

Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
April 26, 2005

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

Kenneth Hart, Board member, presided. No other Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

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

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

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

Participants

- | | |
|--|--|
| 1. Your Style Decks Inc. File Number 2005-01796 (Disc) | Jon Jenifer – C |
| 2. Your Style Decks Inc. File Number 2005-02542 (Disc) | James Burch – C |
| 3. Richard Blair Jenkins t/a Shorehouse Homescapes File Number 2005-00072 (Disc) | Jenkins – R Christopher Craig – R Atty Elizabeth Carter – C George Ford – W Donald Rutley – W Greg West – W |
| <i>(No decision made)</i> | |
| 4. S W Day Construction Corporation File Number 2005-02242 (Disc) | Kenneth Day – R Candance Thomas – C Branyel Thomas – C Wilton Day – W |
| 5. Randy E. Langford t/a Valley View Renovations File Number 2005-01081 (Disc) | Donna Meliso – C Alphonse Meliso – C |

6. Ralph Marks
t/a H & M Home Improvement
File Number 2004-04059 (Disc)

Marks – R

7. Concreate Designs LLC
File Number 2005-00809 (Disc)

None

The meeting adjourned at 4:30 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: Your Style Decks Inc.

File Number: 2005-01796
License Number: 2705082097

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 25, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Your Style Decks Inc. ("Your Style") 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 marked "Unclaimed" and "Return to Sender, Not Deliverable As Addressed, Unable to Forward, Return to Sender".

On April 26, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: John Jenifer ("Jenifer"); Complainant; Jennifer Kazzie, Staff Member; and Kenneth Hart, Presiding Board Member. Neither Your Style 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 and testimony during the IFF, Your Style's actions of accepting a contract, not performing the work, and taking Jenifer's money are dishonest. Furthermore, Jenifer had to hire another contractor to complete the work. It also appears Your Style continues to perform work as Virginia Finest Inc., which is operated by his wife. Virginia Finest Inc. does not appear to be a licensed contractor.

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

Your Style, a Class C contractor, entered into a contract for \$8,380.45 on July 15, 2004, with Jenifer, which is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

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

Your Style's failure to include subsections a., d., and e. 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 imposed.

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

During the IFF, Jenifer testified that Your Style dug post-holes and began construction of the deck frame and returned one week later with a crew to redo the work. Your Style only returned to deliver materials and never performed any additional work. Jenifer contacted Your Style several times and was told by Gerard Hogue ("Hogue"), on behalf of Your Style, that the work would be performed.

Based on the record, Jenifer also contacted Your Style, via certified mail, requesting that they return to the job and complete the work.

Jennifer stated he hired another contractor to complete the work left unfinished by Your Style.

Your Style never returned to the subject property, which is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

On July 15, 2004, Your Style was paid a \$5,000.00 down payment towards the construction of a 18' x 18' deck.

Based on the record, Jennifer contacted Your Style, via certified mail, requesting that they return to the job and complete the work, or refund the money received.

During the IFF, Jenifer stated he later saw Hogue and asked about the money. Hogue told Jenifer that he would have to sue him to get the money back.

Jennifer also stated the check paid by Your Style for the permit bounced and that he paid for the permit himself.

Your Style, however, never refunded the money received for work not performed, which is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Your Style's failure to respond to an investigator seeking information in the investigation of a complaint is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

The record indicates Your Style moved and failed to notify the Board within thirty-days of its new address in violation of Board Regulation 18 VAC 50-22-230.B. Therefore, I recommend a monetary penalty of \$500.00 and license revocation be imposed.

By: _____
Kenneth Hart
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: Virginia Board For Contractors
DATE: March 10, 2005 (revised March 21, 2005)

FILE NUMBER: 2005-01796
RESPONDENT: Your Style Decks Inc
LICENSE NUMBER: 2705082087
EXPIRATION: January 31, 2006

SUBMITTED BY: Lethia Jones, Investigator
APPROVED BY: Linda Boswell

COMMENTS:

Companion file 2005-02542.

Your Style Decks Inc ("Your Style") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705082087).

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 17, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from John Jenifer ("Jenifer") regarding Your Style. (Exh. C-1)

On July 15, 2004, Your Style entered into a written contract with Jenifer, in the amount of \$8,380.45, to build a 18; x 18' deck at 4311 Glendale Road Woodbridge, VA 22193. (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:

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

FACTS:

On January 30, 2004, Your Style was issued Class C contractor's license number 2705082087. (Exh. I-1)

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 . . ."

Your Style practiced in a class of license for which it is not licensed.

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

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

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

A couple of days after signing the contract, Your Style framed and dug post holes at the subject property. Your Style did not return to the subject property after performing this work. (Exh. I-2)

On September 10, 2004, Jenifer sent Your Style a letter, via certified mail, requesting Your Style complete the work within seven (7) days or refund the \$5,000.00 deposit. On September 20, 2004, the certified letter was signed for and received. (Exh. C-4 and C-5)

On September 25, 2004, D & D Construction entered into a contract, in the amount of \$4,500.00, with Jenifer to finish the deck at the subject property. (Exh. C-6)

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 3:

On July 15, 2004, Jenifer paid Your Style \$5,000.00 by check. (Exh. C-4)

On July 29, 2004, Gerard Hogue ("Hogue") of Your Style agreed to purchase a lap top computer from Jenifer in exchange for \$950.00 towards the deck price. (Exh. C-5)

As of February 10, 2005, Your Style failed to return funds received for work not performed or performed only in part. (Exh. I-2)

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 December 17, 2004, Investigator Lethia Jones, the Board's agent, made a written request, via certified mail, to Your Style at the address of record of 13925 Longwood Manor Court Woodbridge, VA 22193, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the response be received by December 31, 2004. (Exh. I-3)

On January 6, 2005, Gerard Hogue signed for and received the certified mail. (Exh. I-3)

On January 13, 2005, the Board's agent made a written request, via certified mail, to Your Style at the address of record of 13925 Longwood Manor Court Woodbridge, VA 22193, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the response be received by January 24, 2005. (Exh. I-4)

On or about January 14, 2005, the United States Postal Service ("USPS") forwarded the certified mail to 15603 Rhame Drive, Dumfries, VA 22026-1107. The certified mail was subsequently returned to the Board's agent by USPS because it was unclaimed. (Exh. I-4)

As of February 22, 2005, Your Style failed to respond to the investigator seeking information in the investigation of a complaint filed with the board.

6. 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 5:

The certified signature card indicated it was delivered to 15603 Rhame Drive, Dumfries, VA 22026. (Exh. I-3)

The State Corporation Commission records indicated the address for the corporation is 15603 Rhame Drive, Dumfries, VA 22026. (Exh. I-5)

Your Decks failed to report, in writing, to the board within thirty (30) days of a change of its address.

DRAFT

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

Re: Your Style Decks Inc.

File Number: 200502542
License Number: 2705082097

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 25, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Your Style Decks Inc. ("Your Style") 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 marked "Unclaimed" and "Return to Sender, Not Deliverable As Addressed, Unable to Forward, Return to Sender".

On April 26, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: James Burch ("Burch"); Complainant; Jennifer Kazzie, Staff Member; and Kenneth Hart, Presiding Board Member. Neither Your Style 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 and testimony during the IFF, Your Style's actions of accepting a contract, not performing the work, and taking Burch's money are dishonest. Furthermore, Burch had to hire another contractor to complete the work.

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

Your Style, a Class C contractor, provided Burch with a written estimate in the amount of \$14,500.00 in September 2004. Your Style and Burch verbally agreed to the work. Burch paid Your Style \$8,700.00 on September 27, 2004. Your Style practiced 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 \$1,500.00 be imposed.

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

Burch testified that he never received a written contract from Your Style for the construction of the proposed deck, for which money was paid. Your Style's failure to use a written contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

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

During the IFF, Burch testified that Your Style put up a partial structure. Burch contacted Your Style several times, via telephone and email, regarding completion of the work. In December 2004, Your Style contacted Burch and told Burch that the company was having financial problems. Burch stated there was no further contact with Your Style since middle December 2004; however, in December 2004 or January 2005, Your Style returned to the property and removed materials. Based on the record, Burch sent Your Style a certified letter on February 24, 2005, requesting the work be completed. During the IFF, Burch stated Your Style signed for and received the certified letter.

Burch stated he hired another contractor to correct the deficiencies and complete the work left unfinished by Your Style.

Your Style never returned to the subject property, which is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

On September 27, 2004, Your Style was paid a \$8,700.00 down payment.

During the IFF, Burch stated he has filed a Warrant in Debt against Your Style for approximately \$15,996.00.

Burch also paid another contractor \$900.00 to remove substandard material and to correct the deficiencies in the work performed by Your Style.

Your Style, however, never refunded the money received for work not performed, which is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Your Style's failure to respond to an investigator seeking information in the investigation of a complaint is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: _____
Kenneth Hart
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: Virginia Board For Contractors
DATE: March 10, 2005 (revised March 21, 2005)

FILE NUMBER: 2005-02542
RESPONDENT: Your Style Decks Inc
LICENSE NUMBER: 2705082087
EXPIRATION: January 31, 2006

SUBMITTED BY: Lethia Jones, Investigator
APPROVED BY: Linda Boswell

COMMENTS:

Companion file 2005-01796.

Your Style Decks Inc ("Your Style") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705082087).

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 16, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from James Burch ("Burch") regarding Your Style. (Exh. C-1)

In the middle of September 2004, Burch contacted Your Style for an estimate to construct a deck at 13113 Taverner Loop Woodbridge, Virginia 22193. (Exh. C-1)

A few days later, Your Style provided Burch with plans and an estimate, in the amount of \$14,500.00, to construct a deck at the subject property. (Exh. C-1)

On September 27, 2004, Your Style entered into a verbal agreement with Burch to construct the deck at the subject property. Your Style told Burch it would bring the contract by the next day. (Exh. C-1)

On September 27, 2004, Burch paid Your Style \$8,700.00 by check. (Exh. C-2)

On November 3, 2004, Your Style obtained building permit number BLD2005-06391 for the work to be performed at the subject property. (Exh. I-3)

1. 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 January 30, 2004, Your Style was issued Class C contractor's license number 2705082087. (Exh. I-4)

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 . . ."

Your Style practiced in a class of license for which it is not licensed.

2. 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:

As of February 11, 2005, Your Style failed to provide Burch with a legible written contract clearly specifying the terms and conditions of the work to be performed. (Exh. I-5)

Your Style failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed.

3. 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 last day Your Style performed work at the subject property was December 1, 2004. (Exh. I-5)

On December 13, 2004, Burch sent Your Style an email regarding the delay in service. (Exh. C-4)

Burch made several attempts, via voice mail messages and email, to contact Your Style regarding completion of the work. Your Style did not respond. (Exh. C-1)

On January 13, 2004, Your Style returned to the subject property and removed building materials. (Exh. C-3)

On February 24, 2005, Burch sent Your Style a letter requesting Your Style either complete the deck or refund the \$8,700.00 deposit within fifteen (15) days. (Exh. C-3)

As of December 15, 2004, Your Style failed to complete the deck. (Exh. C-1)

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In addition to the facts outline in Count 3:

As of March 10, 2005, Your Style failed to return funds received for work not performed or performed only in part. (Exh. I-2)

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 February 10, 2005, Investigator Lethia Jones, the Board's agent, made a written request, via certified mail, to Your Style at the address of record of 13925 Longwood Manor Court Woodbridge, VA 22193, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the response be received by February 21, 2005. (Exh. I-1)

On March 2, 2005, the certified mail was signed for and received. (Exh. I-2)

As of March 10, 2005, Your Style 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: S W Day Construction Corporation

File Number: 2005-02242
License Number: 2701036131

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 25, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to S W Day Construction Corporation to the address of record. The Notice was also mailed to 4020 Devon Drive, Chesapeake, VA 23321. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. Both certified mailings were signed for and received.

On April 26, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Kenneth L. Day ("Day"), Respondent; Branyel Thomas and Candace Thomas, Complainants; Wilton Day, Witness; Jennifer Kazzie, Staff Member; and Kenneth Hart, Presiding Board Member.

RECOMMENDATION

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

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

During the IFF, Day admitted subsection h. was not included in the contract because his project manager failed to include it on the contract. S W Day Construction Corporation typically does government work and uses a template for its contracts.

Day's failure to include subsection h. 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 and remedial education 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)

Based on the record and testimony during the IFF, the punch list was revised on January 12, 2005. Day testified that his project manager told him the punch list items were completed and that Branyel Thomas signed off on the punch list, with the exception of the mechanic's lien.

During the IFF, Branyel Thomas presented pictures showing the unfinished work. Branyel Thomas also presented written proposals from other contractors to correct and complete the work left unfinished by S W Day Construction Corporation.

As of April 2005, S W Day Construction Corporation has not corrected and/or completed the punch list items, including removal of the mold and mildew and repair of the leaks into the garage and correction of the brick doorway cut into the wrong place.

As result, this has created a hardship on Branyel Thomas because of the additional expenses she will incur to correct and complete the work left unfinished by Day.

Day's actions are a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

Based on the record, Moore's Lumber & Building Supplies, Inc. ("Moore's"), a subcontractor, claimed Bryan Sneed was indebted to Moore's for materials sold to Day in the amount of \$8,121.41. On November 23, 2004, in the Norfolk Circuit Court, Moore's recorded the mechanic's lien against Bryan Sneed.

During the IFF, Day testified the mechanic's lien remains outstanding and that S W Day Construction Corporation has filed for Chapter 7 bankruptcy. The record also includes a letter from the corporation's attorney indicating the bankruptcy was filed April 25, 2005.

The mechanic's lien is an outstanding debt against the property owned by Candance Thomas. It appears S W Day Construction Corporation has filed bankruptcy and will likely not pay Moore's and thereby release the lien against the property.

Day's failure to pay Moore's for material received, which directly caused the ensuing lien against Bryan Sneed, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: _____
Kenneth Hart
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.

DRAFT

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: March 8, 2005 (revised March 21, 2005)

FILE NUMBER: 2005-02242
RESPONDENT: S W Day Construction Corporation
LICENSE NUMBER: 2701036131
EXPIRATION: February 28, 2006

SUBMITTED BY: Michael Heaney
APPROVED BY: David Dorner

COMMENTS:

None

S W Day Construction Corporation ("Day") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2701036131).

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 22, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Branyel Thomas, Bryan Sneed, and Candance Thomas regarding Day. (Exh. C-1)

On April 23, 2004, Day entered into a written contract, in the amount of \$34,634.00, with Candance Thomas ("Thomas") to construct an addition at 9626 Worth Street, Norfolk, Virginia. (Exh. C-2 and R-1)

On May 11, 2004, Thomas obtained building permit number 04-00002998 for the work to be performed at the subject property. (Exh. C-1)

On May 25, 2004, Day commenced work. (Exh. I-2)

Day agreed to credit the cost of the deck rail materials to Thomas in exchange for Thomas purchasing rail materials of her choice. On July 12, 2004, Thomas' daughter signed a written change order, which decreased the contract by \$455.75. (Exh. C-2 and R-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:

h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Day in the transaction failed to contain subsection h. (Exh. C-2 and R-1)

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:

The contract specified, "The work to be performed under this Contract shall be commenced on or before May 23rd, 2004 and shall be substantially completed on or before July 10th, 2004." (Exh. C-2 and R-1)

On August 23, 2004, Day and Thomas agreed to and signed a punch list of items for completion of the contract work. (Exh. I-2)

On September 13, 2004, Thomas' daughter sent Day a letter, via certified mail, requesting Day finish the work within five (5) business days. (Exh. C-1)

On January 12, 2005, Day and Thomas agreed to and signed a revised punch list of items for completion of the contract work. (Exh. C-5 and R-2)

On January 18, 2005, Day began working on the punch list items. (Exh. I-6)

As of February 28, 2005, Day failed to complete the following items on the punch list:

- Treat and kill the mold and mildew from the roof leak in the garage.
- The brick wall for a doorway was cut at the wrong dimensions with no support to hold the bricks in place.
- Exterior support for the spiral staircase in the crawl space with the addition of floor joists and hangers.
- Removal of the mechanic's lien by Moore's Lumber & Building Supplies.
- Work on the garage roof and sliding door to prevent water leakage.
- Resolution on the installation of a driveway and completion of the exterior brick wall. (Exh. I-6)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In addition to the facts outlined in Count 2:

The contract specified that Day "shall fully pay said subcontractor and in all instances remain responsible for the proper completion of this Contract" and Day "shall furnish owner appropriate releases or waivers of lien for all work performed or materials provided at the time the next periodic payment shall be due." (Exh. C-2 and R-1)

On April 23, 2004, Thomas paid Day \$1,000.00 by check. On June 14, 2004, Thomas paid Day \$5,000.00 by check. On July 1, 2004, Thomas paid Day \$15,000.00 by check. On July 21, 2004, Thomas paid Day \$10,000.00 by check. (Exh. C-3)

In a Memorandum for Mechanic's Lien ("mechanic's lien") dated November 22, 2004, Moore's Lumber & Building Supplies, Inc. ("Moore's"), a subcontractor, claimed Bryan Sneed was indebted to Moore's for materials sold to Day in the amount of \$8,121.41. On November 23, 2004, in the Norfolk Circuit Court, Moore's recorded the mechanic's lien against Bryan Sneed. On November 23, 2004, Moore's sent Bryan Sneed and Day a Notice ("the Notice"), via certified mail, regarding the mechanic's lien. The Notice stated, "S. W. Day Construction Corporation is indebted to Moore's Lumber & Building Supplies, Inc. in the sum of \$8,121.41, with interest therefore from the 1st day of October, 2004, for building materials and/or services in and about the construction of a dwelling which S. W. Day Construction Corporation constructed and/or contracted to construct for you or on property owned by you

in the City of Norfolk, Virginia, and that I have duly recorded a mechanic's lien for the same." (Exh. I-7)

In a written response dated January 6, 2005, Kenneth Day, President of Day, stated, "Payments to our vendors were made however in this case the payment was not applied to the proper invoice. This matter is being resolved." (Exh. R-1)

On January 7, 2005, Kenneth Day stated the mechanic's lien from Moore's was the result of an accounting error by his company. Kenneth Day further stated he thought he bill had been paid and the issue will be resolved before January 18, 2005. (Exh. I-4)

DRAFT

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

Re: Randy E. Langford, t/a Valley View Renovations

File Number: 2005-01081
License Number: 2705074723

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 28, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Randy E. Langford 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 marked "Unclaimed".

On April 26, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Donna and Alphonse Meliso ("the Melisos"); Complainants; Jennifer Kazzie, Staff Member; and Kenneth Hart, Presiding Board Member. Neither Randy E. Langford, t/a Valley View Renovations ("Langford"), 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:

The Report of Findings indicated the contract was entered into to perform work at the subject property; however, it does not specify the address. During the IFF, the Melisos clarified that the subject property is 113 Eagle Trail, Winchester, Virginia.

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

Langford's failure to include subsections a., d., f., and h. 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 imposed.

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

Based on the record, Langford, a Class C contractor, entered into a contract on July 9, 2003, to perform renovation work in the amount \$63,678.00.

It is clear that Langford knowingly entered into a contract far in excess of his Class C license.

Langford practiced in a class of license for which he is not licensed in violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

During the IFF, the Melisos testified the work commenced in July 2003, but Langford continued to give them excuses of why work was not being performed. In March 2004, Alphonse Meliso contacted Langford; however, Langford did not respond until June 2004 or July 2004. The Melisos gave Langford one more chance. Langford presented an Amended Contract; however, it did not include the minimum provisions required by the Board's regulations. The Melisos would not agree to the Amended Contract until Langford included the required provisions. Langford told the Melisos he needed to contact an attorney, but Langford never contacted the Melisos again. The Melisos hired another contractor to complete the work.

Langford's actions are in violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

During the IFF, the Melisos testified that Langford was paid \$35,000.00. The Melisos also testified that other contractors indicated the work performed by Langford only amounted to about \$5,000.00. The Melisos hired another contractor and paid an additional \$30,000.00 to correct and complete the work left unfinished by Langford.

Langford failed to refund monies received for work not performed in clear violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

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

Langford's failure to respond to an investigator seeking information in the investigation of a complaint is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed

By: _____
Kenneth Hart
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: March 9, 2005 (revised March 23, 2005)

FILE NUMBER: 2005-01081
RESPONDENT: Randy E. Langford, t/a Valley View Renovations
LICENSE NUMBER: 2705074723
EXPIRATION: March 31, 2005

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

COMMENTS:

None.

Randy E. Langford, t/a Valley View Renovations ("Valley View"), was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705074723).

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

BACKGROUND:

On September 14, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Alphonse and Donna Meliso ("the Melisos") regarding Valley View. (Exh. C-1)

On July 9, 2003, Valley View entered into a written contract, in the amount of \$63,678.00, with the Melisos to renovate property at the subject property. (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;
 - 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 Valley View in the transaction failed to contain subsections: a., d., 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:

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

FACTS:

On March 10, 2003, Valley View was issued Class C contractor's license number 2705074723 as a sole proprietorship. (Exh. I-1)

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 . . ."

Valley View practiced in a class of license for which it 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:

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

FACTS:

On July 25, 2003, Valley View commenced renovation by gutting the house and removing the roof. Between October 17, 2003 and February 2004, Valley View partially framed the back wall. (Exh. C-1) (NOTE: The Melisos' timeline indicates Valley View gutted the entire interior of the house on July 25, 2004; however, the contract was entered into in 2003 and the following entry on the timeline is August 2003.)

On April 13, 2004, Valley View ceased performing work at the subject property. (Exh. C-5)

On May 13, 2004, H. Edmunds Coleman III ("Coleman"), attorney representing the Melisos, sent a letter, via email, facsimile, certified mail, and regular mail, to Valley View regarding its failure to perform in accordance with the July 9, 2003, contract. Coleman requested Valley View provide a written response by May 21, 2004, regarding its intentions to complete the work, correct all defects, and compensate the Melisos for damage to personal property. (Exh. C-5)

On June 18, 2004, at the request of the Melisos, Dan Hotek ("Hotek"), P.E. of Engineering Techniques, visited the subject property to review the construction completed to date at the subject property. In a report dated July 16, 2004, Hotek outlined his observations, comments, and recommendations regarding the structure. (Exh. C-7)

On August 29, 2004, Randy Langford sent, via facsimile and priority next day mail, an Amended Contract and Modifications to Contract ("the Amended Contract") to the Melisos for their signature. (Exh. C-6)

On September 2, 2004, the Melisos sent, via facsimilie, Randy Langford a request for amendments to the Amended Contract. The Melisos requested Randy Langford respond to the amendments by September 9, 2004. (Exh. C-6)

In a letter dated September 8, 2004, Randy Langford stated, "In review of your last fax to me dated September 2nd, 2004, I have decided to retain counsel for the purposes of resolving your contract issues. This is done with anticipation of a September 30th, 2004 start date on your project." (Exh. C-8)

The last day Valley View performed work at the subject property was April 13, 2004. (Exh. C-5)

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 outlines in Count 3:

On July 25, 2003, the Melisos paid Valley View \$15,919.50 by cashier's check. On August 13, 2003, the Melisos paid Valley View \$3,075.00 by cashier's check. On September 19, 2003, the Melisos paid Valley View \$7,775.25 by cashier's check. On September 29, 2003, the Melisos paid Valley View \$4,100.25 by cashier's check. On October 10, 2003, the Melisos paid Valley View \$1,650.00 by cashier's check. On October 17, 2003, the Melisos paid Valley View \$1,950.00 by cashier's check. (Exh. C-3)

On September 11, 2004, the Melisos sent Valley View a letter requesting it reimburse \$29,000.00 to the Melisos by certified check within fifteen (15) days. (Exh. C-8)

As of March 9, 2005, Valley View failed to refund any money received for work not performed. (Exh. I-4)

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 October 15, 2004, Investigator Sherell Queen, the Board's agent, made a written request to Valley View at the address of record of 22280 Senedo Road, Edinburg, Virginia, 22824, requesting a written response and supporting documents to the complaint filed. The Board's agent requested the response be received by October 5, 2004. (Exh. 1-3)

On February 17, 2005, the Board's agent made written request, via certified mail, to Valley View at the address of record of 22280 Senedo Road, Edinburg, Virginia, 22824, requesting

a written response and supporting documents to the complaint filed. The Board's agent requested the response be received by March 4, 2005. (Exh. 1-2)

On February 23, 2005, Randy Langford signed for and received the certified mail sent to Valley View. (Exh. I-2)

As of March 9, 2005, Valley View failed to respond to the investigator seeking information in the investigation of a complaint filed with the Board.

DRAFT

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

Re: Ralph Marks, t/a H & M Home Improvement
Hampton, VA 23661

File Number 2004-04059
License Number 2705066276

CONSENT ORDER

Respondent Ralph Marks, t/a H & M Home Improvement ("Ralph Marks") 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 2001 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 February 3, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Ralph Marks ("Marks"), t/a H & M Home Improvement 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 March 16, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the March 16, 2005, IFF: Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Ralph Marks, Respondent, nor anyone on his behalf appeared at the IFF.

In a letter dated March 23, 2005, Ralph Marks requested that the IFF reconvene. On April 8, 2005, a letter was mailed, via certified mail, to Ralph Marks, t/a H & M Improvement to the address of record. The certified mail was signed for and received.

The following individuals participated at the reconvened April 26, 2005, IFF: Ralph Marks, Respondent; Jennifer Kazzie, Staff Member; and Kenneth Hart, Presiding Board Member.

During the IFF, Marks admitted he made a mistake and entered into a contract that he was not supposed to. Marks stated he made attempts to complete the work, including using \$5,000.00 of his own money. Marks regrets the situation and appears to have learned from his mistake. Marks has taken corrective action to revise his contract and attended a course on basic contracting and building.

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 Ralph Marks, as evidenced by the signatures affixed below, enter into this Consent Order. Ralph Marks 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, Ralph Marks acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Amended Report of Findings. Ralph Marks consents to the following term(s):

| | | |
|---------|--------------------------------------|------------|
| Count 1 | 18 VAC 50-22-260.B.9 (SIX COUNTS) | \$0.00 |
| Count 2 | 18 VAC 50-22-260.B.9 | \$0.00 |
| Count 3 | 18 VAC 50-22-260.B.27 | \$200.00 |
| Count 4 | 18 VAC 50-22-260.B.15 | \$2,500.00 |
| Count 5 | 18 VAC 50-22-260.B.16 | \$2,500.00 |
| Count 6 | 18 VAC 50-22-260.B.28 | \$2,500.00 |
| | | ----- |
| TOTAL | | \$7,700.00 |

In addition, Ralph Marks agrees to license revocation for violation of Count 4, Count 5, and Count 6. However, the Board agrees to waive the imposition of license revocation and the \$2,500.00 monetary penalty for Count 4, Count 5, and Count 6 provided Ralph Marks satisfies the judgment and provides proof of satisfaction within 120 days of entry of this Order.

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. Ralph Marks 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, Ralph

Marks 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.

Ralph Marks 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 Ralph Marks's license until such time as there is compliance with all terms of this Order. Ralph Marks 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.

DRAFT

SEEN AND AGREED TO:

Ralph Marks
t/a H & M Home Improvement

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

EOO

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: December 23, 2004 (revised January 21, 2005 and
amended April 26, 2005)

FILE NUMBER: 2004-04059
RESPONDENT: Ralph Marks, t/a H & M Home Improvement
LICENSE NUMBER: 2705066276
EXPIRATION: November 30, 2005

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

COMMENTS:
None.

Ralph Marks ("Marks"), t/a H & M Home Improvement, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705066276).

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 2, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Ruth Williams ("R. Williams") and Ayanna Williams ("A. Williams") regarding Marks. (Exh. C-1)

On May 2, 2002, Marks entered into a written contract, in the amount of \$6,340.00, with R. Williams to perform work on the outside of the house at 188 Semple Farm Road, Hampton, Virginia 23666. (Exh. C-2)

On May 2, 2002, Marks entered into a written contract, in the amount of \$11,500.00, with R. Williams to perform work on the inside of the house at the subject property. (Exh. C-3)

On May 2, 2002, Marks entered into a written contract, in the amount of \$2,500.00, with R. Williams to perform work in the new dining room and laundry room at the subject property. (Exh. C-4)

On July 22, 2002, Marks entered into a written contract, in the amount of \$2,500.00, with R. Williams perform work on the inside of the house at the subject property. (Exh. C-5)

On September 20, 2002, Marks entered into a written contract, in the amount of \$26,500.00, with R. Williams to perform work on the outside of the house at the subject property. (Exh. C-6)

On October 28, 2002, Marks entered into a written contract, in the amount of \$7,050.00, with R. Williams to perform work on the outside of the house at the subject property. (Exh. C-7)

On December 13, 2002, Marks entered into a written contract, in the amount of \$4,000.00, with R. Williams to perform work on the outside of the house at the subject property. (Exh. C-8)

Between May 2002 and February 2003, Marks framed and built two room additions at the subject property. (Exh. I-2)

On November 29, 2001, Marks was issued Class C contractor's license number 2705066276 with the home improvement contracting ("HIC") specialty service. (Exh. I-1)

1. Board Regulation (Effective September 1, 2001) SIX 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;
 - 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 Marks in the transactions failed to contain subsections: a., d., e., h., and i. (Exh. C-2, C-3, C-4, C-5, C-7, and C-8)

2. 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:
 - 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 September 20, 2002, contract used by Marks in the transaction failed to contain subsections: d., e., f., and h. (Exh. C-6)

3. Board Regulation (Effective September 1, 2001)

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 . . ."

On June 2, 2004, Marks admitted he entered into the contracts outside his license because he was ignorant, made a foolish mistake, and worked as an agent for the homeowner. (Exh. I-3)

Marks practiced in a class of license for which he is not licensed.

4. Board Regulation (Effective September 1, 2001)

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 August 2003, Marks told R. Williams that he was out of money and could not complete the work. (Exh. I-2)

On August 19, 2003, R. Williams sent Marks a letter, via certified mail, requesting the work be completed by September 1, 2003. (Exh. C-9)

In September 2003, Marks told R. Williams that he had put \$5,000.00 of his own money into the job and he could not afford to complete the work. (Exh. I-3)

The last day Marks was at the subject property was in September 2003. (Exh. I-3)

As of June 2, 2004, Marks failed to return to complete the following items:

- Vinyl to be repaired
- Gutters to be repaired
- Shutters
- 3 replacement windows finishing work not done
- Flooring to be completed
- Complete door archway
- Pergo does not match
- Floors are not level
- Framing not complete
- No door locks
- Fireplace was not complete
- Door to master bedroom closet not installed
- Master bath fixtures not installed
- No caulking done
- Vinyl installation not done
- Repair security lights to working condition

- Complete installation of the rug
- Attic cover not installed
- Paint attic cover
- Light pole installed but not working
- Complete roof work. (Exh. I-2)

5. 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 outlined in Count 4:

Between June 18, 2002 and February 18, 2003, R. Williams paid Marks \$49,735.00 by checks. (Exh. C-10)

On March 3, 2004, in the Hampton General District Court, R. Williams filed a Warrant in Debt, in the amount of \$13,365.00, against Marks for breach of contract. (Exh. I-4)

Marks retained funds received for work not performed or performed only in part.

6. 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 April 26, 2004, in the Hampton General District Court, R. Williams was awarded a \$6,660.00 judgment against Marks. (Exh. I-4)

On June 2, 2004, Marks admitted he does not have the money to satisfy the judgment and he was not going to appeal the judgment. Marks stated he would set up a payment plan with R. Williams to pay the judgment. (Exh. I-3)

As of January 21, 2005, Marks failed to satisfy the judgment. (Exh. I-4)

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

Re: Concrete Designs LLC

File Number: 2005-00809
License Number: 2705076198

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On March 28, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Concrete Designs LLC 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 26, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jennifer Kazzie, Staff Member; and Kenneth Hart, Presiding Board Member. Neither Concrete Designs LLC ("Concrete") 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 January 1, 2003)

Concrete's failure to include subsections a., d., f., and h. 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 and remedial education 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)

The contract specified an estimated start date of May 13, 2004; however, Concrete did not commence work on May 13, 2005. Based on the record, numerous other start dates were subsequently scheduled; however, each date was postponed per Concrete's request.

Although Concreate delayed commencement of the work, COncreate was subsequently terminated by the John Kuzin ("Kuzin").

Concreate's failure to complete the work contracted for is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

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

Based on the record, Concreate was paid \$3,698.67 on April 16, 2004, but after numerous delays John Kuzin ("Kuzin") requested a full refund. Concreate agreed to refund the \$3,698.67 by June 22, 2004.

The Report of Findings indicated Concreate refunded \$2,000.00 to Kuzin. Prior to the IFF, Kuzin provided written documentation clarifying that Dan Bennett refunded \$2,698.67 and \$1,000.00 is still outstanding.

No documentation was given to the homeowner stating why the balance was not paid.

Cocncreate's actions are in violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

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

Concreate's failure to respond to an investigator seeking information in the investigation of a complaint is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: _____
Kenneth Hart
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.

DRAFT

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: March 9, 2005 (revised March 23, 2005)

FILE NUMBER: 2005-00809
RESPONDENT: Concreate Designs, LLC
LICENSE NUMBER: 2705076198
EXPIRATION: May 31, 2005

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

COMMENTS:

The licensing records incorrectly indicated Concrete instead of Concreate. The Board section was notified of the misspelling.

Concreate Designs, LLC ("Concreate") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705076198).

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

BACKGROUND:

On August 23, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from John Kuzin ("Kuzin") regarding Concreate. (Exh. C-1)

On April 16, 2004, Concreate entered into a written contract, in the amount of \$11,096.67, with B. T. Mahon ("Mahon") to pour a concrete walkway and driveway at 5012 Gadsen Drive, Fairfax, Virginia 22032. The contract indicated Concreate's address was 13944-C Willard Road, Chantilly, VA 20151. (Exh. C-2)

On May 22, 2003, Concreate was issued Class B contractor's license number 2705076198. The address of record is 13944 C Willard Road, Chantilly, Virginia 20151. (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:
 - 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;
 - 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 Concreate in the transaction failed to contain subsections: c., d., e., 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:

The contract specified, "Approximate Start Date: 5/13/04." The contract also specified, "Completion Date: Generally 7 to 12 Business Days from start." (Exh. C-2)

The contract further specified, "The contract start date is based on the contingency of the weather, a day will be added for each forecasted day of 20% or more of rain or precipitation of winds above 25 miles per hour to the above start date." (Exh. C-2)

After Concreate did not commence work on May 13, 2004, Concreate provided several additional start dates, but the additional start dates were postponed. (Exh. C-1)

After several postponements, Kuzin informed Dan Bennett ("Bennett") of Concreate that Kuzin no longer wanted Concreate to perform 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:

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:

On April 16, 2004, Mahon paid Concreate Designs \$3,698.67 by check. (Exh. C-3)

On June 15, 2004, Bennett told Kuzin that the money would be refunded by June 22, 2004. (Exh. C-1)

After filing complaints with the Fairfax Department of Consumer Protection and the Better Business Bureau, Concreate's office manager told Bernadette Mahon that Kuzin and Mahon would not get their money back because the company needed the funds for payroll. Concreate's office manager also told Bernadette Mahon that Concreate was charging Kuzin and Mahon for supplies and for a site visit. (Exh. I-4)

As of March 8, 2005, Concreate refunded \$2,000.00 to Kuzin. (Exh. I-4)

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 September 30, 2004, Investigator Sherell Queen, the Board's agent, made a written request, via certified mail, to Concreate at the address of record of 13944 C Willard Road, Chantilly, Virginia, 20151, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the response be received by October 22, 2004. (Exh. I-3)

On February 17, 2005, the Board's agent made a second written request, via certified mail, to Concreate at the address of record of 13944 C Willard Road, Chantilly, Virginia, 20151, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the response be received by March 4, 2005. (Exh. I-2)
On March 17, 2005, the certified mail was returned to the Board's agent because it was not claimed by Concreate. (Exh. I-2)

Concreate failed to respond to the investigator seeking information in the investigation of a complaint filed with the board.