

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
May 19, 2005**

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

Ruth Ann Wall, presiding officer, presided. No Board members were present.

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. Value Painting & Home Improvements Inc.
File Number 2005-00423 (Disc) | None |
| 2. Michael C. Wade
t/a C W Contracting
File Number 2005-02191 (Disc)

(No decision made) | Wade – R
Carl Burgan – C
Rhonda Burgan – C
Al Sorenson – W |
| 3. Master Builders & Home Improvements Inc.
File Number 2004-04337 (Disc) | None |
| 4. Master Builders & Home Improvements Inc.
File Number 2004-04338 (Disc) | None |
| 5. Master Builders & Home Improvements Inc.
File Number 2004-04602 (Disc) | None |
| 6. James Michael Hartsel
File Number 2005-04314 (Disc) | James Hartsel – R |
| 7. Dudley Plumbing, Inc. | Clara Dudley – A |

File Number 2005-04315 (Lic)

The meeting adjourned at 1:10 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: Value Painting & Home Improvements Inc.

File Number: 2005-00423
License Number: 2705073265

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 Value Painting & Home Improvements Inc. ("Value Painting") 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: Geraldine Warren (“Warren”), Complainant; Penelope Rood (“Rood”), Witness; Joseph Haughwout, Staff Member; and Robert Burch, Presiding Board Member. Neither Thomas Gleason, Responsible Management for Value Painting, Respondent, nor anyone on its behalf appeared at the IFF.

On May 3, 2005, a letter to reconvene the IFF was mailed, via certified mail and regular mail, to Value Painting & Home Improvement Inc. to the address of record.

On May 19, 2005, the IFF reconvened at the Department of Professional and Occupational Regulation.

The following individuals participated at the reconvened IFF: Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Thomas Gleason, Responsible Management for Value Painting, Respondent, nor anyone on its behalf appeared at the reconvened IFF.

RECOMMENDATION

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

In April 2004, Value Painting contracted with Warren to perform repairs and improvements to the subject property. Value Painting commenced work.

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

The contract used in the transaction reflected the name Tom Gleason, and not Value Painting. Value Painting’s Class C contractor’s license was issued to Value Painting as a corporation.

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

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

The price of the contract was \$16,000.00. Value Painting exceeded the limitations of its Class C contractor’s license.

Value Painting’s action of operating in a class of license for which it was not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

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

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

Value Painting's failure to include subsections a., e., f., and h. (contractor's name, license number, expiration date, class of license, and classifications or specialty services) is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$400.00 be imposed.

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

Warren agreed to have Value Painting install wrap-around vinyl siding on the outside wood not covered by brick for an additional \$1,000.00. This change was not executed by a change order.

During the IFF, Warren acknowledged she agreed to have the wrap-around vinyl siding installed instead of the exterior painted. Warren stated there was nothing in writing regarding this verbal agreement.

Value Painting's failure to obtain signed, written change orders modifying the scope of work and costs of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$450.00 and license revocation be imposed.

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

Between early May and late June 2004, Warren made several attempts to contact Value Painting regarding the completion of the work. Value Painting did not return to complete work. In July 2004, Warren told Value Painting she no longer wanted Value Painting to finish the work. At the time Warren terminated Value Painting from the job, the roof still leaked and the interior work had not been started. Value Painting ceased work for thirty (30) or more days without justification.

During the IFF, Warren stated the last time Gleason or Value Painting worked on the property was in May 2004, after paying him for the vinyl siding.

Value Painting's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

Warren paid Value Painting a total of \$12,000.00 towards the contracted amount of \$16,000.00. Value Painting failed to complete the work, and failed to return any monies received for work it did not perform or complete.

Value Painting's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

In September 2004, the State Corporation Commission (SCC) terminated Value Painting as a corporation.

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

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

In November 2004, in Fairfax County General District Court, Gleason pleaded guilty to, and was convicted of, performing home improvement work without a Fairfax County Home Improvement Contractor's license, a misdemeanor.

During the IFF, Rood stated she received a complaint from Warren and determined that Thomas Gleason did not have a license. Rood contacted DPOR requesting licensing records for Thomas Gleason and Value Painting. After receiving this information, Rood determined neither Thomas Gleason nor Value Painting have a license required by Fairfax County. Gleason originally entered a not guilty plea. The court found Gleason guilty and he was ordered to pay restitution to Warren and placed on probation.

Gleason's conviction of a misdemeanor after initial licensure, as Responsible Management and Qualified Individual for Value Painting, is a violation of Board Regulation 18 VAC 50-22-260.B.22. Therefore, I recommend license revocation and no monetary penalty be imposed.

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

Value Painting's failure to inform the Board, in writing, within thirty (30) days of Gleason's conviction of a misdemeanor for activities carried out while engaged in the practice of

contracting is a violation of Board Regulation 18 VAC 50-22-260.B.23. Therefore, I recommend a monetary penalty of \$600.00 and license revocation be imposed.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

DRAFT

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: December 29, 2004 (revised February 3, 2005, February 4,
2005, and March 4, 2005)

FILE NUMBER: 2005-00423
RESPONDENT: Value Painting & Home Improvements Inc.
LICENSE NUMBER: 2705073265
EXPIRATION: February 28, 2005

SUBMITTED BY: Investigator Wayne J. Ozmore, Jr.
APPROVED BY: Bonnie Rhea Adams

COMMENTS:

None.

Value Painting & Home Improvements Inc. ("Value") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705073265).

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 3, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Geraldine Warren ("Warren") regarding Thomas Gleason ("Gleason") and VPHI Inc. (Exh. C-1)

On April 19, 2004, Gleason entered into a written contract, in the amount of \$16,000.00, with Warren to remove the existing roof covering, install new roofing shingles, prepare and paint, replace rotted wood trim at the rear fascia area, remove damaged sheetrock in two bedrooms, replace with new sheetrock, finish and paint ceilings, tear off existing gutters and downspouts and to replace with new gutters, try and locate all water leaks, and fix faucets that are leaking at 4733 Briggs Road, Fairfax, Virginia 22030. (Exh. C-2)

On April 24, 2004, Value commenced work. (Exh. C-1)

On February 26, 2003, Value was issued Class C contractor's license number 2705073265 as a corporation. Thomas A. Gleason, individual tracking number 2706125576, is the Qualified Individual and Responsible Management for license number 2705073265. (Exh. I-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:

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

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:

Value 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:

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

- a. When work is to begin and the estimated completion date;
- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- f. Disclosure of the cancellation rights of the parties;
- h. Contractor's name, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

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

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

Warren agreed to have Value install warp around vinyl on the outside wood not covered by brick for an additional \$1,000.00. (Exh. C-1)

On May 7, 2004, Warren paid Gleason \$1,000.00 by check. (Exh. C-3)

Gleason failed to obtain written change orders, signed by all parties, for a modification to the original contract.

5. 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:

Between May 7, 2004 and June 27, 2004, Warren made several attempts to contact Value regarding completion of the work. (Exh. C-1)

As of July 8, 2004, the roof still leaks and Value failed to start the interior work. (Exh. C-1)

On July 12, 2004, Warren told Gleason of Value not to come on July 13, 2004, to finish the work. Warren then told Gleason of Value that she no longer wanted his services. (Exh. C-1)

6. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In addition to the facts outlined in Count 5:

On April 19, 2004, Warren paid Gleason \$5,000.00 in cash. (Exh. C-1) On April 19, 2004, Warren paid Gleason \$3,000.00 by check. On April 22, 2004, Warren paid Gleason \$4,000.00 by check. (Exh. C-3)

Gleason retained money received for work not performed or performed only in part.

7. Board Regulation (Effective January 1, 2003)

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

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

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

FACTS:

On September 30, 2004, the State Corporation Commission terminated the corporation. (Exh. I-3)

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

8. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On November 8, 2004, in the Fairfax County General District Court, Gleason pleaded guilty to doing home improvement work without the Fairfax County Home Improvement Contractors license, a Class 1 misdemeanor, in violation of Section 61-3-9 of the Code of the County of Fairfax. There is no appeal pending and the time for appeal has lapsed. (Exh. W-1 and I-2)

9. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

FACTS:

In addition to the facts outlined in Count 8:

Value failed to inform the board in writing, within thirty (30) days, that Gleason pleaded guilty to a misdemeanor for activities carried out while engaged in the practice of contracting.

IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS

Re: Master Builders & Home Improvements Inc.

File Number: 2004-04337
License Number: 2705063390

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 30, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Master Builders & Home Improvements Inc. ("Master Builders") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On January 10, 2005, Joseph A. Durso ("Durso"), President of Master Builders, requested a continuance, which was granted. On January 11, 2005, a letter rescheduling the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Master Builders to the address of record. The certified mail was signed for and received.

On March 15, 2005, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Man Tran ("Tran"), Complainant; Jennifer Kazzie, Staff Member; and Dorothy Wood, Presiding Board Member. Neither Joseph Durso, Responsible Management for Master Builders, Respondent nor anyone on its behalf appeared at the IFF.

On March 15, 2005, Durso requested the IFF be reconvened so that he could present testimony and documents to the Board. On March 31, 2005, a letter to reconvene the IFF on April 19, 2005, was mailed, via certified mail, to Master Builders to the address of record. The letter was also mailed, via certified mail, to Master Builders at P.O. Box 2020 Manassas, Virginia 20110; and at 44 McCarty Road, Fredericksburg, Virginia 22405. The certified mail sent to 44 McCarty Road, Fredericksburg, Virginia was signed for and received. The certified mail sent to the P.O. Box 2020 address was returned marked "Unclaimed" by the United States Postal Service ("USPS"). The certified mail sent to the address of record was returned by the USPS marked "Moved, Left No Address".

On April 19, 2005, Durso contacted the Board regarding his inability to attend the IFF Conference.

On April 20, 2005, a reschedule letter was mailed, via certified mail, to Master Builders to the address of record. The letter was also mailed, via certified mail, to Master Master Builders at P.O. Box 2020 Manassas, Virginia 20110; and at 44 McCarty Road, Fredericksburg, Virginia 22405. The certified mail sent to 44 McCarty Road, Fredericksburg, Virginia was signed for and received. The certified mail sent to P.O. Box 2020 address was returned marked "Unclaimed" by the United States Postal Service ("USPS"). The certified mail sent to the address of record was returned by the USPS marked "Moved, Left No Address".

On May 19, 2005, the IFF was reconvened at the Department of Professional and Occupational Regulation.

The following individuals participated at the reconvened IFF: Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Board Member. Neither Master Builders, Respondent, 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)

The contract used in the transaction failed to include four of the provisions required by the Board's regulations.

Master Builders's failure to include subsections a., e., 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 \$100.00 and license revocation be imposed.

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

In October 2003, Man Tran and Vy Nguyen ("Nguyen") entered into a contract with Master Builders to finish the basement at the subject property. In February 2004, Tran and Nguyen requested Master Builders complete the work in three weeks. In March 2004, Tran, Nguyen, and Master Builders verbally agreed the work would be completed by the end of March. Master Builders last performed work at the subject property during the first week of March 2004. After the end of March, Master Builders had failed to complete the work. In April 2004, the attorney for Tran and Nguyen requested Master Builders provide him a work schedule and complete work by the end of the month. Master Builders failed to do both. Tran and Nguyen terminated Master Builders from the project for breach of contract.

Master Builders' abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

After receiving the letter of termination from Tran and Nguyen, Master Builders sent them a letter requesting payment for additional work performed, including plumbing ground work and ceiling insulation. Master Builders failed to use a change order for the additional work it performed.

Master Builders' failure to obtain signed, written change orders modifying the scope and costs of the work is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$500.00 and license revocation be imposed.

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

Tran and Nguyen paid Master Builders \$29,390.00 towards the contract price of \$30,000.00. After terminating the contract, Tran and Nguyen requested Master Builders order the materials, pay for the materials, and send Tran and Nguyen the receipts to arrange for delivery of the materials.

Master Builders failed to refund money to Tran and Nguyen. Master Builders's retention of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: _____
Ruth Ann Wall
Presiding Officer
Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 9, 2004 (revised October 28, 2004)

FILE NUMBER: 2004-04337
RESPONDENT: Master Builders & Home Improvements, Inc.
LICENSE NUMBER: 2705063390
EXPIRATION: January 31, 2006

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

COMMENTS:

Other pending Master Builders & Home Improvements, Inc. cases:

- 2004-04338
- 2004-04602

Master Builders & Home Improvements, Inc. ("Master Builders") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705063390).

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 22, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Man Tran ("Tran") and Vy Nguyen ("Nguyen") regarding Master Builders. (Exh. C-1)

On October 2, 2003, Tran and Nguyen entered into a written contract, in the amount of \$30,000.00, with Master Builders to finish the basement at 22986 Falcon Ridge Court, Brambleton, Virginia. (Exh. C-2)

On October 14, 2003, Tran an Nguyen obtained building permit number B30219310100 for the work to be performed at the subject property. The permit indicated Master Builders as the contractor. (Exh. W-1)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The contract used in the transaction failed to contain subsections: (a) estimated completion date; (e); (f); and (h) contractor's class of license, and classifications or specialty services. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On February 17, 2004, Tran and Nguyen sent Master Builders a letter, via facsimile, requesting the basement be completed in three (3) weeks. (Exh. C-1 and C-4)

On March 5, 2004, Tran, Nguyen, and Master Builders verbally agreed the basement would be completed by the end of March 2004. (Exh. C-4)

The last time Master Builders performed work at the subject property was the first week of March 2004. (Exh. I-1)

On March 12, 2004, Tran and Nguyen sent Master Builders a letter, via facsimile, requesting the basement be completed in the end of March 2004. (Exh. C-1 and C-4)

On March 31, 2004, Tran and Nguyen sent Master Builders a letter, via facsimile, requesting the basement be completed by April 30, 2004. (Exh. C-1 and C-4)

On April 2, 2004, Bradley Hansen ("Hansen"), attorney representing Tran and Nguyen, sent Master Builders a letter, via regular mail and facsimile, requesting the basement be completed by April 30, 2004 and Master Builders provide a work schedule by April 7, 2004. (Exh. C-1 and C-5)

On April 16, 2004, Hansen sent Master Builders a letter, via certified mail and facsimile, terminating Master Builders for breach of contract. (Exh. C-1 and C-5)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

After receiving a letter of termination, Master Builders sent Tran and Nguyen a letter requesting payment for additional work performed. In the letter, Master Builders stated Tran and Nguyen owed \$4,895.00 for plumbing ground work and \$3,100.00 for insulating the ceiling. (Exh. R-3)

Master Builders failed to use written change order, signed by all parties, for modifications to the scope of the work and costs of the original contract.

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On October 1, 2003, Tran and Nguyen paid Master Builders \$14,950.00 by check. On October 2, 2003, Tran and Nguyen paid Master Builders \$500.00 by check. On November 14, 2003, Tran and Nguyen paid Master Builders \$6,727.50 by check. On February 11, 2004, Tran and Nguyen paid Master Builders \$7,212.50 by check. (Exh. C-3)

On April 21, 2004, Tran and Nguyen sent Master Builders a letter, via facsimile, requesting Master Builders order materials, pay for the materials, and send Tran and Nguyen the receipts to arrange for delivery of the materials. (Exh. C-1 and C-4)

As of April 22, 2004, Master Builders failed to refund money received for work not performed or performed only in part. (Exh. C-1)

DRAFT

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

Re: Master Builders & Home Improvements Inc.

File Number: 2004-04338
License Number: 2705063390

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

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On March 15, 2005, Durso requested the IFF be reconvened so that he could present testimony and documents to the Board. On March 31, 2005, a letter to reconvene the IFF on April 19, 2005, was mailed, via certified mail, to Master Builders to the address of record. The letter was also mailed, via certified mail, to Master Builders at P.O. Box 2020 Manassas, Virginia 20110; and at 44 McCarty Road, Fredericksburg, Virginia 22405. The certified mail sent to 44 McCarty Road, Fredericksburg, Virginia was signed for and received. The certified mail sent to the P.O. Box 2020 address was returned marked “Unclaimed” by the United States Postal Service (“USPS”). The certified mail sent to the address of record was returned by the USPS marked “Moved, Left No Address”.

On April 19, 2005, Durso contacted the Board regarding his inability to attend the IFF Conference.

On April 20, 2005, a reschedule letter was mailed, via certified mail, to Master Builders to the address of record. The letter was also mailed, via certified mail, to Master Master Builders at P.O. Box 2020 Manassas, Virginia 20110; and at 44 McCarty Road, Fredericksburg, Virginia 22405. The certified mail sent to 44 McCarty Road, Fredericksburg, Virginia was signed for and received. The certified mail sent to P.O. Box 2020 address was returned marked "Unclaimed" by the United States Postal Service ("USPS"). The certified mail sent to the address of record was returned by the USPS marked "Moved, Left No Address".

On May 19, 2005, the IFF was reconvened at the Department of Professional and Occupational Regulation.

The following individuals participated at the reconvened IFF: Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Board Member. Neither Master Builders, Respondent, 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)

The contract used in the transaction failed to include four of the provisions required by the Board's regulations.

Master Builders's failure to include subsections c., e., 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 \$400.00 and license revocation be imposed.

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

Master Builders claims Young Sohn ("Sohn") caused delays in the project by requesting numerous changes, including the addition of a sauna after the basement had already been plumbed and framed.

Master Builders did not obtain change orders for the changes. Master Builders's failure to obtain signed, written change orders modifying the scope and costs of the work is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$500.00 and license revocation be imposed.

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

In September 2003, Sohn entered into a contract with Master Builders to finish the basement at the subject property. The contract specified work would be completed in 90-120 days. In October 2003, Sohn entered into a second contract with Master Builders to construct a deck at the subject property. Master Builders did not perform work at the subject property in January 2004. In February 2004, Sohn requested Master Builders complete the basement in two weeks, and the deck in one week. Master Builders failed to complete the work.

Master Builders's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 17, 2004 (revised October 28, 2004)

FILE NUMBER: 2004-04338
RESPONDENT: Master Builders & Home Improvements, Inc.
LICENSE NUMBER: 2705063390
EXPIRATION: January 31, 2006

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

COMMENTS:

Other pending Master Builders & Home Improvements, Inc. cases:

- 2004-04337
- 2004-04602

Master Builders & Home Improvements, Inc. ("Master Builders") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705063390).

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 26, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Young Sohn ("Sohn") regarding Master Builders. (Exh. C-1)

On September 5, 2003, Sohn entered into a written contract, in the amount of \$31,280.00, with Master Builders to finish the basement at 22991 Falcon Ridge Court, Brambleton, Virginia. (Exh. C-2)

On October 3, 2003, Sohn obtained building permit number B30214730100 for the work to be performed at the subject property. The permit indicated Master Builders as the contractor. (Exh. W-1)

On October 16, 2003, Sohn entered into a second written contract, in the amount of \$6,500.00, with Master Builders to build a deck at the subject property. (Exh. C-3)

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;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Master Builders in the transaction failed to contain subsections: (c), (e), (f), and (h). (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On June 21, 2004, Master Builders sent Sohn a letter regarding permission to finish the job. Master Builders also stated the delays were caused by numerous changes requested by Sohn during the project. (Exh. R-3)

In its answers to interview questions, Master Builders stated Sohn “owes us \$6,000.00 for extras . . .” Master Builders further stated “Mrs. Sohn requested that we add a Sauna to her basement, after we had already plumbed and framed her basement. The walls had to be torn down and rebuilt and the plumbing had to be moved and redone in order to make the sauna fit.” (Exh. R-2)

Master Builders failed to use a written change order, signed by all parties, for modifications to the scope of the work and costs of the original contract.

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 September 5, 2003, contract specified “90-120 days for completion.” (Exh. C-2)

Master Builders did not perform work at the subject property in January 2004. (Exh. I-1)

On February 17, 2004, Sohn sent Master Builders a letter requesting the basement be completed in two (2) weeks and the deck be completed in one (1) week. (Exh. C-5)

On April 14, 2003, John Carroll, attorney representing Sohn, sent Master Builders a letter requesting Master Builders provide within two (2) weeks a schedule for completion of the work. (Exh. C-6)

As of April 26, 2004, Master Builders failed to complete the work. (Exh. C-1)

IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS

Re: Master Builders & Home Improvements Inc.

File Number: 2004-04602
License Number: 2705063390

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 30, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Master Builders & Home Improvements Inc. ("Master Builders") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On January 10, 2005, Joseph A. Durso ("Durso"), President of Master Builders, requested a continuance, which was granted. On January 11, 2005, a letter rescheduling the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Master Builders to the address of record. The certified mail was signed for and received.

On March 15, 2005, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jennifer Kazzie, Staff Member; and Dorothy Wood, Presiding Board Member. Neither Joseph Durso, Responsible Management for Master Builders, Respondent nor anyone on its behalf appeared at the IFF.

On March 15, 2005, Durso requested the IFF be reconvened so that he could present testimony and documents to the Board. On March 31, 2005, a letter to reconvene the IFF on April 19, 2005, was mailed, via certified mail, to Master Builders to the address of record. The letter was also mailed, via certified mail, to Master Builders at P.O. Box 2020 Manassas, Virginia 20110; and at 44 McCarty Road, Fredericksburg, Virginia 22405. The certified mail sent to 44 McCarty Road, Fredericksburg, Virginia was signed for and received. The certified mail sent to the P.O. Box 2020 address was returned marked "Unclaimed" by the United States Postal Service ("USPS"). The certified mail sent to the address of record was returned by the USPS marked "Moved, Left No Address".

On April 19, 2005, Durso contacted the Board regarding his inability to attend the IFF Conference.

On April 20, 2005, a reschedule letter was mailed, via certified mail, to Master Builders to the address of record. The letter was also mailed, via certified mail, to Master Master Builders at P.O. Box 2020 Manassas, Virginia 20110; and at 44 McCarty Road, Fredericksburg, Virginia 22405. The certified mail sent to 44 McCarty Road, Fredericksburg, Virginia was signed for and received. The certified mail sent to the P.O. Box 2020 address was returned marked "Unclaimed" by the United States Postal Service ("USPS"). The certified mail sent to the address of record was returned by the USPS marked "Moved, Left No Address".

On May 19, 2005, the IFF was reconvened at the Department of Professional and Occupational Regulation.

The following individuals participated at the reconvened IFF: Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Board Member. Neither Master Builders, Respondent, 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)

The contract used in the transaction failed to include four of the provisions required by the Board's regulations.

Master Builders's failure to include subsections a., e., 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 \$400.00 and license revocation be imposed.

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

The contract specified Master Builders would obtain all county permits and inspections. Master Builders failed to obtain required building, electrical, and plumbing permits for work performed. Master Builders informed the Board's agent that James Hottle ("Hottle") requested that no permit be issued for the first floor remodeling work, and that no permit was needed for the master bedroom.

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

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

In January 2004, Hottle entered into a contract with Master Builders to renovate the master bedroom at the subject property. In February 2004, Master Builders commenced work. Master Builders last performed work at the subject property in March 2004. Master Builders repeatedly promised Hottle that the work would be completed. As of April 2004, Master Builders had failed to complete work. Hottle informed Master Builders that he was seeking estimates from other builders to complete the work. At that point, Master Builders again made several promises to resume work, but failed to do so. In May 2004, Hottle terminated the contract with Master Builders.

Master Builders's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

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

Hottle paid Master Builders a total of \$34,312.50 towards the contract price of \$42,500.00. In May 2004, Hottle requested a refund of \$30,000.00 so that Hottle could pay for another contractor to complete the work. Master Builders failed to refund any money to Hottle.

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

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

During demolition, Master Builders broke a glass door on the rear of the house. Master Builders informed the Board's agent that it would pay for and replace the broken door, but that Hottle locked them out of the property before it could be replaced. Master Builders failed to replace the damaged door.

Master Builders's failure to honor a promise to repair is misconduct in the practice of contracting, in violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 and license revocation be imposed.

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

DRAFT

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 17, 2004 (revised October 28, 2004)

FILE NUMBER: 2004-04338
RESPONDENT: Master Builders & Home Improvements, Inc.
LICENSE NUMBER: 2705063390
EXPIRATION: January 31, 2006

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

COMMENTS:

Other pending Master Builders & Home Improvements, Inc. cases:

- 2004-04337
- 2004-04602

Master Builders & Home Improvements, Inc. ("Master Builders") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705063390).

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 26, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Young Sohn ("Sohn") regarding Master Builders. (Exh. C-1)

On September 5, 2003, Sohn entered into a written contract, in the amount of \$31,280.00, with Master Builders to finish the basement at 22991 Falcon Ridge Court, Brambleton, Virginia. (Exh. C-2)

On October 3, 2003, Sohn obtained building permit number B30214730100 for the work to be performed at the subject property. The permit indicated Master Builders as the contractor. (Exh. W-1)

On October 16, 2003, Sohn entered into a second written contract, in the amount of \$6,500.00, with Master Builders to build a deck at the subject property. (Exh. C-3)

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;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Master Builders in the transaction failed to contain subsections: (c), (e), (f), and (h). (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On June 21, 2004, Master Builders sent Sohn a letter regarding permission to finish the job. Master Builders also stated the delays were caused by numerous changes requested by Sohn during the project. (Exh. R-3)

In its answers to interview questions, Master Builders stated Sohn “owes us \$6,000.00 for extras . . .” Master Builders further stated “Mrs. Sohn requested that we add a Sauna to her basement, after we had already plumbed and framed her basement. The walls had to be torn down and rebuilt and the plumbing had to be moved and redone in order to make the sauna fit.” (Exh. R-2)

Master Builders failed to use a written change order, signed by all parties, for modifications to the scope of the work and costs of the original contract.

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 September 5, 2003, contract specified “90-120 days for completion.” (Exh. C-2)

Master Builders did not perform work at the subject property in January 2004. (Exh. I-1)

On February 17, 2004, Sohn sent Master Builders a letter requesting the basement be completed in two (2) weeks and the deck be completed in one (1) week. (Exh. C-5)

On April 14, 2003, John Carroll, attorney representing Sohn, sent Master Builders a letter requesting Master Builders provide within two (2) weeks a schedule for completion of the work. (Exh. C-6)

As of April 26, 2004, Master Builders failed to complete the work. (Exh. C-1)

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

Re: James Michael Hartsel

File Number: 2005-04314
License Number: 2710012196

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On May 2, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to James Michael Hartsel ("Hartsel") 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 May 19, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: James Michael Hartsel, Respondent; Clara Dudley, Witness; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

RECOMMENDATION

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

During the IFF, Hartsel testified that the assault and battery conviction was the result of a verbal confrontation and did not involve physical contact.

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

Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-30-190.11.

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

Therefore, I recommend Count 2 of this file be closed with a finding of no violation of 18 VAC 50-30-190.12.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

DRAFT

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

REPORT OF FINDINGS

BOARD: Contractors
DATE: April 28, 2005

FILE NUMBER: 2005-04314
RESPONDENT: James Michael Hartsel
LICENSE NUMBER: 2710012196
EXPIRATION: July 31, 2005

COMMENTS:

Companion File No. 2005-04315 for licensing application.

James Michael Hartsel ("Hartsel") was at all times material to this matter a licensed master plumber tradesman in Virginia (No. 2710012196).

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 28, 2005, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received information from Kevin Hoeft, Regulatory Boards Administrator for the Board for Contractors regarding Hartsel. (Exh. C-1)

On April 1, 2005, Dudley Plumbing Inc. submitted a change of designated employee application and a change of qualified individual application for its Class B contractor's (license number 2705032326) and disclosed Hartsel had a criminal conviction. (Exh. C-2)

On July 1, 1995, Hartsel was issued master plumber tradesman's license number 2710012196. (Exh. C-4)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having lapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

FACTS:

On March 4, 2004, in the Franklin County General District Court, Hartsel was convicted of assault and battery, a misdemeanor involving physical injury, in violation of Section 18.2-57 of the Code of Virginia. There is no appeal pending and the time for appeal has lapsed. (Exh. C-3)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession.

FACTS:

In addition to the facts outlined in Count 1:

Hartsel failed to inform the board in writing, within thirty (30) days, that he was convicted of a misdemeanor involving a physical injury.

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

Re: Dudley Plumbing Inc.
Application

File Number: 2005-04315

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On May 2, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Dudley Plumbing Inc. 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 May 19, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Clara Dudley ("Dudley"), on behalf of Dudley Plumbing Inc., Applicant; James Hartsel ("Hartsel"), Witness; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

PRIOR CRIMINAL CONVICTIONS

§ 54.1-204 of the Code of Virginia. Prior convictions not to abridge rights.

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

On March 4, 2004, in the Franklin County General District Court, James Hartsel was convicted of assault and battery, a misdemeanor, in violation of Section 18.2-57 of the Code of Virginia.

During the IFF, Hartsel testified that the assault and battery conviction was the result of a verbal confrontation and did not involve physical contact. As a result of the argument, Hartsel picked up a hammer and slammed it down on the table.

2. The relationship of the crime 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. James Hartsel is the Designated Employee and Qualified Individual for Dudley Plumbing Inc.

During the IFF, Hartsel testified that this was an isolated incident. Dudley also testified that Hartsel is a hard worker, very respectful, and not a violent person.

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

Based upon the above information, it does not appear that adding Hartsel as the Designated Employee and Qualified Individual on Dudley's license will encourage any criminal activity.

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

Due to the circumstances of the crime and Hartsel's actions since that time, I do not see any significant relationship between the crime and his fitness to engage in licensed activity.

5. The extent and nature of the person's past criminal activity;

Hartsel was convicted of assault and battery, a misdemeanor.

6. The age of the person at the time of the commission of the crime;

Hartsel was 49 years of age at the time of the crime(s).

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

The last offense occurred on or about December 2003.

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

Hartsel has been performing plumbing work since 1972. He has held a Master Plumber Tradesman license since 1995 and has been an employee with Dudley for over 30 years.

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

Hartsel was fined \$100.00 for the conviction, which was paid. Hartsel did not serve jail time and did not have any other requirements imposed related to his conviction.

RECOMMENDATION

Based upon the evidence and the IFF, including the information obtained from the Central Criminal Records Exchange, and in consideration of the criteria outlined in § 54.1-204.B, the following is recommended regarding the application as outlined in the IFF Conference Referral Memorandum:

Based on the testimony during the IFF, it was evident that Hartsel has many years of experience working with the same company. I believe Hartsel will do well as the company's Designated Employee and Qualified Individual.

Therefore, I recommend Dudley Plumbing Inc. application be approved.

By: _____

Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____



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

To: Adjudication Section, Compliance & Investigations Division

Date: 4/27/2005

From: Kevin Hoeft

Board: Contractors

Applicant: James Hartsel (DE & QI) of Dudley Plumbing, Inc./2705-032326

Applied For: DE & QI Change / Certification / Registration Class: **A** / B / C

Type Applied For: PLB (as marked on application)

Reviewed _____ **By:** _____

_____ Board Member
Kevin
Hoeft _____
_____ Staff Member

IFF Requested by Whom: Clara Dudley (RM) of Dudley Plumbing, Inc.

When: 4/19/2005 **How:** Letter
(date) (letter, telephone, etc.)

COMMENTS:

A Board Member should preside at this IFF.

BASIS UPON WHICH APPLICANT MAY NOT MEET BOARD REGULATORY REQUIREMENTS:
CRIMINAL CONVICTION(S)

Pursuant to VA Code or Board Regulation §:54.1-204; 54.1-1106; 18 VAC 50-22-60(G)

FACTS: (Include name of Court, convicted of, Code §, misdemeanor or felony and date of order.)

Franklin County General District Court; Assault & Battery; 18.2-57; Misdemeanor; 3/4/2004