

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
April 5, 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.

Ann Rackas Pate, Board member, presided. No other Board members were present.

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

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

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

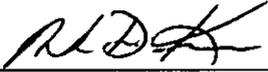
C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

- | | |
|--|---|
| 1. Jeffrey D. Persons & Edward A. Kelly t/a First Class Contracting File Number 2004-05156 (Disc) | Persons – R |
| 2. Hudson Roofing Company File Number 2004-02633 (Disc) | Steve Cocoli – R Dr. William Steeves Jr. – C Kathleen Steeves – C |
| 3. Allen's Electrical Service of VA Inc. File Number 2004-05182 (Disc) | Mark Allen – R Thomas Hennessy – R Atty |
| 4. William D. Bottoms t/a W B Home Improvements File Number 2004-04344 (Disc) (No decision made) | Bottoms – R (by phone) Walter Hutcheson – C Darlene Hutcheson – C |
| 5. Helen D. Govea t/a Silver Bullet Carports File Number 2004-04543 (Disc) | None |

The meeting adjourned at 3:00 p.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

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

Re: Jeffrey D. Persons & Edward A. Kelly, t/a First Class Contracting

File Number: 2004-05156
License Number: 2705071640

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 4, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Jeffrey D. Persons & Edward A. Kelly, t/a First Class Contracting ("First Class") 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 April 5, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jeffrey Persons ("Persons"), Responsible Management for First Class, Respondent; Joseph Haughwout, Staff Member; and Ann Rackas Pate, Presiding Board Member.

RECOMMENDATION

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

In October 2003, First Class provided Patricia Norton ("Norton") with an invoice (Exh. C-2) to perform repairs to the subject property. In November 2003, First Class provided Norton with an invoice (Exh. R-2) to perform additional repairs and improvements to the subject property. First Class began work at the subject property in December 2003. In January 2004, First Class contracted with Norton to perform improvements to the subject property. The January 2004 agreement (Exh. C-3) indicated that it superceded all previous agreements.

During the IFF, Persons stated he was deployed at sea when the contract was entered into with Norton and he did not become involved in the contract until November 2003. Persons also stated Kelly was in charge of this project between October 2003 and February 2004. Persons later stated he was working on another project until February 2004 and did not perform work on this project until after February 2004.

The only employees for First Class were Persons, Kelly, and the occasional day laborer. Persons stated he was partners with Kelly at the time of this transaction, but he is now operating a business of his own and applied for a license for his own business, which was issued in August 2004.

From Persons' testimony, it appears Kelly was responsible for overall management of the company; whereas, Persons was responsible for the actual construction work. Kelly did not participate in the IFF.

According to Inspector Morris of the City of Norfolk, the house is livable but has serious problems, some safety issues, and structural problems. Morris also informed the Board's agent that the work performed by First Class was of very poor quality, and not close to code. Morris further stated most of the work performed would have to be removed and redone.

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

The Board issued the Class C contractor's license to First Class as a partnership.

The firm's name on the November 2003 invoice, and the January 2004 contract reflected the name First Class Contracting Inc. First Class Contracting Inc. became incorporated in Virginia in September 2004.

During the IFF, Persons confirmed the business was operating as a partnership before September 2004 and that Kelly was in charge of changing the business entity. Persons stated he was not aware of whether the corporation was still active because he no longer was in business with Kelly.

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

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

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

First Class's failure to operate in the name in which its licensed was issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

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

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

The October 2003 (Exh. C-2) and November 2003 (Exh. R-2) invoices provided to Norton for work at the subject property were not fully executed by both of the parties prior to the beginning of work.

First Class's failure to fully execute a contract prior to beginning work is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

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

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

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

During the IFF, Persons stated he is aware of the Board's requirements for what must be included in a contract. However, Kelly was the responsible individual in charge of these contracts. *First Class used invoices as its contracts.*

First Class's failure to include subsections a., b., d., e., f., h. (contractor's license number, expiration date, class of license, and classifications or specialty services) and i. is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

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

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

First Class agreed to perform the work at the subject property for \$25,100.00; however First Class only holds a Class C contractor's license. First Class exceeded the limits of its Class C license.

During the IFF, Persons stated the only work to be performed initially was replacement of the roof. However, the original October 2003 invoice/contract was \$14,010.00.

First Class's action of practicing in a class of license for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

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

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

During construction, First Class performed plumbing, electrical, and mechanical work. First Class's license does not have plumbing contracting (PLB) or electrical contracting (ELE) classifications or specialty services.

During the IFF, Persons stated, although his license did not allow him to perform electrical work, he did rewire the kitchen because there were frayed wires. Persons also stated he performed plumbing and mechanical work. Persons stated Kelly may have done some plumbing and mechanical work.

First Class's action of practicing in a classification or specialty service for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$750.00 and remedial education be imposed.

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

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

The contract specified First Class would obtain the building permit. In June 2004 (eight months after the original invoice was given to Norton), Inspector Morris ("Morris"), a building inspector for the City of Norfolk Department of Planning and Community Development, issued a stop work order for the subject property for failure to obtain a required permit prior to beginning work, and failure to obtain required inspections, in violation of the Uniform Statewide Building Code.

In September 2004, Edward Kelly ("Kelly") was convicted of performing building, plumbing, and electrical work without permits or inspections, a misdemeanor. In October 2004, Jeffery Persons ("Persons") was convicted of performing building, plumbing, and electrical work without permits or inspections, a misdemeanor.

During the IFF, Persons stated the permit obtained had the wrong address. Persons also stated there was a mix up of the addresses for two projects. Persons believed he obtained a permit for the project at Norton's property but the permit indicated another address for a project that was not started at that time. Despite the mix up, Persons stated a permit was never obtained for the other address.

Based on Persons' testimony, a permit was obtained for the scope of the work being performed at the Norton property; however, the permit indicated the wrong address. It appears First Class did not correct the error. Therefore, a proper permit was never obtained for the work being performed at Norton's property, which resulted in a Stop Work Order being issued by the City of Norfolk.

Based on the record, the error in the permit was discovered because Norton was concerned with a lack of inspections for the work being performed by First Class at her property. In June 2004, Norton visited the City of Norfolk Codes Administration Department and brought the permit posted at the subject property. The Codes Administration Department determined the permit was not for the subject property, but for a property at a different location.

First Class's violation of the building code constitutes misconduct in the practice of contracting, and is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

In January 2004, First Class gave Norton a permit to be placed in the window of the subject property. Norton asked First Class if the work had been inspected, and was told by First Class that it had been. First Class also told Norton that work in the den area, which was damaged by a hurricane, did not require a permit. First Class also told Norton some of the work was grandfathered in because of changes to the building code.

Based on the record, an error in the permit was discovered because Norton was concerned with a lack of inspections for the work being performed by First Class at her property. In June 2004, Norton visited the City of Norfolk Codes Administration Department and brought the permit posted at the subject property. The Codes Administration Department determined the permit was not for the subject property, but for a property at a different location.

First Class made misrepresentations to Norton by providing her with a false permit, when no permits for work had been obtained; and by informing Norton that inspections had been performed, when no inspections had been performed. First Class also made misrepresentations to Norton by informing her that permits were not required for some work, when, in fact, permits were required.

During the IFF, Persons stated the permit obtained had the wrong address. Persons also stated there was a mix up of the addresses for two projects. Persons believed he obtained a permit for the project at Norton's property but the permit indicated another address for a project that was not started at that time. Despite the mix up, Persons stated a permit was never obtained for the other address.

Based on Persons' testimony, a permit was obtained for the scope of the work being performed at the Norton property; however, the permit indicated the wrong address. It appears First Class did not correct the error. Therefore, a proper permit was never obtained for the work being performed at Norton's property, which resulted in a Stop Work Order being issued by the City of Norfolk.

During the IFF, Persons stated he thought the permit posted was for the Norton project but it had a different address. Persons also stated he did not call for inspections. Although Persons claimed Kelly told Norton inspections were called for and a permit was not required for the den area, Persons was performing work on the property and should have asked Kelly about the lack of inspections.

First Class's action of making misrepresentations that might influence, persuade, or induce is a violation of Board Regulation 18 VAC 50-22-260.B.17. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

Morris directed First Class to abate the building code violations by June 18, 2004.

During the IFF, Persons stated he talked to Morris about the Stop Work Order after the date the work was to be abated. Persons stated Morris was in the hospital between the time the Stop Work Order was issued and the time Persons talked to Morris.

First Class's failure to abate building code violations is a violation of Board Regulation 18 VAC 50-22-260.B.25. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

According to Inspector Morris of the City of Norfolk, the house is liveable but has serious problems, some safety issues, and structural problems. Morris also informed the Board's agent that the work performed by First Class was of very poor quality, and not close to code. Morris further stated most of the work performed would have to be removed and redone.

During the IFF, Persons admitted the siding had to be redone. Persons stated he was in the process of correcting the problems but he was using his own funds to make the corrections.

First Class's action of improperly performing work constitutes negligence and/or incompetence in the practice of contracting, which is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

Persons and Kelly each failed to report to the Board, in writing, of their convictions for building code violations.

During the IFF, Persons stated he did not report it because he knew he was coming here and the Board would get all this information at that time.

First Class's failure on the part its Responsible Management and Qualified Individuals to report to the Board, in writing, of convictions for building code violations is a violation of Board Regulation 18 VAC 50-22-260.B.3. Therefore, I recommend a monetary penalty of \$500.00 for each violation, for a total of \$1,000.00, be imposed.

Count 12: Board Regulation (Effective January 1, 2003) (TWO COUNTS)

Persons and Kelly, as Responsible Management and Qualified Individuals for First Class, were each convicted of misdemeanors after initial licensure.

During the IFF, Persons admitted he was convicted and that there was no reason to appeal the convictions for the building code violations.

First Class's convictions on the part of its Responsible Management and Qualified Individuals for misdemeanors after initial licensure are a violation of Board Regulation 18 VAC 50-22-260.B.22. Therefore, I recommend remedial education and no monetary penalty for each violation, for a total of remedial education and no monetary penalty be imposed.

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

By:

Ann Rackas Pate
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED

WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: February 18, 2005 (revised March 3, 2005)

FILE NUMBER: 2004-05156
RESPONDENT: Jeffery D. Persons & Edward A. Kelly, t/a First Class
Contracting
LICENSE NUMBER: 2705071640
EXPIRATION: October 31, 2004

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

COMMENTS:

This license will lapse on April 30, 2004. However, on August 16, 2004, Jeffery D. Person received another Class C Contractor's license number 2705087374. This case is proceeding for a possible substantial identity case against license number 2705087374.

Jeffery D. Persons is also listed as Jeffrey D. Person in Norfolk General District Court records, and Jeffery D. Person under license number 2705087374. Edward A. Kelly is also listed as Edward D. Kelley in Norfolk General District Court records.

Jeffery D. Persons & Edward A. Kelly, t/a First Class Contracting ("First Class"), were at all times material to this matter a licensed Class C contractor in Virginia (No. 2705071640).

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 24, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Patricia Norton ("Norton") regarding First Class. (Exh. C-1)

On October 21, 2003, First Class provided Norton with an invoice, in the amount of \$14,010.00, for the repair of structural damage caused by a fallen tree, reinforcement of the exterior structure adjacent to the room addition, removal and re-installation of siding, and repair of the ceiling at 8243 Simons Drive, Norfolk, Virginia 23505. (Exh. C-2 and R-1)

On November 22, 2003, First Class Contracting Inc. provided Norton with an invoice, in the amount of \$22,400.00, to repair an 11 x 26 room addition including raising the floor into kitchen and den, obtain a building permit for the room addition, remodel the bathroom, remodel the kitchen including cabinets and double window, and add marble beige tile at the subject property. The invoice was only signed by Norton. (Exh. R-2)

In December 2003, First Class commenced work. (Exh. I-4)

On January 10, 2004, First Class Contracting Inc. entered into a written contract, in the amount of \$25,100.00, with Norton to repair an 11 x 26 room addition including raising the floor into kitchen and den, obtain a building permit for the room addition, remodel the bathroom, remodel the kitchen including cabinets and double window, install electrical wiring for the house including 150 amp box and rewire outlets only, and install door and jam in kitchen at the subject property. A hand-written note on the January 10, 2004, contract indicated, "This voids all previous contracts." (Exh. C-3 and R-3)

On October 19, 2002, Jeffery D. Persons & Edward A. Kelly, t/a First Class Contracting, were issued Class C contractor's license number 2705071640 as a partnership with the Commercial Improvement Contracting ("CIC"), Home Improvement Contracting ("HIC"), Concrete Contracting ("CEM"), Landscape Irrigation Contracting ("ISC"), Landscape Service Contracting ("LSC"), Masonry Contracting ("BRK"), Painting and Wallcovering Contracting ("PTC"), and Roofing Contracting ("ROC") specialty services. Jeffery D. Persons ("Persons"), individual tracking number 2706123233, and Edward A. Kelly ("Kelly"), individual tracking number 2706123224, are the Qualified Individuals and Responsible Management for license number 2705071640. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

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

Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a

new business entity, the firm shall apply for a new license, on a form provided by the board, within 30 days of the change in the business entity. Such changes include but are not limited to:

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

FACTS:

The contracts signed November 22, 2003, and January 10, 2004, reflected the name First Class Contracting Inc. (Exh. C-3, R-2, and R-3)

On September 9, 2004, First Class Contracting, Inc. became incorporated in Virginia. (Exh. I-2)

First Class failed to apply for a new license within thirty (30) days of a change in its business entity.

2. Board Regulation (Effective January 1, 2003)

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

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

FACTS:

In addition to the facts outlined in Count 1:

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

3. Board Regulation (Effective January 1, 2003)

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

- B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine

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

FACTS:

First Class failed to fully execute a written contract prior to commencement of work.

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The contract used by First Class in the transaction failed to contain subsections: a., b., d., e., f., h., and i. (Exh. C-3 and R-3)

5. 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 states "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 \$7,500 . . ."

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

6. 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:

On June 15, 2004, Inspector Morris ("Morris") of the City of Norfolk Department of Planning & Community Development inspected the subject property and determined structural, electrical, plumbing, and mechanical work was performed. (Exh. C-4 and W-1)

On July 23, 2004, Kelly admitted First Class performed plumbing and electrical work, which included running piping to a new shower in the bathroom, a few elbow joints, replacement of the electrical panel box, and replacement of existing outlets, at the subject property. (Exh. I-3)

On September 17, 2004, in Norfolk General District Court, Edward D. Kelley (also known as Edward A. Kelly), t/a First Class Contracting, pleaded nolo contendere and was convicted of an unspecified misdemeanor of built, altered and repaired building, electrical and plumbing without permits or inspections at the subject property, in violation of Section 111.1 of the Uniform Statewide Building Code ("USBC") as adopted by Section 11.1 of the Code of the City of Norfolk. (Exh. I-5)

On October 22, 2004, in Norfolk General District Court, Jeffrey D. Person (also known as Jeffrey D. Persons), t/a First Class Contracting, pleaded guilty and was convicted of an unspecified class misdemeanor of built, altered and repaired building, electrical and plumbing without permits or inspections at 8243 Simons Drive, Norfolk, Virginia, in violation of Section 111.1 of the USBC as adopted by Section 11.1 of the Code of the City of Norfolk. (Exh. I-6)

First Class practiced in a classification or specialty service for which it is not licensed.

7. 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:

In addition to the facts outlined in Count 6:

The January 10, 2004, contract specified building permit. (Exh. C-3)

On June 15, 2004, Inspector Morris ("Morris") of the City of Norfolk Department of Planning & Community Development issued a stop work order to First Class for failure to obtain required permit prior to commencing work, in violation of Section 111.1 of the USBC, and failure to obtain required inspections, in violation of Section 115.4 of the USBC. (Exh. C-4)

8. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In January 2004, First Class gave Norton a permit to be placed in the window of the subject property. Between January 2004 and June 2004, Norton asked First Class if the work had been inspected, and First Class told Norton that the work had been inspected. First Class further told Norton that the den area was hurricane damaged and did not need a building permit, but that the remaining work required a permit. Additionally, First Class

told Norton that some of the work was grandfathered in because the codes change every three years. (Exh. and I-4)

In June 2004, Norton visited the City of Norfolk Codes Administration Department and brought the permit First Class posted at the subject property. The Codes Administration Department stated that the permit was not for the subject property, but rather was for an address on Capeview Avenue in Norfolk. The Codes Administration Department took the permit from Norton. (Exh. I-4)

9. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In addition to the facts outlined in Count 6 and Count 7:

Morris directed First Class to abate the violations by June 18, 2004. (Exh. C-4)

As of August 7, 2004, First Class failed to abate the violations. (Exh. I-5, I-6, and W-1)

10. 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:

In addition to the facts outlined in Count 7:

In a letter dated August 2004, Morris stated, "The work done was of very poor quality and not close to code. Many leaks in plumbing, leaning walls unfinished coverings and just a bad job. Most of what was done will have to be removed and redone." Morris further stated, "The homeowner is in a bad situation as the house is liveable but has serious problems, some safety issues and structural problems." (Exh. W-1)

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

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

B. The following are prohibited acts:

3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.

FACTS:

In addition to the facts outlined in Count 6:

As of February 18, 2005, Persons and/or Kelly failed to report to the board, in writing, the convictions in a court of competent jurisdiction of a building code violation.

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

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

B. The following are prohibited acts:

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having lapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

FACTS:

In addition to the facts outlined in Count 6:

Neither Persons nor Kelly have appeals pending and the time for appeal has lapsed. (Exh. I-5 and I-6)

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

Re: Hudson Roofing Company

File Number: 2004-02633
License Number: 2705028844

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 28, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Hudson Roofing Company ("Hudson") 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 10, 2005, Hudson requested a continuance of the Informal Fact-Finding Conference ("IFF"), which was granted. On February 15, 2005, a letter rescheduling the IFF was mailed, via certified mail, to Hudson to the address of record. The certified mail was signed for and received.

On April 5, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Steve Cocoli ("Cocoli"), Responsible Management for Hudson, Respondent; Dr. William Steeves ("Steeves"), Complainant; Kathleen Steeves, Witness; Joseph Haughwout, Staff Member; and Ann Rackas Pate, Presiding Board Member.

RECOMMENDATION

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

During the IFF, Cocoli stated he requested the first IFF be rescheduled because he had to take care of his children on the day of the first IFF.

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

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

During the IFF, Cocoli stated Hudson only includes subsection e. in a contract when permits, inspections, or zoning requirements are an issue for the project. The subsection was not included in this contract because the work did not require a permit and there were no zoning issues.

Cocoli believes the Virginia Consumer Protection Act ("the Act") requires a cancellation clause if you are soliciting a job. Based on this, Cocoli stated this contract did not include subsection f. because the Steeves contacted Hudson and his interpretation of the Act did not require the cancellation clause for this contract.

Cocoli agreed to include the subsections if the Board determines it is required.

In my opinion, the Board's requirements for subsection e. and f. apply to all residential contracts regardless of whether permits, inspections, or zoning requirements are an issue and even if a statutory cancellation right is not applicable. Therefore, these provisions should have been included in this contract.

Hudson's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

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

The contract specified the work was warranted for one (1) year from the date of completion to cover defective workmanship.

In April 2002, Steeves contracted with Hudson to remodel a kitchen at the subject property. During the IFF, Kathleen Steeves stated the work was completed sometime in July 2002.

During the IFF, Kathleen Steeves stated in May 2003 she noticed a leak in the kitchen. Kathleen Steeves further stated she did not know what caused the leak so she called a plumber, who indicated it was possibly the dishwasher. It was eventually discovered that a hose to the dishwasher was cut and taped over. Kathleen Steeves contacted Hudson regarding the problem. Hudson offered to submit a claim to its insurance company to fix the damage. Hudson offered to repair the damage; however, Kathleen Steeves did not agree to the first offer from Hudson because the offer did not appear to cover the entire damage. As of this date, the Steeves and Hudson have not come to an agreement regarding settlement of the warranty.

During the IFF, Cocoli stated the warranty is a civil issue and should be handled by the courts because there is a dispute as to the warranty. Cocoli stated the Steeves contacted Hudson to replace the roof in 2001. The following year (2002), the Steeves contacted Hudson to perform interior renovations, including the cutting and redesigning of a structural wall in the kitchen. In June 2003, Cocoli received an email from Kathleen

Steeves regarding a cut pipe that caused a water leak. Cocoli returned to the subject property to inspect the problem, determine the extent of the damage, and offer a resolution to the problem.

During his inspection, Cocoli examined the sub-floor and did not detect any damage to the sub-floor. Cocoli also contacted a flooring company regarding the replacement of the oak flooring. For several months, Cocoli made several offers to the Steeves, but the parties have not agreed to a settlement amount because the scope of the repair cannot be agreed upon.

Although Cocoli was not present at the time the pipe was cut and he cannot explain how it got cut, Cocoli admitted he is responsible for the problem and wants to pay for the damage caused to the property.

Since discovering the damage to the floor in May 2003, the Steeves have not had the flooring repaired or replaced.

In my opinion, Hudson has attempted to honor the warranty and that the matter has not been resolved because the scope of damage caused by the leak cannot be agreed upon between the parties.

Therefore, I recommend Count 2 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.30.

By: _____
Ann Rackas Pate
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: September 27, 2004 (revised December 8, 2004)

FILE NUMBER: 2004-02633
RESPONDENT: Hudson Roofing Company
LICENSE NUMBER: 2705028844
EXPIRATION: July 31, 2005

SUBMITTED BY: Carolyn D. Wright
APPROVED BY:

COMMENTS:

Also holds license number 2705019491 as Steven A. Cocoli, t/a Baker & Woods Construction.

Hudson Roofing Company ("Hudson") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705028844).

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

BACKGROUND:

On December 24, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Dr. William Steeves, Jr. ("Steeves") regarding Hudson. (Exh. C-1)

On April 9, 2002, Hudson entered into a written contract, in the amount of \$12,353.00, with Steeves to remodel a kitchen at 8918 Kenilworth Drive, Burke, Virginia 22015. (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:

- 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.

FACTS:

The contract used by Hudson failed to contain subsections: e. and f. (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:

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

FACTS:

The contract specified, "This work is warranted for a period of one(1) year, from the date of completion, to cover defective workmanship furnished by us." (Exh. C-2)

Several months after Hudson installed the kitchen countertops and sink, Kathleen Steeves discovered the wood flooring in front the sink was warping and a crack in the corian kitchen countertop. (Exh. C-1)

In May 2003, a plumber and appliance repairman were hired to determine the cause of the leak. The appliance repairman found a plastic pipe that ran hot water to the dishwasher was cut and covered by a piece of duct tape. (Exh. C-1)

On May 23, 2003, Steeves notified Hudson the wood flooring in front of the kitchen sink buckled. (Exh. C-4)

Hudson made several appointments, but failed to show up as scheduled. (Exh. C-1 and C-4)

Hudson offered to reimburse Steeves \$850.00 to replace the damage wood flooring and to reimburse the cost of the plumber. (Exh. I-1)

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

Re: Allen's Electrical Service of VA Inc.

File Number: 2004-05182
License Number: 2705055288

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 3, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Allen's Electrical Service of VA Inc. ("Allen's Electrical") 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 Thomas Hennesey, Esq., the attorney for Allen's Electrical, at 150 Boush Street, Suite 204, Norfolk, Virginia 23510. The certified mailings were signed for and received.

On April 5, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Mark Allen ("Allen"), Responsible Management for Allen's Electrical, Respondent; Thomas Hennesey ("Hennesey"), Attorney for Respondent; Joseph Haughwout, Staff Member; and Ann Rackas Pate, Presiding Board Member.

RECOMMENDATION

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

On January 21, 2004, John Martin ("Martin") contacted Allen's Electrical regarding a power outage at the subject property. After inspecting the system, Mark Allen told Martin that the electrical panel had burned up and needed replacing because it caused a fire hazard. Martin decided to have Allen make repairs to the electrical panel, rather than having a new panel installed, because the panel had already been replaced in the preceding year. Allen told Martin he could fix the problem, but that the fix would be temporary. Allen repaired the electrical panel.

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

After the work was performed, Allen's Electrical provided Martin with a written proposal to install a new main breaker at the subject property and the proposal was signed by Martin and Allen.

During the IFF, Allen stated the labor charges are standard by the corporation. Allen also stated he typically does not obtain the customer's signature until after the work is completed because it is difficult to know the total charges for a service call until after the work is completed.

The \$75.00 service call and an additional labor charge are consistent with other proposals written by Allen's Electrical.

Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.17.

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

On January 22, 2004, Martin returned to the subject property, and noticed a power outage. Joseph Privott ("Privott"), another electrician, visited the subject property and discovered Allen's Electrical had installed the incorrect type of circuit breaker, which caused the electrical panel to burn up.

During the IFF, Allen admitted he installed a Square D circuit breaker. Allen stated the circuit box had several different types of breakers. Allen further stated he did not see the Murray label on the electrical panel.

In my opinion, Allen's work on an electrical panel without knowing who manufactured the panel is negligent. If Allen had known the brand of the electrical panel, he may have questioned the existence of the Square D circuit breaker rather than merely replacing the breaker with the same brand.

Allen's Electrical's action constitutes negligence or incompetence in the practice of contracting, and is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$200.00 be imposed.

By: _____
Ann Rackas Pate
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 21, 2005 (revised February 22, 2005)

FILE NUMBER: 2004-05182
RESPONDENT: Allen's Electrical Service of VA Inc.
LICENSE NUMBER: 2705055288
EXPIRATION: March 31, 2006

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

COMMENTS:

Issues regarding the minimum contract provisions and delivery of the contract are not addressed in this matter since it does not involve a residential transaction.

Allen's Electrical Service of VA Inc. ("Allen's Electrical") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705055288).

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 28, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from John Martin ("Martin"), on behalf of Great Atlantic Travel ("Great Atlantic"), regarding Allen's Electrical. (Exh. C-1)

On January 21, 2004, Allen's Electrical removed the face off the electrical panel at 1065 Laskin Road, Suite 101, Virginia Beach, Virginia 23451. Mark Allen ("Allen"), of Allen's Electrical told Martin the electrical panel had burned up and needed to be replaced because it created a fire hazard. Martin questioned Allen because the electrical panel was had been replaced last year. Allen told Martin that he could fix the problem temporarily, but the repair would not last long. (Exh. C-1)

On January 21, 2004, Allen's Electrical repaired the electrical panel at the subject property. (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:

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

FACTS:

After Allen's Electrical performed the work, Allen's Electrical provided Great Atlantic with a written proposal for the removal of a 100 amp main breaker and installation of a new 100 amp main breaker at the subject property. The proposal indicated \$75.00 for labor, \$94.83 for parts, and \$25.00 for wire and parts. Martin signed the proposal on behalf of Great Atlantic. (Exh. C-1, C-2, and R-2)

After Martin signed the proposal, Allen modified the labor charge from \$75.00 to \$375.00 and indicated the total cost of the project was \$569.82. Allen signed the proposal and backdated it to January 16, 2004. (Exh. C-1, C-2, and R-2)

Martin disputed the altered labor charge. Martin paid Allen's Electrical \$569.83 by check because Allen told Martin that he would disconnect the power until Martin settled the dispute. (Exh. C-1)

In a written response dated July 22, 2004, Thomas F. Hennessy ("Hennessy"), attorney representing Allen's Electrical, stated, "Mr. Allen did not present Mr. Martin with a Proposal before commencing work because he was responding to an emergency service call and could not know the nature and extent of the problem before beginning work." Hennessy also stated Allen's Electrical replaced the circuit breaker and then presented Martin with the proposal, which was endorsed by Martin. Hennessy further stated, "Mr. Allen did not add anything to the Proposal after it had been signed by Mr. Martin." (Exh. R-1)

Allen's Electrical made a misrepresentation to Martin regarding the charges, which Martin disputed after he signed the proposal because Allen altered the charge.

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The electrical panel box at the subject property was a Murray Electrical Products brand. (Exh. I-2 and I-3) The label on the cover of the electrical box specified, "Additional or replacement breakers must be of the same manufacturer, type, ampere rating and interrupting capacity as those listed above such that the panelboard short circuit current rating equals or exceeds the available short circuit current." (Exh. I-3) Allen repaired the main circuit breaker, which powered the entire office, with a Homeline brand Square D circuit breaker. (Exh. I-2)

On January 22, 2004, Martin arrived at the Great Atlantic office, which was without power. (Exh. C-1)

On January 22, 2004, Joseph K. Privott ("Privott") of Shoreside Electric discovered the circuit breaker installed by Allen's Electrical was the wrong type and had burned up during the night. Privott did not find anything wrong with the electrical panel. (Exh. C-1)

Privott repaired the work performed by Allen's Electrical. According to Privott, the Homeline brand Square D circuit breaker installed by Allen's Electrical did not fit properly into the Murray Electrical Products electrical panel, which caused it to burn up in a short period of time. (Exh. I-2)

In a written response dated July 22, 2004, Hennessy stated, "Mr. Allen replaced a Square D two-pull 100 amp circuit breaker with another circuit breaker of the same type." (Exh. R-1)

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

Re: Helen D. Govea, t/a Silver Bullet Carports

File Number: 2004-04553
License Number: 2705065834

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 4, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Helen D. Govea, t/a Silver Bullet Carports ("Silver Bullet") 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 April 5, 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 Ann Rackas Pate, Presiding Board Member. Neither Silver Bullet 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:

Based on the record, Silver Bullet constructed the carport to the wrong height dimension. Silver Bullet's actions will likely result in Rowland incurring additional costs to repair or reconstruct the carport. Otherwise, if Rowland leaves the existing carport, she may not be able to use the carport as intended.

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

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

Silver Bullet's failure to include subsections a., d., e., f., h. (contractor's address, license number, expiration date, class of license, and classifications or specialty services), and i. is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

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

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

In March 2004, Silver Bullet contracted with Faye Rowland ("Rowland") to construct and install a carport at the subject property. The contract specified Silver Bullet was not responsible for permits. Silver Bullet performed the work, but failed to ensure a permit had been obtained prior to performing the work, in violation of the Uniform Statewide Building Code.

Silver Bullet's violation of the building code constitutes misconduct in the practice of contracting, and is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

The contract specified the carport would have a leg height of 7'; however Silver Bullet constructed and installed a carport with a leg height of 6' instead. Rowland sent a letter to Silver Bullet regarding the incorrect size, and requested Silver Bullet correct the dimensions of the carport. Silver Bullet has failed to make the corrections.

Silver Bullet's failure to make corrections and comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

In July 2004, the Board's agent requested Silver Bullet to provide a written response and supporting documents to the complaint filed with the Board. The Board's agent made subsequent requests to Silver Bullet by certified mail, and by fax. A representative for Silver Bullet informed the Board's agent that the fax had been received; however Silver Bullet still has not provided a response to the Board's agent.

Silver Bullet's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

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

A representative for Silver Bullet informed the Board's agent that the address for Silver Bullet had changed. The Board's agent faxed a change of address form to Silver Bullet, and indicated that Silver Bullet had thirty (30) days to change its address with the Board. Silver Bullet has failed to report to the Board its change of address.

Silver Bullet's failure report to 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 a monetary penalty of \$500.00 and remedial education be imposed.

By:

Ann Rackas Pate
Presiding Board Member

Board for Contractors

Date:

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Contractors
DATE: January 26, 2005 (revised February 28, 2005)

FILE NUMBER: 2004-04543
RESPONDENT: Helen D. Govea, t/a Silver Bullet Carports
LICENSE NUMBER: 2705065834
EXPIRATION: February 28, 2006

SUBMITTED BY: Dale C. Amos
APPROVED BY: Wayne Mozingo

COMMENTS:

On site visit made on December 27, 2004, by Inv. Dale C. Amos. No Consent Order offered since respondent will not answer letters or return phone calls.

Helen D. Govea, t/a Silver Bullet Carports ("Silver Bullet"), was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705065834).

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

BACKGROUND:

On May 3, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Faye Rowland ("Rowland") regarding Silver Bullet. (Exh. C-1)

On March 5, 2004, Silver Bullet entered into a written contract, in the amount of \$830.78, with Rowland to construct and install an 18' x 21' carport with a leg height of 7' at 2140 Cody Road, Gretna, Virginia 24557. The contract indicated Gene Crews as the dealer. (Exh. C-2)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

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

6. Misconduct in the practice of contracting.

FACTS:

The contract specified, "We are not responsible for permits, covenants or restrictions." (Exh. C-2)

As of January 26, 2005, Silver Bullet failed to ensure a required permit was obtained for the work performed at the subject property, in violation of Section 109.1 of the Uniform Statewide Building Code. (Exh. I-7)

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:

The contract specified a carport size of 18' x 21' with leg height of 7'. (Exh. C-2)

Silver Bullet constructed and installed a carport with a leg height of 6 feet instead of 7 feet. (Exh. C-3)

Rowland sent a letter to Silver Bullet regarding the incorrect size and requested Silver Bullet correct the dimensions of the carport installed. (Exh. C-3)

Silver Bullet failed to make the corrections 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:

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 July 22, 2004, Investigator Dale C. Amos, the Board's agent, made a written request to Silver Bullet at the address of record of 157 Eastwind Court, Mount Airy, North Carolina 27030, requesting a written response and supporting documentation to the complaint filed with the Board. The Board's agent requested a written response be received by August 4, 2004. (Exh. I-2)

On December 13, 2004, the Board's agent made a written request, via certified mail, to Silver Bullet at the address of record of 157 Eastwind Court, Mount Airy, North Carolina 27030, requesting a written response and supporting documentation to the complaint filed with the Board. The Board's agent requested a written response be received by December 23, 2004. On January 10, 2005, the certified letter was returned by the United States Postal Service and was marked "other." (Exh. I-3)

On January 11, 2005, the Board's agent made a written request, via facsimile, to Silver Bullet at (336) 786-0046, requesting a written response and supporting documentation to the complaint filed with the Board. The Board's agent requested a written response be received by January 17, 2005. (Exh. I-4)

On January 11, 2005, Melissa Beverly ("Beverly"), on behalf of Silver Bullet, stated she received the fax transmission. On January 26, 2005, Beverly told the Board's agent that she gave the faxed letter to Helen Govea. (Exh. I-5)

As of January 26, 2005, Silver Bullet failed to respond to an investigator seeking information in the investigation of a complaint filed with the Board.

5. Board Regulation (Effective January 1, 2003)

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

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

FACTS:

In addition to the facts outlined in Count 4:

On January 11, 2005, Beverly told the Board's agent that the address for Silver Bullet changed to P.O. Box 6105, Mount Airy, North Carolina 27030. (Exh. I-5)

On January 11, 2005, the Board's agent faxed a letter and change of address form to Silver Bullet. The letter indicated Silver Bullet was required to notify the Board of any change of address within thirty days of a change. (Exh. I-4)

On January 26, 2005, the licensing records for the Board for Contractors revealed the address of record for Silver Bullet is 157 Eastwind Court, Mount Airy, North Carolina 27030. (Exh. I-1)

Silver Bullet failed to report, in writing, to the Board within thirty (30) days of a change of its address.

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

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

1. Name: Ann Rackas Pate
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on April 5, 2005
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

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

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


Signature

4-5-05
Date