

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
April 12, 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.

Robert Burch, 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. Value Painting & Home Improvements Inc.
File Number 2005-00423 (Disc)
(No decision made) | Geraldine Warren – C
Penelope Rood – W |
| 2. Larry Gayle Elliot
t/a Cross Timbers Concrete
File Number 2004-04998 (Disc)
(No decision made) | Elliot – R |
| 3. Michael Turner
File Number 2005-03574 (Lic) | Turner – A
W. Joseph Owen III – A's Atty
Sam Kaufman – A's Atty |
| 4. Asghar Changiz
t/a A & S Landscaping & Contracting
File Number 2004-05132 (Disc)
(Consent Order) | Changiz – R
Scott Wash – R Atty
D. Brent Pope – C |
| 5. Excel Heating & Air Conditioning Inc.
File Number 2005-00825 (Disc) | William Davidson – R
(by phone)
Jannine Pennell – W
K. Hutchinson – W (by phone) |

(No decision made)

- | | |
|---|---------------------|
| 6. RAO Contracting LLC
File Number 2005-02200 (Disc)
<i>(No decision made)</i> | None |
| 7. Decked Out Fenced In Inc.
File Number 2005-00188 (Disc)
<i>(No decision made)</i> | None |
| 8. JKP Plumbing Inc.
File Number 2005-00224 (Disc)
<i>(No decision made)</i> | None |
| 9. Thomas Lewis
t/a Good Works
File Number 2004-05195 (Disc)
<i>(No decision made)</i> | Lewis – R |
| 10. John Beatty.
t/a Beatty Construction
File Number 2005-00043 (Disc)
<i>(No decision made)</i> | Vaughnie Hailey – C |

The meeting adjourned at 4:00 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: Michael Turner
Application

File Number: 2005-03574

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 8, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Michael Turner ("Turner"). The Notice included the Informal Fact-Finding Conference Referral Memorandum, which contained the facts regarding the application. The certified mail was signed for and received.

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

The following individuals participated at the IFF: Michael Turner, Applicant; W. Joseph Owen III ("Owen") and Sam Kaufmann ("Kaufmann"), Attorneys for Applicant; Joseph Haughwout, Staff Member; and Robert Burch, Presiding Board Member.

On January 31, 2005, Turner applied for a Class A contractor's as a sole proprietorship. Turner is listed as the Designated Employee, Qualified Individual, and Responsible Management on the license application. On the application, Turner disclosed that his business, Designated Employee, Qualified Individual, and Responsible Management were subject to disciplinary action imposed by a regulatory body. The Board for Contractors took disciplinary action against Turner's previous license (License Number 2705040865).

PRIOR REGULATORY VIOLATIONS

In accordance with §54.1-1106 of the Code of Virginia, the applicant's prior disciplinary violations were considered using the analytical framework contained within § 54.1-204.B of the Code of Virginia.

1. The nature and seriousness of the violation;

On December 3, 1999, the Board issued a Final Opinion and Order in File number 1999-01412, regarding Turner. The Board found clear and convincing evidence Turner violated the Board's Regulations (Effective March 31, 1995). The violations involved failure to operate in the name in which the license was issued, failure to include minimum provisions in a contract, misconduct for failure to honor a promise to make repairs, abandonment, and failure to obtain written change orders. The Board

imposed monetary penalties in the total amount of \$2,300.00, and revoked Turner's license for violation of its regulations.

2. The relationship of the violation to the purpose for requiring a license to engage in the occupation;

The purpose of licensure is to protect the health, safety, and welfare of the public.

File number 1999-01412 was based on a complaint filed by David and Cindy Lacy ("the Lacys"). The Lacys alleged that Turner failed to complete work contracted for, and that Turner failed to honor a signed agreement stipulating he would make requested repairs. The violations are directly related to contracting.

Although the violations are related to contracting, Turner did not appear at the Board meeting regarding File number 1999-01412 and regrets not being able to explain his behavior. Based on his testimony and credibility, it does not appear that granting a license to Turner would result in the same harm to the public.

3. The extent to which the occupation or profession might offer an opportunity to engage in further activity of the same type as that in which the person had been involved;

Turner's previous license was revoked because Turner failed to make repairs to the Lacy's property, as promised, and because he failed to complete work for which he was contracted. Were Turner to obtain this license, it offers the possibility that Turner could again violate the Board's regulations.

Based upon the above information, it does not appear that granting Turner a license will encourage any further activity of the same type. As indicated above, Turner regrets his prior actions and has taken measures to prevent any future complaints. Turner has hired an attorney to review and revise his contracts and understands if a conflict arises that he should consult his attorney rather than avoiding the situation.

4. The relationship of the violation to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

The violations are directly related to Turner's ability, capacity or fitness required to perform the duties and discharge the responsibilities in the contracting profession.

During the IFF, Turner stated he learned from his mistake regarding the prior regulatory violations. As stated above, Turner has taken measures to prevent any future violations.

5. The extent and nature of the person's past regulatory violation(s);

Turner was disciplined for regulatory violations of the Board's regulations (Effective March 31, 1995) in 1999.

6. The age of the person at the time of the commission of the regulatory violation(s);

Turner was approximately 36 years of age at the time of the violation(s).

7. The amount of time that has elapsed since the person's last involvement in a regulatory violation;

The last violation occurred on or about December 3, 1999.

8. The conduct and work activity of the person prior to and following the regulatory violation; and

During the IFF, Turner stated he has been designing homes most of his life. Turner's attorney provided a report from the Better Business Bureau Central Virginia, which indicated no complaints for his design business since 1992.

Since the regulatory violations in 1999, Turner has been designing homes, but not contracting.

9. Evidence of the person's rehabilitation or rehabilitative following the violation.

In File number 1999-01412, the Board imposed a total monetary penalty of \$2,300.00, and revoked Turner's license for the violations.

During the IFF, Turner stated he has paid the monetary penalties. Turner's attorney indicated his firm was hired by Turner to review and draft contracts to be used by Turner if he is granted his license. Turner's attorney provided copies of a draft short form and long form contract intended to be used by Turner for contracting jobs.

RECOMMENDATION

Based upon the evidence and the IFF, and in consideration of the criteria outlined, the following is recommended regarding the application as outlined in the IFF Conference Referral Memorandum:

During the IFF, Turner stated he would like to obtain his license to start building the homes he designs.

Therefore, I recommend Turner's application be approved.

By: _____

Robert Burch
Presiding Board Member

Board for Contractors

Date: _____



LICENSING & REGULATORY PROGRAMS DIVISION
APPLICATION REVIEW
INFORMAL FACT FINDING CONFERENCE REFERRAL MEMORANDUM

To: Adjudication Section, Compliance & Investigations Division

Date: 3/4/2005

From: Kevin Hoeft

Board: Contractors

Applicant: Michael Turner, t/a Michael Turner/2705-092166

Applied For: License / Certification / Registration Class: A / B / C

Type Applied For: BLD (as marked on application)

Reviewed

By:

Board Member
Kevin Hoeft
Staff Member

IFF Requested by Whom:

Applicant

When: 3/2/2005 How:

Fax (date) (letter, telephone, etc.)

COMMENTS:

BASIS UPON WHICH APPLICANT MAY NOT MEET BOARD REGULATORY REQUIREMENTS:

ENTRY REQUIREMENT DEFICIT(S)

Pursuant to VA Code or Board Regulation §: 54.1-1110 & 54.1-1106(A)

FACTS: (Include information that specifically addresses why the applicant does not satisfy the Section of the Code or Regulation cited above.)

Michael Alan Turner was RM, DE & QI of Michael Turner, t/a Michael Turner, license number 2705-040865. The license for Michael Turner, t/a Michael Turner was revoked by the Board by Final Order on December 3, 1999. Pursuant to § 54.1-1110 of the *Code of Virginia*, The Board may refuse to issue a license to "any contractor who is shown to have a substantial identity of interest with a contractor whose license or certificate has been revoked or not renewed by the Board."

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

Re: Asghar Changiz, t/a A & S Landscaping & Construction
Great Falls, VA 22066

File Number 2004-05132
License Number 2705057937

CONSENT ORDER

Respondent Asghar Changiz, t/a A & S Landscaping & Construction ("Asghar Changiz") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's 2003 Regulations provides:

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

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

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

On March 8, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Asghar Changiz, t/a A&S Landscaping & Contracting ("A&S") 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 12, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Asghar Changiz ("Changiz"), Respondent; Scott Wash ("Wash"), Respondent's Attorney; D. Brent Pope ("Pope"), Complainant; Joseph Haughwout, Staff Member; and Robert Burch, Presiding Board Member.

During the IFF, Wash stated the contracts did not contain the provisions. Changiz indicated he is in the process of revising his contract.

During the IFF, Changiz admitted permits were not obtained. Changiz stated he was having family problems and he hired a subcontractor, who was supposed to take care of the project. Changiz accepts responsibility for the subcontractor's actions because it was his contract, but he trusted the subcontractor. Changiz also stated he did not oversee the project close enough and did not ensure the permits were obtained because he believed the subcontractor had taken care of it.

During the IFF, Pope stated he hired Changiz to perform work at this property, including remodeling the kitchen and structural work. After the work was performed, Pope noticed a leak from the skylight. Pope hired a roofing contractor, who determined the skylight was installed wrong. While replacing the skylight, the roofing contractor noticed the roof was caving in. Pope also noticed several cracks in walls. Pope hired Colonial Roofing to fix the damages at a cost of more than \$40,000.00.

During the IFF, Changiz stated Pope contacted him about installing a skylight. Changiz advised Pope not to install the skylight, but he eventually agreed to install the skylight for Pope. Changiz stated he was contacted by Pope in October 2004 because the skylight was leaking. Changiz returned to the property five (5) times in an effort to repair the leak.

During the IFF, Wash stated there was miscommunication regarding the problems and scope of work because Changiz was in Iran. Wash also stated neither Changiz's business partner nor the subcontractor who Changiz hired to take care of the project during Changiz's family problems actually took care of this project in his absence.

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

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

By signing this Consent Order, Asghar Changiz acknowledges an understanding of the charges. Although Asghar Changiz hereby admits to the violation(s) of the Counts as outlined in the Amended Report of Findings, Asghar Changiz is not admitting to any acts of fraud and/or misrepresentation. Asghar Changiz consents to the following term(s):

Count 1	18 VAC 50-22-230.A	\$0.00
Count 2	18 VAC 50-22-260.B.9	\$0.00
Count 3	18 VAC 50-22-260.B.6	\$500.00
Count 4	18 VAC 50-22-260.B.5	\$1,500.00

	TOTAL	\$2,000.00
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In addition, for violation of Count 1, Count 2, Count 3, and Count 4, Asghar Changiz agrees to successfully complete remedial education by attending the Board's Basic Contracting License class and passing the examination within six (6) months of entry of this Order.

For violation of Count 1, Asghar Changiz agrees to provide, within thirty (30) days of entry of this Order, proof of documentation that he has registered as a limited liability company ("LLC") and applied for a license to operate as an LLC.

For violation of Count 2, Asghar Changiz agrees to provide, within thirty (30) days of entry of this Order, a copy of a revised contract.

Asghar Changiz also agrees to pay \$500.00 in Board costs.

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

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

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

SEEN AND AGREED TO:

Asghar Changiz
t/a A & S Landscaping & Construction

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

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

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2005.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

EEO

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

AMENDED
REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 10, 2005 (revised March 4, 2005 and amended
April 12, 2005)

FILE NUMBER: 2004-05132
RESPONDENT: Asghar Changiz, t/a A & S Landscaping & Construction
LICENSE NUMBER: 2705057937
EXPIRATION: September 30, 2006

SUBMITTED BY: Sherell Queen
APPROVED BY: Linda J. Boswell

COMMENTS:

Asghar Changiz, t/a A & S Landscaping & Construction, may have filed for bankruptcy protection.

Asghar Changiz, t/a A & S Landscaping & Construction ("A & S"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705057937).

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 21, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from D. Brent Pope ("Pope") regarding A & S. (Exh. C-1)

On May 16, 2003, Pope paid A & S \$2,950.00 by check. (Exh. C-6)

On May 22, 2003, A & S entered into a written contract, in the amount of \$7,400.00, with Pope to perform renovation work at 3905 Old Mill Road, Alexandria, Virginia. (Exh. C-2)

On May 22, 2003, Pope paid A & S \$3,700.00 by check. On May 28, 2003, Pope paid A & S \$2,950.00 by check. (Exh. C-6)

On May 29, 2003, Great Falls Paving and Concrete LLC ("Great Falls") provided a written proposal, in the amount of \$9,500.00, to Pope to perform renovation work at the subject property. (Exh. C-3)

On June 7, 2003, Pope paid A & S \$9,300.00 by check. (Exh. C-6)

On June 22, 2003, Great Falls provided a written proposal, in the amount of \$11,500.00, to Pope to perform renovation work at the subject property. (Exh. C-3)

On June 22, 2003, Great Falls provided a written proposal, in the amount of \$31,750.00, to Pope to perform renovation work at the subject property. (Exh. C-3)

On July 7, 2003, Pope paid Great Falls \$23,150.00 by check. (Exh. C-6)

According to an invoice from A & S dated September 13, 2003, the activity included the \$9,500.00, \$11,500.00, and \$31,750.00 contracts. The invoice also indicated A & S received \$60,450.00 from Pope towards the contracts and Pope had an outstanding balance of \$16,045.47. (Exh. C-2)

On September 1, 2000, A & S was issued Class A contractor's license number 2705057937 as a sole proprietorship. Ashgar Changiz, individual tracking number 2706107461, is the Designated Employee, Qualified Individual, and Responsible Management for license number 2705057937. (Exh. I-1)

On May 9, 2003, Great Falls registered as a limited liability company in Virginia. On December 31, 2004, the State Corporation Commission cancelled the limited liability company. The registered agent for Great Falls was Asghar Changiz. (Exh. I-3)

In a written response received August 12, 2004, Asghar ("Oscar") Changiz stated, "A & S was a subsidiary under Great Falls Paving & Concrete LLC." (Exh. R-1)

1. Board Regulation (Effective January 1, 2003)

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

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

FACTS:

A & S failed to operate in the name in which the license is issued.

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

- a. When work is to begin and the estimated completion date;
- b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
- c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
- 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 A & S in the transaction failed to contain subsections: a., c., d., e., f., g., 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:

6. Misconduct in the practice of contracting.

FACTS:

In February 2004, Pope discovered A & S failed to obtain any permits for work performed at the subject property. (Exh. C-4)

As of August 19, 2004, A & S failed to obtain a required building permit for work performed at the subject property. (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:

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

FACTS:

Pope hired another contractor to repair a leak around a skylight installed by A & S and reinstall drywall at the subject property. The contractor discovered no aluminum backing and improper grade of insulation. The contractor also discovered cracks or stress fractures along the cathedral ceiling, which may be indications of problems with the structural integrity of the cathedral ceiling installed by A & S. (Exh. C-4)

On May 13, 2004, Pope sent A & S a letter, via facsimile, regarding the problems with the cathedral ceiling. (Exh. C-4)

On May 13, 2004, at the request of Pope, D. Anthony Beale ("Beale"), P.E. with Advance Engineers Ltd., conducted a structural evaluation of the roof framing over the living room at the subject property. In a letter dated May 17, 2004, Beale noted, "The removal of these ceiling joists has compromised the structural integrity of the roof framing system." Beale further noted, "The ceiling joists should not have been removed without replacing the ridge board with a structural ridge beam." (Exh. C-5)

On May 14, 2004, George A.M. Brown Construction LLC provided Pope with a written estimate, in the amount of \$7,760.00, to demolish the roof installed by A & S and reframe the ceiling to form a flat roof instead of a cathedral ceiling. (Exh. C-4 and C-5)

On May 14, 2004, Colonial Roofing Inc. provided Pope with an invoice, in the amount of \$1,550.00, for the replacement of the skylight at the subject property. (Exh. C-5)

On May 15, 2004, Colonial Roofing Inc. provided Pope with an invoice, in the amount of \$1,650.00, for the removal of drywall ceiling at the subject property. (Exh. C-5)

On May 27, 2004, Colonial Roofing Inc. provided Pope with two written proposals to remove and repair the roof and ceiling installed by A & S at the subject property. The two proposals, which were for different methods of repair, were in the amount of \$34,500.00 and \$23,690.00. (Exh. C-5)

On July 7, 2004, Colonial Roofing Inc. obtained a building permit for interior alterations and repairs at the subject property. The permit indicated an estimated cost of \$13,000.00. (Exh. W-1)

On July 23, 2004, Colonial Roofing Inc. obtained a building permit for installation of a new structural beam at the subject property. The permit indicated an estimated cost of \$11,000.00. (Exh. W-1)

DRAFT

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

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

1. Name: Robert Burch
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on April 12, 2005
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

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

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

Signature  _____ Date 4/12/05