brooker on behalf of H R Siding & Trim. (Exh. C-2)

On October 1, 2003, Stanfield entered into a second written contract (the "Window Contract") with H R Siding & Trim, in the amount of \$1,570.00, to install eight (8) new replacement windows, dispose of old windows and caulk where needed at the subject property. The Window Contract was signed by Michael Brooker on behalf of H R Siding & Trim. (Exh. C-3)

On October 1, 2003, Hampton Roads Siding commenced work on the Siding Contract. On October 3, 2003, Hampton Roads Siding completed the siding work with the exception of punch list items and trim around the windows, which was to be done after the windows were installed. On October 4, 2003, Hampton Roads Siding installed the gutters. (Exh. C-1)

The last day Hampton Road Siding performed work at the subject property was October 22, 2003. (Exh. I-4)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.

FACTS:

On September 29, 1999, in the Christian Circuit Court, Commonwealth of Kentucky, Brooker pleaded guilty to fourteen (14) counts of Criminal Possession of a Forged Instrument, Second Degree. On February 1, 2000, a Judgment and Sentence on Plea of Guilty Order was entered and Brooker was sentenced to five (5) years on each count to run consecutively for a total of five (5) years, however, that sentence was suspended and Brooker was placed on probation for a period of five years. (Exh. I-10)

On February 8, 2001, in the Virginia Beach General District Court, Brooker was convicted of obstructing justice, a misdemeanor, in violation of 18.2-460 of the Code of Virginia. (Exh. I-9)

On February 14, 2001, in the Virginia Beach Circuit Court, Brooker was convicted of possession of a Schedule I or Schedule II controlled substance, a Felony, in violation of Section 18.2-250 of the Code of Virginia. (Exh. I-8)

On February 24, 2003, the Board for Contractors received a license application from Hampton Roads Siding for a Class C contractor's license. Michael P. Brooker ("Brooker") was listed in Section 26 as Responsible Management. (Exh. I-5)

On the license application, Brooker answered "NO" to question 23.A, which states, "Has your business, Designated Employee, Qualified Individual(s), or Responsible Management been convicted in any jurisdiction of any felony? Any guilty plea or plea of nolo contendere must be disclosed on this application." Brooker also answered "NO" to question 23.B, which states, "Has your business, Designated Employee, Qualified Individual(s), or Responsible Management been convicted in any jurisdiction of any misdemeanor within the last three years? Any guilty plea or plea of nolo contendere must be disclosed on this application." Brooker affirmed his statements and answers as true and his signature was notarized on the license application. (Exh. I-5)

On May 7, 2003, Hampton Roads Siding was issued Class C contractor's license number 2705074860 as sole proprietorship. (Exh. I-1)

2. Board Regulation (Effective January 1, 2003) (TWO COUNTS)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - 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 address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contracts used by Hampton Roads Siding in the transaction failed to contain subsections: (e), (f), (h), and (i). (Exh. C-2 and C-3)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The Siding Contract specified "Start Date 19 Sep 03" and "Comp Date 29 Sep 03." (Exh. C-2)

In late September 2003, the Stanfields and Brooker verbally agreed to extend the estimated completion date on the Siding Contract to October 3, 2003. (Exh. I-4)

On October 3, 2003, the Stanfields and Brooker verbally agreed to change the trim color on the Siding Contract for an additional cost of \$550.00. (Exh. C-1 and I-4)

Hampton Roads Siding failed to use written change orders, signed by all parties, for modifications to the materials, cost, and estimated completion date of the Siding Contract.

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

Prior to October 22, 2003, the Stanfields noticed water leaking into the garage roof and being trapped under the siding at the front of the garage following a heavy rain. (Exh. C-1)

5. 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 October 8, 2003, the Stanfields contacted Hampton Roads Siding regarding the incomplete punch list items. Brooker told the Stanfields he would meet with them to review the punch list, but failed to return to the subject property. (Exh. C-1)

Between October 8, 2003 and January 14, 2004, the Stanfields made several attempts to contact Hampton Roads Siding regarding the incomplete punch list items. Hampton Roads Siding made several appointments, but failed to show as scheduled. (Exh. C-1)

As of June 4, 2004, Hampton Roads Siding failed to complete the following items on the Siding Contract:

- Trim around window openings
- Dented piece of vinyl siding on side of house near master bedroom
- Front seams on fascia trim should be facing away from front door instead of toward front door
- Clean up of nails and trim pieces
- Adjustment of gutter near on rear of house near master bedroom window. (Exh. I-4)

6. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On September 12, 2003, the Stanfields paid Hampton Roads Siding \$2,565.00 by check, as a deposit on the Siding Contract. (Exh. C-4)

On October 3, 2003, the Stanfields paid Ted Lansing Corp., a material supplier of Hampton Roads Siding, \$285.82 for one roll of trim. On October 3, 2003, the Stanfields paid Rick Cortes, a subcontractor of Hampton Roads Siding, \$496.00 for the seamless gutter installation. (Exh. C-1 and C-4) On October 3, 2003, the Stanfields paid Hampton Roads Siding \$2,347.18. (Exh. C-4)

On January 14, 2004, the Stanfields agreed to pay for the windows, negotiate a resolution of the incomplete work, and close the contract if Hampton Roads Siding provided a copy of the purchase order to prove the price of the windows. (Exh. C-1)

As of January 29, 2004, Hampton Roads Siding failed to return the funds received for work not performed.

7. 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 January 14, 2004, Hampton Roads Siding promised the Stanfields the eight (8) windows would be delivered next week. (Exh. C-1)

As of January 29, 2004, Hampton Roads Siding failed to commence work or deliver materials for the replacement of the eight (8) windows at the subject property. (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:

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

FACTS:

On October 1, 2003, the Stanfields paid Hampton Roads Siding \$785.00 by check, as a deposit on the Window Contract. (Exh. C-4)

On January 14, 2004, the Stanfields agreed to pay for the windows, negotiate a resolution of the incomplete work, and close the contract if Hampton Roads Siding provided a copy of the purchase order to prove the price of the windows. (Exh. C-1)

As of January 29 2004, Hampton Roads Siding failed to return the funds received for materials not provided and work not performed.

9. 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 February 10, 2004, Investigator Valerie J. Matney, the Board's agent, made a written request to Hampton Roads Siding at the address of record of 7400 Spartan Avenue, Norfolk, Virginia 23518, 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 5, 2004. (Exh. I-2)

On March 23, 2004, the Board's agent made a written request, via certified mail, to Hampton Road Siding at the address of record of 7400 Spartan Avenue, Norfolk, Virginia 23518, 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 12, 2004. On April 12, 2004, Brooker signed for the certified letter. (Exh. I-3)

On May 7, 2004, the Board's agent called (757) 588-2747 and spoke to Brooker's father. He told the Board's agent that Brooker had been gone for about one month and no longer resided at 7400 Spartan Avenue, Norfolk, Virginia 23518. He also told the Board's agent he did not know where his son was, but gave the Board's agent his son's cell phone number. (Exh. I-6)

On May 21, 2004, at 9:45 a.m., the Board's agent visited a possible address for Brooker of 2411 Spinnaker Court, Virginia Beach, Virginia 23451. No one answered the door at that location and the Board's agent left a business card for Brooker to call her regarding the Stanfield job. (Exh. I-6)

On May 21, 2004, at 9:45 a.m., the Board's agent called Brooker's cell phone number of (757) 685-5999. A male answered the phone and said he was not Brooker, but that he would have Brooker return the call right away. On May 21, 2004, at 11:00 a.m., the

Board's agent called Brooker's cell phone number of (757) 685-5999 and left a message for a return phone call or a charge would be made for the failure to respond. (Exh. I-6)

As of June 10, 2004, Hampton Roads Siding failed to respond to the investigator seeking information in the investigation of a complaint filed with the Board.

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

Re: Jimmy L. Lane, t/a Oceanfront Renovations

File Number: 2004-03516
License Number: 2705071278

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 Jimmy L. Lane ("Lane"), t/a Oceanfront Renovations 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 not returned to the Department, and the return receipt for the mailing has not been returned.

On February 1, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Ronald and Melody Williams ("the Williamses"), Complainants; Joseph Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Jimmy Lane, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

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

In May 2004, in the Virginia Beach General District Court, Meldoy and Ronald Williams were awarded a judgment against Lane, in the amount of \$2,000.00. Lane has failed to satisfy the judgment, but informed the Board's agent he was appealing the matter.

During the IFF, Meldoy Williams stated Lane has not satisfied the judgment, and is unable to appeal it.

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

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 25, 2004 (revised October 21, 2004)

FILE NUMBER: 2004-03516
RESPONDENT: Jimmy L. Lane, t/a Oceanfront Renovations
LICENSE NUMBER: 2705071278
EXPIRATION: October 31, 2004

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

Jimmy L. Lane ("Lane"), t/a Oceanfront Renovations, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705071278).

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

BACKGROUND:

On February 25, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Melody and Ronald Williams ("the Williamses") regarding Lane. (Exh. C-1)

On October 14, 2003, the Williamses entered into a written contract with Lane, in the amount of \$2,850.00, to perform improvements at 1837 Gershwin Drive, Virginia Beach, 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:

28. Failure to satisfy any judgments.

FACTS:

On May 21, 2004, in the Virginia Beach General District Court, the Williamses were awarded a \$2,000.00 judgment against Lane. (Exh. I-2)

In a letter dated May 20, 2003, Lane stated "I am appealing this matter now, for I did fulfill the contract except for the door . . ." Lane further stated "Due to the severe injury of my hand I closed my business on February of 2004." (Exh. R-1)

As of August 5, 2004, Lane failed to satisfy the judgment. (Exh. I-2)

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

Re: Jimmy L. Lane, t/a Oceanfront Renovations

File Number: 2005-00102
License Number: 2705071278

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On January 11, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Jimmy L. Lane, t/a Oceanfront Renovations ("Oceanfront") 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 not returned to the Department, and the return receipt for the mailing has not been returned.

On February 1, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joseph Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Jimmy Lane, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

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

The contracts used in the transaction failed to contain seven of the provisions required by the Board's regulation. Oceanfront'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 that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In March 2004, Lane entered into contracts with Oceanfront to replace siding, remodel the back porch, and perform ceiling and wall repairs at the subject property. In May 2004, Oceanfront began work, and last worked at the subject property in June 2004. After that Oceanfront failed to return to complete the work.

Oceanfront's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

The contracts specified work would be finished by the end of March 2004. Work was not completed by that time, and was never finished.

Oceanfront's failure to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Lane paid Oceanfront \$2,996.00 towards the contracted amount of \$5,700.00. After Oceanfront failed to complete the work, Lane requested Oceanfront refund the money. Oceanfront failed to do so.

Oceanfront's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In August 2004, the Board's agent requested Oceanfront to provide a written response and supporting documents to the complaint filed with the Board. The Board's agent did not receive a response from Oceanfront.

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

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: November 19, 2004 (revised December 8, 2004)

FILE NUMBER: 2005-00102
RESPONDENT: Jimmy L. Lane, t/a Oceanfront Renovations
LICENSE NUMBER: 2705071278
EXPIRATION: October 31, 2004

SUBMITTED BY: David C. Dorner
APPROVED BY: M. Wayne Brown

COMMENTS:
None.

Jimmy L. Lane, t/a Oceanfront Renovations ("Oceanfront"), was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705071278).

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

BACKGROUND:

On July 27, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Jeff Lane ("Lane") regarding Oceanfront. (Exh. C-1)

On March 17, 2004, Oceanfront entered into a written contract, in the amount of \$5,200.00, with Lane to replace siding and remodel inside of the back porch at 3501 Baum Road, Virginia Beach, Virginia 23457. (Exh. C-2)

On March 17, 2004, Oceanfront entered into a second written contract, in the amount of \$500.00, with Lane to repair a ceiling and walls at the subject property. (Exh. C-2)

1. Board Regulation (Effective January 1, 2003) (TWO COUNTS)

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

B. The following are prohibited acts:

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

FACTS:

The contracts used by Oceanfront in the transaction failed to contain subsections: a., d., e., f., g., h., and i. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On March 23, 2004, Oceanfront contacted Lane and told Lane the siding would be delivered on March 25, 2004, and work would commence on March 27, 2004. (Exh. C-1A)

On March 29, 2004, Oceanfront contacted Lane and told Lane the wood for the porch would be delivered. (Exh. C-1A)

On May 10, 2004, Oceanfront commenced work. On May 18, 2004, Oceanfront delivered a trailer to haul the old material away. On May 21, 2004, Oceanfront tore off the siding. On May 26, 2004 and May 27, 2004, Oceanfront installed insulation. On June 3, 2004, Oceanfront tore off the siding from the porch. (Exh. C-1A)

The last day Oceanfront performed work at the subject property was June 3, 2004. (Exh. C-1A)

As of July 27, 2004, Oceanfront failed to return to the subject property to complete the work. (Exh. C-1)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In addition to the facts outlined in Count 2:

The contracts specified, "Estimated finish dated 3-31-04." (Exh. C-2)

Oceanfront failed to complete work contracted for and comply with the terms of the contract.

4. 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 outlined in Count 2 and Count 3:

On March 16, 2004, Lane paid Jimmy Lane \$2,850.00 by check. (Exh. C-3)

On June 14, 2004, Lane sent Oceanfront a letter requesting it return \$2,996.00 within two weeks. (Exh. C-4)

As of July 27, 2004, Oceanfront failed to return funds received for work not performed or performed in part. (Exh. C-1)

5. 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 August 16, 2004, Assistant Director David C. Dorner of the Compliance & Investigations Division ("the Board's agent") made a written request to Oceanfront at the address of record of 909 Bernstein Court, Virginia Beach, Virginia 23454, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the response be received by August 26, 2004. (Exh. I-1)

On September 4, 2004, the London Bridge Station Postmaster certified mail was delivered to Jimmy Lane at 909 Bernstein Court, Virginia Beach, Virginia 23454. (Exh. I-2)

As of November 19, 2004, Oceanfront failed to respond an investigator seeking information in the investigation of a complaint filed with the board.

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

Re: Tananlor LLC, t/a Newport Construction Services

File Number: 2004-01872
License Number: 2705057421

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 Tananlor LLC, t/a Newport Construction Services ("Newport") 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."

On February 1, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joseph Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Britt Gibson, Don Brown, or Jeff Sill, Responsible Management for Newport, Respondents, nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

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

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

(TWO COUNTS)

The contracts used in the transaction failed to contain four of the provisions required by the Board's regulation. Newport's failure to include minimum provision in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend that a monetary penalty of \$2,500.00 be imposed for each count, for a total of \$5,000.00 and license revocation imposed.

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

In November 2002, William Huff ("Huff") contracted with Newport to repair hailstorm damage, and perform additional improvements to the subject property. Newport repaired the hailstorm damage, but did not install replacement windows, as required by the second contract.

Newport's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation imposed.

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

Huff paid Newport the full amount of the first contract total of \$8,118.50 from insurance proceeds. Huff was later informed of a mechanic's lien placed against his property by Newport's subcontractor, for failure to receive payment from Newport for work performed under the first contract.

Huff paid Newport a total of \$2,700.00 towards the second contract amount of \$4,819.00. Newport did not complete the work.

Newport's retention and misapplication of funds received is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation imposed.

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 6, 2004 (revised October 18, 2004)

FILE NUMBER: 2004-01872
RESPONDENT: Tananlor LLC, t/a Newport Construction Services
LICENSE NUMBER: 2705057421
EXPIRATION: August 31, 2004

SUBMITTED BY: Doneen A. Whitaker
APPROVED BY: Linda J. Boswell

COMMENTS:

Respondent did not respond and could not be located. Site visit to license address of record revealed Respondent is no longer at that address. The telephone number on the contracts was disconnected or is no longer in service.

The issue of failure to report a change of address was addressed in File No. 2004-02923.

Tananlor LLC, t/a Newport Construction Services ("Newport"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705057421).

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 29, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from William Huff ("Huff") regarding Newport. (Exh. C-1)

On November 15, 2002, Huff entered into a written contract with Newport, in the amount of \$8,118.50, to repair hailstorm damage at 8219 Macbeth Street, Manassas, Virginia. (Exh. C-2)

On November 15, 2002, Huff entered into a second written contract with Newport, in the amount of \$4,819.00, for additional improvements to Huff's residence at the subject property. (Exh. C-3)

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

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contracts used by Newport in the transaction failed to contain subsections: (a); (b) schedule of progress payments and specific statement on the amount of the down payment; (e); and (h) contractor's license expiration date, class of license, and classifications or specialty services. (Exh. C-2 and C-3)

2. 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:

Newport Construction Services completed the hailstorm damage repair work. Newport Construction Services signed a Certificate of Completion, verifying that it had completed the work. (Exh. C-1)

In April 2003, Newport made several promises to Huff that the replacement windows were ordered and would be installed. (Exh. C-1 and I-6)

In a letter dated June 16, 2003, Huff requested Newport install the replacement windows. (Exh. C-6)

As of October 13, 2003, Newport failed to install the windows at the subject property. (Exh. C-1)

3. 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 November 15, 2002, Huff paid Newport \$2,000.00 by check for the replacement windows. (Exh. C-5) On November 21, 2002, Huff was issued a \$5,337.18 check from his insurance company. (Exh. C-4) On December 16, 2002, Huff paid Newport \$700.00 by check for front windows. (Exh. C-5) On December 23, 2002, Huff was issued a \$4,258.45 check from his insurance company. (Exh. C-4)

After Newport completed the roof, gutter, and siding work, Huff signed over the two insurance checks to Newport. (Exh.C-1)

On February 27, 2003, Ralph Rinaldi (Rinaldi"), attorney for Construction Design Concepts, Inc. ("Construction Design"), notified Huff a mechanic's lien was recorded because Newport was indebted to Construction Design in the amount of \$4,897.00 for siding labor and materials furnished at the subject property. (Exh. C-7 and C-8)

In a letter dated June 16, 2003, Huff informed Newport about the Mechanic's Lien filed by Construction Design and requested Newport pay Construction Design. (Exh. C-6)

On August 6, 2003, Rinaldi sent Huff a letter advised Huff that Construction Design "elected not to proceed with the enforcement of its mechanic's lien filed against property owned by you." (Exh. C-9)

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

Re: Tananlor LLC, t/a Newport Construction Services

File Number: 2004-02923
License Number: 2705057421

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 Tananlor LLC, t/a Newport Construction Services ("Newport") 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."

On February 1, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Robert Fallin ("Fallin"), Complainant; Joseph Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Britt Gibson, Don Brown, or Jeff Sill, Responsible Management for Newport, Respondents, nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

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

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

The contract used in the transaction failed to contain four of the provisions required by the Board's regulation. Newport's failure to include minimum provision in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In October 2002, Robert Fallin ("Fallin") entered into a contract with Newport to repair hailstorm damage and replace the roof at the subject property. In the winter of 2002, Newport contacted Fallin regarding the commencement of work. Fallin requested

Newport not to perform the work during the winter. In the spring of the following year, Fallin contacted Newport regarding the beginning of work, and was assured by Newport work would begin when the weather cleared. Newport never commenced work.

Newport's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Fallin paid Newport \$6,927.45 towards the contract amount of \$9,420.54. Newport never began the work, and failed to return the money it received.

During the IFF, Fallin stated Newport has not refunded any money.

Newport's retention of funds received for work not performed is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In March 2004, the Board's agent requested Newport to provide a written response and supporting documents to the complaint filed with the Board. The Board's agents mailings to the licensee's address of record were returned by the United States Postal Service, indicating Newport had moved and left no forwarding address. The Board's agent later visited the address of record, and verified Newport was no longer there.

Newport's failure to inform the Board in writing of a change of address, within thirty (30) days of the change, is a violation of Board Regulation 18 VAC 50-22-230.B. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In May 2004, in the Prince William County General District Court, Fallin obtained a judgment against Newport, in the amount of \$6,927.45. Newport has failed to satisfy the judgment.

During the IFF, Fallin stated Newport has not satisfied the judgment.

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

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 6, 2004 (revised October 20, 2004)

FILE NUMBER: 2004-02923
RESPONDENT: Tananlor LLC, t/a Newport Construction Services
LICENSE NUMBER: 2705057421
EXPIRATION: August 31, 2004

SUBMITTED BY: Doneen A. Whitaker
APPROVED BY: Linda J. Boswell

COMMENTS:

Respondent did not respond and could not be located. Site visit to license address of record revealed Respondent is no longer at that address. The telephone number on the contracts was disconnected or is no longer in service.

Tananlor LLC, t/a Newport Construction Services ("Newport"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705057421).

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 22, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Robert T. Fallin ("Fallin") regarding Newport. (Exh. C-1)

On October 5, 2002, Fallin entered into a written contract with Newport, in the amount of \$9,420.54, to replace a roof and repair hail and wind damage at 7535 Ablemarle Drive, Manassas, 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:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Newport in the transaction failed to contain subsections: (a); (b) schedule of progress payments, including a specific amount of the down payment; (e); and (h) contractor's license expiration date, class of license, and classifications or specialty services. (Exh. C-2)

2. Board Regulation (Effective September 1, 2001)

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

B. The following are prohibited acts:

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

FACTS:

In the winter of 2002, Newport contacted Fallin regarding commencement of work; however Fallin did not want work to begin at that time because he did not want the roof exposed during the winter. In spring 2003, Fallin contacted Newport several times to inquire when the work would begin. Newport verbally assured Fallin the work would begin when the weather cleared. (Exh. C-1 and I-6)

Fallin also attempted to send Newport a letter, but the letter was returned because of no forwarding address. (Exh. C-1)

As of June 18, 2004, Newport failed to commence work. (Exh.I-7)

3. 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 September 22, 2002, Fallin was issued a \$6,927.45 check from his insurance company. Fallin signed the check over to Newport. On October 8, 2002, Newport cashed the check. (Exh.C-4)

As of June 18, 2004, Newport failed to return funds received for work not performed. (Exh.I-7)

4. 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:

On March 18, 2004, Investigator Doneen A. Whitaker, the Board's agent, made a written request, via certified mail and regular First Class mail, to Newport at the address of record of 10562 Associates Court, Manassas, Virginia 20109, requesting a written response and supporting documentation to the complaint filed with the Board. (Exh. I-1)

The written request sent regular First Class mail was returned by the United States Postal Service ("USPS") and marked "Moved--Left No Address, Unable to Forward." (Exh. I-2)

The written request sent certified mail was returned by the USPS and marked "Moved--Left No Address, Unable to Forward." (Exh. I-3)

On April 4, 2004, the Board's agent visited the address of record at 10562 Associates Court, Manassas, Virginia 20109. A neighbor told the Board's agent that Newport had been gone for several months. (Exh. I-8)

As of August 6, 2004, the address of record for Newport was still 10562 Associates Court, Manassas, Virginia 20109. (Exh. I-5)

Newport failed to report in writing to the Board within thirty (30) days of a change of address.

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On May 27, 2004, in the Prince William County General District Court, Fallin was awarded a \$6,927.45 judgment against Newport. As of October 20, 2004, Newport failed to satisfy the judgment. (Exh. I-9)

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

Re: Shannon Construction Company Inc.

File Number: 2004-02193
License Number: 2705054234

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 Shannon Construction Company Inc. ("Shannon") 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 Notice was also mailed, via certified mail, to Shannon at RR 81, Box 23, Lindside, West Virginia 24951. The certified mail to the address of record was returned by the United States Postal Service (USPS), and marked as "Unclaimed." The certified mail to the second address was returned by the USPS, and marked as "Unclaimed."

On January 3, 2005, the Notice was mailed, via certified mail, to Shannon at RR 81, Box 201, Peterstown, West Virginia 24963-9415. The certified mail was signed for and received.

On February 1, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Herbert Goodman ("Goodman"), Complainant; Kay Large, Witness; Joseph Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Melissa Robertson, Responsible Management for Shannon, nor anyone on behalf of Shannon 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 January 2003, Payne Memorial United Methodist Church ("the Church") contracted with Shannon to construct an addition and perform renovations at the subject property. The contract specified work would be completed 150 days from the start of construction. Shannon last performed work in July 2003.

Shannon did not continue work after this time because it claimed it was waiting for the Church to complete installation of the HVAC system via another contractor, as was previously agreed. The Church hired an estimator to determine if Shannon could have completed additional work prior to the installation of the HVAC system. The estimator noted several items that could have been completed prior to HVAC installation. The Church's attorney requested Shannon complete the work. Shannon has not completed the work.

During the IFF, Goodman stated he was informed by another contractor that the HVAC work did not need to be completed for Shannon to finish its work. Goodman further stated the Church completed the remainder of the work on its own, at a total cost of \$50,000.00 paid to suppliers and subcontractors, as well as time contributed by church volunteers.

Shannon's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

The Church paid Shannon \$285,045.25 towards the contract amount of \$304,995.00. In June 2003, Shannon provided the Church with a schedule and certificate of payment, indicating 100% of the work had been completed, and requesting final payment on the contract. However, Shannon had failed to complete the work.

In late September 2003 or early October 2003, several of Shannon's subcontractors contacted the Church because they had not been paid by Shannon.

During the IFF, Goodman stated a plumbing subcontractor hired by Shannon came to the property and physically removed materials because he had not been paid by Shannon.

Shannon's retention and misapplication of funds received for work not performed, or performed in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. 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 March 2004, in the Prince Edward General District Court, Arena Trucking Co. Inc. obtained a judgment against Shannon, in the amount of \$1,757.70. Shannon has failed to satisfy the judgment.

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

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

In May 2004, in the Prince Edward General District Court, Adams Insulation Company obtained a judgment against Shannon, in the amount of \$1,170.24. Shannon has failed to satisfy the judgment.

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

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

In May 2004, in the City of Richmond General District Court, J. S. Archer Company Inc. obtained a judgment against Shannon, in the amount of \$6,196.66. Shannon has failed to satisfy the judgment.

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

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 3, 2004 (revised October 25, 2004)

FILE NUMBER: 2004-02193
RESPONDENT: Shannon Construction Company Inc, t/a Shannon
Construction Company Inc
LICENSE NUMBER: 2705054234
EXPIRATION: January 31, 2006

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

COMMENTS:

****Respondent may have moved from address of record. On July 29, 2004, the United States Postal Service furnished information stating that the Respondent has moved, and the forwarding address is RR81 Box 23, Lindside, West Virginia 24951.***

Shannon Construction Company Inc ("Shannon Construction") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705054234).

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 20, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from John M. Perry ("Perry"), attorney filing on behalf of Payne Memorial United Methodist Church ("the Church"), regarding Shannon Construction. (Exh. C-1)

On December 30, 2002, Shannon Construction obtained building permit number 5714 for the construction of an addition at 1491 Anderson Highway, Cumberland, Virginia. (Exh. I-7 and W8-2)

On January 5, 2003, the Church entered into a written contract, in the amount of \$295,000.00, with Shannon Construction to construct an addition and renovate the fellowship hall and classrooms at the subject property. (Exh. C-1(A))

The parties agreed to change orders totaling \$9,995, bringing the adjusted contract price to \$304,995.00. (Exh. C-1)

In January 2003, Shannon Construction commenced work. (Exh. I-1)

The last day Shannon Construction performed work at the subject property was July 2, 2003. (Exh. I-1)

On January 28, 2000, Shannon Construction was issued Class A contractor's license number 2705054234 as a corporation. Melissa Gail Robertson, individual certificate number 2706099842, is the Designated Employee, Qualified Individual, and Responsible Management as President of Shannon Construction and Michael D. Harmon, individual certificate number 2706103231, is the Qualified Individual and Responsible Management as the Vice President of Shannon Construction. (Exh. I-5)

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:

The contract specified "The projected completion date shall be approximately one hundred fifty days from the first day of construction, however any change orders and/or unusual weather might delay or otherwise effect the completion date." (Exh. C-1(A))

Between August 2003 and October 2003, at the request of the Church, Kevin Hooper ("Hopper"), Project Manager/Estimator for English Construction Company Inc., inspected the subject property to evaluate the work in place to determine if Shannon Construction could have completed additional work on the project before the Church's HVAC

subcontractor completed the installation of the HVAC system. Hopper concluded the following work could be completed prior to a functional HVAC system being installed:

- Install elevator
- Complete installation of floor coverings.
- Install baseboards.
- Complete painting and trim work.
- Complete electrical work.
- Install gutters.
- Connect heat pumps to main electrical. (Exh. I-2)

In a letter dated October 8, 2003, Perry requested Shannon Construction immediately complete the work. (Exh. C-1(D))

As of November 20, 2003, Shannon Construction failed to complete the work contracted for. (Exh. C-1)

In a letter dated November 21, 2003, the Church provided Shannon Construction a list of incomplete items and items in need of repair, which the Church was hiring other contractors to complete or redo. (Exh. C-2)

In a letter dated January 2, 2004, Michael D. Harmon ("Harmon"), Vice President of Shannon Construction, stated "As a part of the contract negotiations, Mr. Johnny Murphy in front of the Church building committee asked us, to drop our price 10% in order to make their budget work. Reluctantly we agreed to do so but in return they agreed to have their HVAC work performed in accordance with the construction schedule." Harmon also stated "By the end of June we had gone as far as we could without the HVAC and related inspections. Without a functional HVAC system we could not install floor coverings, complete the painting, complete the job." Harmon further stated "The first week of July, we pulled off the job. I told the Church that we could complete once their work was done." (Exh. R-1)

2. 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:

In addition to the facts in Count 1:

Between January 5, 2003 and July 11, 2003, the Church paid Shannon Construction a total of \$285,045.25. (Exh. C-1, C-1(G), and I-1)

On June 30, 2003, Shannon Construction provided the Church with Schedule of Values and Certificate for Payment No. 11 ("the Schedule"), which indicated work was 100% complete and final payment of \$18,432.13 was due. The Schedule also indicated Shannon warranted "all previous progress payments received from Owner on account of Work done under this Contract have been applied to discharge in full (except allowable retainage) all obligations of Contractor incurred in connection with Work covered by prior Certificates for Payment of numbered 1 through 11 inclusive . . ." (Exh. C-1(B))

Shannon Construction subcontracted Adams Insulation Company Inc. to provide labor and materials at the subject property. (Exh. I-4)

In late September 2003 or early October 2003, several subcontractors, whom Shannon Construction had not paid for services performed at the subject property, contacted the Church. (Exh. C-1)

As of September 30, 2003, Shannon Construction failed to pay Adams Insulation Company Inc. a total of \$1,170.24, based on \$1,104.00 for services performed at the subject property and \$66.24 in late fees. (Exh. W3-2)

In a letter dated October 8, 2003, Perry requested Shannon Construction immediately pay in full its subcontractors and material suppliers. (Exh. C-1(D))

As of November 20, 2003, Shannon Construction retained funds received for work not performed or performed only in part and misapplied funds received for work performed by subcontractors. (Exh. C-1)

As of July 14, 2004, Shannon Construction failed to pay A Building & Plumbing Co., Inc. a total of \$8,010.60, based on \$5,952.75 for services performed at the subject property and \$2,057.85 in finance charges. (Exh. W4-1 and W4-2)

As of July 14, 2004, Shannon Construction failed to pay Otis Elevator Company \$26,738.00 for services performed at the subject property. (Exh. W1-4 and W6-1)

As of July 20, 2004, Shannon Construction failed to pay Farmville Wholesale Electric Supply Co. Inc. \$9,376.53 for services performed at the subject property. (Exh. W5-1)

Shannon Construction retained funds and misapplied funds received for work 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:

28. Failure to satisfy any judgments.

FACTS:

On March 30, 2004, in the Prince Edward General District Court, Arena Trucking Co. Inc. was awarded a \$1,757.70 judgment against Shannon Construction. As of October 25, 2004, Shannon Construction failed to satisfy the judgment. (Exh. I-10)

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On May 25, 2004, in the Prince Edward General District Court, Adams Insulation Company was awarded a \$1,170.24 judgment against Shannon Construction for services rendered. As of October 25, 2004, Shannon Construction failed to satisfy the judgment. (Exh. I-9)

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On May 27, 2004, in the City of Richmond General District Court, J. S. Archer Company, Inc. was awarded a \$6,196.66 judgment against Shannon Construction. As of October 25, 2004, Shannon Construction failed to satisfy the judgment. (Exh. I-8)

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

Re: Loredana L. Henderson, t/a All Around Home Improvements

File Number: 2004-02306
License Number: 2705071797

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 Loredana L. Henderson ("Henderson"), t/a All Around Home Improvements 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 February 1, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Geraldine Harris ("Harris"), Complainant; and Paul Warren ("Warren"), Attorney for Complainant; Joseph Haughwout, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Loredana Henderson, Respondent, nor anyone on her 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:

On July 4, 2003, Harris contracted with Henderson, and paid Henderson \$18,500.00.

During the IFF, Warren stated Harris is currently pursuing civil action against Henderson.

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

The contract used in the transaction failed to include three of the provisions required by the Board's regulation. Henderson'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 that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

In July 2003, Geraldine Harris ("Harris") contracted with Henderson to perform renovations at the subject property. The contract's value was \$37,000.00, but Henderson holds only a Class C license.

Henderson's action of practicing in a class of license for which she is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

The contract specified Henderson would use an existing permit held by Harris to perform the work. The Board's agent was informed by the local building official that neither Harris, nor Henderson, had obtained a permit to perform the work outlined in the contract, as required by the building code.

During the IFF, Harris stated there was no existing building permit at the time she contracted with Henderson. Harris stated it was her understanding that Henderson would pull the correct.

Henderson's failure to obtain a building permit is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Henderson began work in July 2003, and last performed work in August 2003. Henderson failed to complete several items.

During the IFF, Harris stated she believed Henderson never intended to complete the work. Harris also stated she does not have enough money to hire another contractor to complete the work.

Henderson's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Harris paid Henderson \$18,500.00 towards the contract amount of \$37,000.00. After Harris learned Henderson only held a Class C license, Harris requested Henderson refund her money. Henderson failed to return any money.

During the IFF, Harris stated Henderson has not returned any money.

Henderson's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 4, 2004 (revised October 25, 2004)

FILE NUMBER: 2004-02306
RESPONDENT: Loredana L. Henderson, t/a All Around Home
Improvements
LICENSE NUMBER: 2705071797
EXPIRATION: October 31, 2004

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

COMMENTS:

License was suspended on September 14, 2004.

Loredana L. Henderson ("Henderson"), t/a All Around Home Improvements, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705071797).

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 1, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Geraldine Harris ("Harris") regarding Henderson. (Exh. C-1)

On July 4, 2003, Harris entered into a written contract, in the amount of \$37,000.00, with All Around Home Improvements to tear out existing framing in an addition and carport area, reframe, remove and level the floor, repair flashing on the roof, resize windows to fit existing holes, move electrical outlets to correct areas, install pocket doors, insulation, sheet rock, kitchen cabinets, countertops, the attic stairwell, siding, tie wraps, and frame up carport and room addition at 2627 McKann Avenue, Norfolk, Virginia 23509. (Exh. C-2)

On July 7, 2003, Henderson commenced work. (Exh. I-2 and I-4)

On October 17, 2002, Henderson was issued Class C contractor's license number 2705071797. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services;

FACTS:

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

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

Section 54.1-1100 of the Code of Virginia specified "'Class C Contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,5000"

Henderson practiced in a class of license for which she is not licensed.

3. 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:

The contract specified Henderson "will use the existing permit that Ms. Harris has on the premises to complete the project that is in progress." (Exh. C-2)

As of December 12, 2003, Henderson failed to obtain required permits for the scope of work outlined in the contract, in violation of Section 111.1 of the Virginia Uniform Statewide Building Code. (Exh. W-1)

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The last day Henderson performed work at the subject property was August 22, 2003. (Exh. I-4)

On January 8, 2004, Investigator Nathan E. Matthews, the Board's agent, interviewed Harris at the subject property. The Board's agent photographed the subject property and observed the following incomplete items:

- Shaky/unstable and unfinished stairs
- Unfinished walls
- Unfinished ceilings
- Holes in sheetrock in various locations
- Some areas were exposed to outside elements
- Unfinished siding
- Unfinished flooring
- Water damaged areas. (Exh. I-3)

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In addition to the facts in Count 5:

On 4, 2003, Harris paid Henderson \$18,500.00 by check. (Exh. C-3)

After discovering Henderson only had a Class C contractor's license, Harris requested Henderson refund money paid for work to be performed. (Exh. C-4)

As of January 8, 2004, Henderson failed to return funds received for work not performed or performed only in part. (Exh. I-3)

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

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

1. Name: Ruth Ann Wall
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on February 1, 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.

Ruth Ann Wall
Signature

2-01-05
Date