Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
July 7, 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.

Jeffrey Buckley 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. John Wayne Atkins Sr. t/a Atkins Roofing & Siding File Number 2005-03090 (Disc) No Decision Made	John Atkins – R (by telephone) Dawn Reid – C
2. Mallicott & Associates Incorporated File Number 2005-03822 (Disc)	Patton Mallicott – R Alvin Archibald – C Patricia Culley-Anderson – C George Colley – W
3. The Great Southern Contracting Co Inc. File Number 2005-01502 (Disc)	Michael Kayne – R Michaela Langford – C Robert Langford – C
4. Brian Keith Cooper and t/a White Construction File Number 2004-00826 (RF) No Decision Made	Brian Cooper – C (by telephone) Kandy Cooper – C (by telephone) Frederick Harman – C Atty (by telephone)

5. Linda G. Funk and
   Doug L. Ruckman
   t/a DLR Contracting
   File Number 2004-01812 (RF)

Linda Funk – C (by telephone)

The meeting adjourned at 3:30 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: Mallicott & Associates Incorporated

File Number: 2005-03822
License Number: 2701026392

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On June 2, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mallicott & Associates Incorporated ("Mallicott") 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 July 7, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Patton Mallicott ("P. Mallicott"), on behalf of Mallicott, Respondent; Alvin Archibald ("Archibald") and Patricia Culley-Anderson

("Culley-Anderson"), Complainants; George Colley ("Colley"), Witness; Jeffrey W. Buckley, 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:

In June 2003, Mallicott contracted with the Archibald and Culley-Anderson to construct a residence at the subject property. In August 2003, a new contract was agreed to between the parties to reflect the addition of a three car garage. In September 2003, Mallicott informed the complainants that it could not obtain construction financing. As a result, Mallicott requested the complaints forward Mallicott the money to purchase the lot where the house was to be constructed. In October 2003, a new contract was agreed to between the parties, which reflected an increase in the contract price. Mallicott obtained the building permit in October 2003, and commenced work in November 2003.

During the IFF, Archibald stated that the construction was supposed to begin on July 15, 2003, but as of the beginning of August 2003, work had not begun. At that time, P. Mallicott told him that the price of the project had changed because Mallicott was building a three-car garage. Archibald stated that it was his understanding that the original plans he and Culley-Anderson had agreed to included a three-car garage. Archibald stated that he agreed to the new contract, and paid an additional amount towards the down payment. Archibald further stated that in September 2003, work had still not been started. At that time, P. Mallicott told him that Mallicott was unable to obtain construction financing, and that, as a result, Archibald and Culley-Anderson would be required to purchase the housing lot themselves. Archibald stated that in October 2003, he and Culley-Anderson entered into a new contract with Mallicott.

Count 1: <u>Board Regulation (Effective January 1, 2003)</u> (TWO COUNTS)

During construction, Mallicott paid W.O. Little Concrete ("Little") and Johnny Williams ("Williams") for work performed at the subject property. Based on the record, neither Little nor Williams were licensed contractors at the time they performed work at the subject property.

During the IFF, P. Mallicott stated that Little and Williams did perform work at the subject property. Malicott testified that since he held a Class A license he thought the subcontractors he hired were not required to be licensed. Accordingly, he did not check to ensure that they were properly licensed.

Mallicott's action of contracting with unlicensed subcontractors in the delivery of contracting services is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend

that a monetary penalty of $250.00 for each count be imposed, for a total of $500.00 and license revocation be imposed.

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

In December 2003, Mallicott began framing the house, but did not close in the house. As a result, between December 2003 and March 2004, the house was left open to the elements. In May 2004, George Colley ("Colley"), building inspector for Hampton City, issued a Stop Work Order for the subject property. The order specifically cited Mallicott's failure to complete the roof and protect the structure from the elements. The order also cites the presence of standing water in the interior flooring, causing the floor sheathing to swell, and the floor joints to buckle. Colley informed the Board's agent that Mallicott submitted the construction plan in October 2003, and subsequently revised the plan, changing the roof lines. As a result, the roof load transferred to the foundation, which caused a sagging floor. Colley also informed the Board's agent of several other problems with the framing work. According to the record, Archibald hired Pulliam Construction Company ("Pulliam") to complete construction. Pulliam hired a professional engineer to inspect the work performed by Mallicott. The professional engineer noted several structural and material defects in the work.

During the IFF, Archibald stated that Mallicott never closed the house in after he began the framing work. Colley stated that the framing was being installed in a piecemeal manner, using scraps that were laying around the house on the job-site. In March 2004, Colley testified he repeatedly informed Mallicott of issues with the framing that needed to be resolved and that the building site needed to be maintained. Colley was primarily concerned with the fact that the home had been open to the elements, and that standing in the home had deteriorated the floor boards.

Based on the record and testimony presented at the IFF, it is my opinion that Mallicott has demonstrated gross negligence and incompetence in the construction of this home. I point specifically to the statements made by Colley, as well as the professional engineer's report, which clearly indicate the work performed by Mallicott posed a threat to both people and property.

Mallicott's actions constitute negligence and incompetence in the practice of contracting, and are a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend that a monetary penalty of $1,000.00 and license revocation be imposed.

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

Colley issued a Stop Work Order for violations of the Uniform Statewide Building Code. Colley requested P. Mallicott to submit a repair plan before construction continued. Based on the record, Mallicott never provided the repair plan, and never abated the building code

violations. During the IFF, P. Mallicott admitted that he was not going to return to the house due to disagreements with the homeowner.

Mallicott's failure to abate violations of the Uniform Statewide Building Code is a violation of Board Regulation 18 VAC 50-22-260.B.25. Therefore, I recommend that a monetary penalty of $500.00 and license revocation be imposed.

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

Mallicott last performed work at the subject property in February 2004. In June 2004, Archibald and Culley-Anderson terminated its contract with Mallicott, and hired Pulliam to finish construction of the home.

P. Mallicott testified that he stopped work at the subject property because Archibald refused to pay him to continue work. Based on the record and the testimony presented at the IFF, Mallicott ceased work at the subject property for a period of thirty (30) or more days due to a disagreement regarding the purchase of a door. P. Mallicott testified that the homeowners verbally agreed to purchase a $2,800.00 door; however, the money was never paid. The complainants, however, testified that the $2,800.00 was paid in full to P. Mallicott (by check), but the door was never installed and Mallicott subsequently abandoned the job. Colley further testified that he believed P. Mallicott "did not supply needed materials to build the structure."

Mallicott's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend that a monetary penalty of $1,000.00 and license revocation be imposed.

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

The contract specified construction would be completed on April 30, 2004. However, Mallicott stopped work in February 2004, and did not complete construction. During the IFF, P. Mallicott testified that he did stop work on the complainant's house.

Based on the record and the testimony presented at the IFF, Mallicott ceased work at the subject property for a period of thirty (30) or more days due to a disagreement regarding the purchase of a door. Specifically, P. Mallicott testified that the homeowners verbally agreed to purchase a $2,800.00 door; however, the money was never paid. The complainants, however, testified that the $2,800.00 was paid in full to Mallicott (by check), but the door was never installed and Malicott subsequently abandoned the job. Colley further testified that he believed P. Mallicott clearly "did not supply needed materials to build the structure."

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

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

Archibald and Culley-Anderson paid Mallicott $157,762.89 towards the revised contract amount of $320,200.00. The contract Archibald and Culley-Anderson entered into with Pulliam to complete the work indicated that the cost to complete the home was $200,000.00.

Based on the record and testimony at the IFF, it appears that Mallicott was paid for work it did not perform. Mallicott was paid $76,162.89, yet it cost the complainants an additional $200,000.00 to have the work completed. According to the draw schedule and testimony provided my Archibold, the work was about 25% complete. Taking into consideration the purchase of the lot, which the draw schedule indicates was $61,100.00; the cost of the project was established at $244,600.00. Given what Mallicott had thus far been paid, prior to his stopping work, the project should have been 39% or 40% completed.

Mallicott's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of $1,500.00 and license revocation be imposed.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: May 18, 2005 (revised May 26, 2005)

FILE NUMBER: 2005-03822
RESPONDENT: Mallicott & Associates, Incorporated
LICENSE NUMBER: 2701026392
EXPIRATION: August 31, 2005

SUBMITTED BY: Michael Heaney
APPROVED BY: David Dorner

COMMENTS:

None.

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Mallicott & Associates, Incorporated ("Mallicott") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2701026392).

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 March 21, 2005, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Alvin Archibald ("Archibald") and Patricia Culley-Anderson ("Culley-Anderson") regarding Mallicott. (Exh. C-1)

On June 10, 2003, Mallicott entered into a written contract, in the amount of $305,000.00, with Archibald and Culley-Anderson to construct a single-family dwelling at Lot 13, Farmington Subdivision, Hampton, Virginia. (Exh. C-2) (NOTE: The street address for the subject property is 27 Castle Haven Road, Hampton, Virginia.)

On June 10, 2003, Archibald paid Mallicott $15,000.00 by check. On June 13, 2003, Archibald paid Mallicott a total of $15,000.00 by two checks. (Exh. C-5)

In August 2003, Mallicott told Archibald and Culley-Anderson that the price of the house changed because it was building a three-car garage. (Exh. C-1)

On August 8, 2003, Mallicott entered into a written contract, in the amount of $316,000.00, with Archibald and Culley-Anderson to construct a single-family dwelling at the subject property. (Exh. C-3)

On August 8, 2003, Archibald paid Mallicott $1,600.00 in cash. (Exh. C-5)

In September 2003, Mallicott told Archibald and Culley-Anderson that it could not get construction financing and needed an additional $50,000.00 to acquire the lot. Mallicott requested Archibald and Culley-Anderson purchase the lot and pay for their own construction loan. (Exh. C-1)

On September 12, 3003, Culley-Anderson paid Mallicott $50,000.00 by cashier's check. (Exh. C-5)

On October 20, 2003, Mallicott obtained building permit B03-03048 for the work to be performed at the subject property. (Exh. C-11)

On October 29, 2003, Mallicott entered into a written contract, in the amount of $320,200.00, with Archibald and Culley-Anderson to construct a single-family dwelling at the subject property. (Exh. C-4)

Between October 29, 2003 and February 20, 2004, a total of $76,162.89 was disbursed from Archibald's construction loan. (Exh. C-6)

On or about November 1, 2003, Mallicott commenced work. (Exh. I-2)

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

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

B. The following are prohibited acts:

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

FACTS:

On November 21, 2003, Mallicott paid W.O. Little Concrete $4,300.00 by check. (Exh. R-2)

On December 6, 2003, Mallicott paid Johnny William, t/a William Masonry, $3,575.00 in cash. (Exh. R-2)

In a written response dated May 6, 2005, Mallicott indicated, "Johnny Williams – Block labor" and "W.O. Little – Concrete Footing." (Exh. R-2)

On May 16, 2005, a search of the licensing records of the Board for Contractors ("the Board") revealed W. O. Little Concrete, W. O. Little, and WO Little are not licensed contractors in Virginia. The licensing records did reveal Wesley O'Hara Little, t/a O'Hara Builders & Designers, was issued Class B contractor's license number 2705037407 on February 20, 1997, and Wesley O. Little, individual tracking number 2706082349, was the Responsible Management for the license. However, license number 2705037407 expired on February 28, 1999. (Exh. I-5)

On May 16, 2005, a search of the licensing records of the Board revealed Williams Masonry and Johnny Williams are not licensed contractors in Virginia. (Exh. I-6)

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In December 2003, Mallicott began framing the house. Between December 2003 and March 2004, the house was left open to the elements because it was not closed in. (Exh. C-1)

In a letter dated May 18, 2004, George Colley ("Colley"), City of Hampton Building Inspector, stated, "Site inspections and observations have been made repeatedly to this address and there appears to be no action on your part to complete or protect the building materials used in the erection of this dwelling or to provide the required sanitary and trash collection." Colley also outlined his observations of the structure. (Exh. C-8)

At the request of Pulliam Construction Company Ltd, James H. Fletcher, P.E. ("Fletcher") of Fletcher Associates inspected and analyzed the subject property to provide an engineering opinion regarding the alterations from the construction documents to the existing construction. In a report dated August 3, 2004, Fletcher provided a list of areas of concern with comments. (Exh. C-9)

On May 4, 2005, Colley further explained his observations of the subject property. (Exh. I-3)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On May 18, 2004, Colley issued a Stop Work Order to Mallicott for violations of Section 120.0 and 121.0 of the Uniform Statewide Building Code, the International Residential Code, and the International Property Maintenance Code. Colley requested Mallicott submit a repair plan for review before construction continues. (Exh. C-8)

As of May 4, 2005, Mallicott failed to abate the building code violations. (Exh. I-3)

4. 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 Mallicott performed work at the subject property was on or about February 15, 2004. (Exh. I-2)

On June 21, 2004, Richard Gordon ("Gordon"), attorney representing Archibald and Culley-Anderson, sent Mallicott a letter, via certified mail, notifying Mallicott that it was in breach of contract and Archibald and Culley-Anderson were terminating the contract. (Exh. C-7)

On June 29, 2004, Archibald and Culley-Anderson hired Pulliam Construction Co. Ltd ("Pulliam") to finish the construction of the home at the subject property. (Exh. C-10) On February 22, 2005, Pulliam completed the work. (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:

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

FACTS:

In addition to the facts outlined in Count 4:

The contract specified, "Construction of (1) single family dwelling" with an estimated completion date of "4/30/04." (Exh. C-4)

6. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

In addition to the facts outlined in Count 4 and Count 5:

On June 29, 2004, Pulliam Construction Co. Ltd ("Pulliam") entered into a written "COST PLUS 20%" contract, in the estimated amount of $200,000.00 to $240,000.00, with Archibald and Culley-Anderson to finish the construction of the home at the subject property. (Exh. C-10)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: The Great Southern Contracting Co. Inc.

File Number: 2005-01502
License Number: 2705030631

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On June 2, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to The Great Southern Contracting Co. Inc. ("GSC") 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 July 7, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Michael Kayne ("Kayne"), on behalf of GSC, Respondent; Michaela Langford ("Langford"), Complainant; 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:

In June 2004, GSC contracted with Michaela and Robert Langford ("the Langfords") to perform exterior renovation work and construct a deck at the subject property. This contract was subsequently voided when the Langfords decided to change the scope of work. A new contract was agreed to in July 2004.

Count 1: <u>Board Regulation (Effective January 1, 2003)</u>

The contract specified that work would begin on July 26, 2005. GSC did not commence work on that date. According to the Langfords, several attempts were made to resolve the matter, but GSC did not return their calls. In August 2004, the Langfords terminated the contract because GSC did not commence work.

Kayne testified that GSC did not start work due to delays caused by changes that the Langfords kept making to the scope of work. Kayne cited additional changes to the scope of work, including the elimination of the deck, as well as the elimination of additional doors. Conversely, the Langfords testified that only one change was made to the contract, which pertained to the removal of a bay window. Written change orders were not used.

GSC intentional and unjustified failure to complete work, or comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of $1000.00 and remedial education be imposed.

The Board's Basic Contractor Licensing course (remedial education) must completed by a member of the firm's responsible management within six (6) months of the effective date of this order.

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

The Langfords paid GSC $7,500.00 as a deposit on the contract. After GSC failed to commence work, the Langfords, through their attorney, requested GSC to return the deposit, plus attorney's fees. Based on the record, GSC and the Langfords' attorney were unable to resolve the issue, despite several telephone conversations on the matter. GSC did not refund the Langfords' deposit. The Langfords eventually obtained a judgment against GSC for the amount of the deposit.

During the IFF, Kayne stated that GSC retained the deposit because it spent numerous business hours working on the job, which included trips made to the Langfords' residence to work on drawings, planning, color choices, and material choices; as well as scheduling of the job with subcontractors. Kayne further stated that it was his understanding that the Langfords were unwilling to accept any type of reimbursement.

Based on the record and the testimony presented at the IFF, I find that the facts support a violation. The Langfords did terminate the contract, but only after GSC failed to commence work nearly a month after it was contractually obligated to do so. Since a court of competent jurisdiction has also adjudicated the facts of this case, and found in favor of the Langfords, it appears to me that GSC's stated reasons for retaining the deposit are not sufficient justification.

GSC retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of $500.00 and remedial education be imposed.

The Board's Basic Contractor Licensing course (remedial education) must completed by a member of the firm's responsible management within six (6) months of the effective date of this order.

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

In May 2005, in Prince William County General District Court, the Langfords obtained a judgment against GSC, in the amount of $7,500.00, with interest at 6%, $38.00 in court costs, and $591.64 in attorney fees. Documentation was submitted by the contractor substantiating that the judgment was paid in full. Moreover, the Langfords confirmed that the judgment was paid during the IFF.

Therefore, I recommend that Count 3 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.28.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: March 23, 2005 (revised April 20, 2005 and May 19, 2005)

FILE NUMBER: 2005-01502
RESPONDENT: The Great Southern Contracting Co. Inc.
LICENSE NUMBER: 2705030631
EXPIRATION: September 30, 2005

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

COMMENTS:

None.

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The Great Southern Contracting Co. Inc. ("GSC") was at all times material to this matter a licensed Class A contractor in Virginia (No.2705030631).

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

BACKGROUND:

On October 1, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Michaela and Robert Langford ("the Langfords") regarding GSC. (Exh. C-1)

On June 26, 2004, GSC provided the Langfords with a written estimate, in the amount of $25,000.00, to do exterior renovation work and construct a deck at 14224 Bremerton Drive, Woodbridge, Virginia 22193. On July 13, 2004, GSC entered into the contract and the Langfords signed the estimate. (Exh. C-2)

GSC and the Langfords voided the first contract and modified the work to be performed at the subject property. (Exh. C-2)

On July 13, 2004, GSC provided the Langfords with a written estimate, in the amount of $22,000.00, for the work to be performed at the subject property. The estimate was agreed to and signed by GSC and the Langfords. (Exh. C-3)

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1. 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, "APPROXIMATE STARTING DATE: 7/26/04" and "APPROXIMATE COMPLETION DATE: 8/9/04." (Exh. C-3)

GSC failed to commence work on July 26, 2004. (Exh. C-1 and C-4)

Prior to August 24, 2004, the Langfords made attempts to resolve the matter; however, GSC did not return the calls. (Exh. C-1 and C-4)

In a letter dated August 24, 2004, Jenine Elco Graves ("Graves"), attorney representing the Langfords, advised GSC that the Langfords were terminating the contract because GSC breached the contract for non-performance. (Exh. C-4)

2. 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, "In the event the Buyer(s) fail to comply with the provision of this Agreement, they shall pay Contractor, upon demand, a sum in cash equal to all direct and indirect costs incurred by the Contractor in connection herewith, plus an amount equal to twenty-four per centrum (24%) of the contract price as liquidated damages." (Exh. R-1)

The contract also specified, "Buyer(s) agree that if this Contract is cancelled by him or them for any reason, other than set forth under Federal or State Statutes allowing Recision, to pay the Contractor a sum of money equal to twenty-five percent of the Contract price herein agreed to be paid, as fixed, liquidated and ascertained damages without proof of loss or damage." (Exh. R-1)

On June 26, 2004, the Langfords paid GSC $7,500.00, in cash. (Exh. C-2 and I-1)

In a letter dated August 24, 2004, Graves demanded GSC immediately return the $7,500.00 deposit and $500.00 in attorneys' fees. (Exh. C-4)

In a letter dated September 16, 2004, Graves stated, "We had several telephone conversations in an attempt to resolve these issues, but as of today's date, I do not have a response from you as to whether Great Southern will agree to refund the above sums. In this regard, the Langfords are again requesting that Great Southern return their deposit and reimburse them for attorney fees, for a total amount of $8,000.00." (Exh. C-4)

On November 10, 2004, in the Prince William County General District Court, the Langfords filed a Warrant in Debt, in the amount of $7,500.00, against GSC. (Exh. I-4)

In a written response received December 3, 2004, Michael Kayne ("Kayne"), President of GSC, stated, "Great Southern Contracting Company, Inc. spent numerous business hours working on the job for the Langfords. The work that Great Southern Contracting Company, Inc. completed includes many different trips to the Langfords home in Dale City by Associate Michael Goodrich-Stuart to work with the Langfords on drawings, planning, color choices, material choices, etc., drawings of the exterior rear covered porch/deck, scheduling of the job with sub-contractors, etc." (Exh. R-1)

As of May 12, 2005, GSC failed to satisfy the judgment or refund the payment received for work not performed. (Exh. I-1)

3. <u>Board Regulation (Effective January 1, 2003)</u>

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

<u>FACTS:</u>

On May 3, 2005, in the Prince William County General District Court, the Langfords were awarded a $7,500.00 judgment against GSC. (Exh. I-4)

As of May 12, 2005, GSC failed to satisfy the judgment. (Exh. I-1)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: The Great Southern Contracting Co. Inc.

File Number: 2005-01502
License Number: 2705030631

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On June 2, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to The Great Southern Contracting Co. Inc. ("GSC") 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 July 7, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Michael Kayne ("Kayne"), on behalf of GSC, Respondent; Michaela and Robert Langford ("Langfords"), Complainants; Jeffrey Buckley, 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:

In June 2004, GSC contracted with the Langfords to perform exterior renovation work and construct a deck at the subject property. This contract was subsequently voided when the Langfords decided to change the scope of work. A new contract was agreed to in July 2004.

Count 1: <u>Board Regulation (Effective January 1, 2003)</u>

The contract specified that work would begin on July 26, 2005. GSC did not commence work on that date. According to the Langfords, several attempts were made to resolve the matter, but GSC did not return their calls. In August 2004, the Langfords terminated the contract because GSC did not commence work.

Kayne testified that GSC did not start work due to delays caused by changes that the Langfords kept making to the scope of work. Kayne cited additional changes to the scope of work, including the elimination of the deck, as well as the elimination of additional doors.

Conversely, the Langfords testified that only one change was made to the contract, which pertained to the removal of a bay window. Written change orders were not used.

GSC intentional and unjustified failure to complete work, or comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of $1000.00 and remedial education be imposed.

The Board's Basic Contractor Licensing course (remedial education) must completed by a member of the firm's responsible management within six (6) months of the effective date of this order.

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

The Langfords paid GSC $7,500.00 as a deposit on the contract. After GSC failed to commence work, the Langfords, through their attorney, requested GSC to return the deposit, plus attorney's fees. Based on the record, GSC and the Langfords' attorney were unable to resolve the issue, despite several telephone conversations on the matter. GSC did not refund the Langfords' deposit. The Langfords eventually obtained a judgment against GSC for the amount of the deposit.

During the IFF, Kayne stated that GSC retained the deposit because it spent numerous business hours working on the job, which included trips made to the Langfords' residence to work on drawings, planning, color choices, and material choices; as well as scheduling of the job with subcontractors. Kayne further stated that it was his understanding that the Langfords were unwilling to accept any type of reimbursement.

Based on the record and the testimony presented at the IFF, I find that the facts support a violation. The Langfords did terminate the contract, but only after GSC failed to commence work nearly a month after it was contractually obligated to do so. Since a court of competent jurisdiction has also adjudicated the facts of this case, and found in favor of the Langfords, it appears to me that GSC's stated reasons for retaining the deposit are not sufficient justification.

GSC retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of $500.00 and remedial education be imposed.

The Board's Basic Contractor Licensing course (remedial education) must completed by a member of the firm's responsible management within six (6) months of the effective date of this order.

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

In May 2005, in Prince William County General District Court, the Langfords obtained a judgment against GSC, in the amount of $7,500.00, with interest at 6%, $38.00 in court costs, and $591.64 in attorney fees. Documentation was submitted by the contractor substantiating that the judgment was paid in full. Moreover, the Langfords confirmed that the judgment was paid during the IFF.

Therefore, I recommend that Count 3 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.28.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: March 23, 2005 (revised April 20, 2005 and May 19, 2005)

FILE NUMBER: 2005-01502
RESPONDENT: The Great Southern Contracting Co. Inc.
LICENSE NUMBER: 2705030631
EXPIRATION: September 30, 2005

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

COMMENTS:

None.

****

The Great Southern Contracting Co. Inc. ("GSC") was at all times material to this matter a licensed Class A contractor in Virginia (No.2705030631).

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

BACKGROUND:

On October 1, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Michaela and Robert Langford ("the Langfords") regarding GSC. (Exh. C-1)

On June 26, 2004, GSC provided the Langfords with a written estimate, in the amount of $25,000.00, to do exterior renovation work and construct a deck at 14224 Bremerton Drive, Woodbridge, Virginia 22193. On July 13, 2004, GSC entered into the contract and the Langfords signed the estimate. (Exh. C-2)

GSC and the Langfords voided the first contract and modified the work to be performed at the subject property. (Exh. C-2)

On July 13, 2004, GSC provided the Langfords with a written estimate, in the amount of $22,000.00, for the work to be performed at the subject property. The estimate was agreed to and signed by GSC and the Langfords. (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:

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, "APPROXIMATE STARTING DATE: 7/26/04" and "APPROXIMATE COMPLETION DATE: 8/9/04." (Exh. C-3)

GSC failed to commence work on July 26, 2004. (Exh. C-1 and C-4)

Prior to August 24, 2004, the Langfords made attempts to resolve the matter; however, GSC did not return the calls. (Exh. C-1 and C-4)

In a letter dated August 24, 2004, Jenine Elco Graves ("Graves"), attorney representing the Langfords, advised GSC that the Langfords were terminating the contract because GSC breached the contract for non-performance. (Exh. C-4)

2. 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, "In the event the Buyer(s) fail to comply with the provision of this Agreement, they shall pay Contractor, upon demand, a sum in cash equal to all direct and indirect costs incurred by the Contractor in connection herewith, plus an amount equal to twenty-four per centrum (24%) of the contract price as liquidated damages." (Exh. R-1)

The contract also specified, "Buyer(s) agree that if this Contract is cancelled by him or them for any reason, other than set forth under Federal or State Statutes allowing Recision, to pay the Contractor a sum of money equal to twenty-five percent of the Contract price herein agreed to be paid, as fixed, liquidated and ascertained damages without proof of loss or damage." (Exh. R-1)

On June 26, 2004, the Langfords paid GSC $7,500.00, in cash. (Exh. C-2 and I-1)

In a letter dated August 24, 2004, Graves demanded GSC immediately return the $7,500.00 deposit and $500.00 in attorneys' fees. (Exh. C-4)

In a letter dated September 16, 2004, Graves stated, "We had several telephone conversations in an attempt to resolve these issues, but as of today's date, I do not have a response from you as to whether Great Southern will agree to refund the above sums. In this regard, the Langfords are again requesting that Great Southern return their deposit and reimburse them for attorney fees, for a total amount of $8,000.00." (Exh. C-4)

On November 10, 2004, in the Prince William County General District Court, the Langfords filed a Warrant in Debt, in the amount of $7,500.00, against GSC. (Exh. I-4)

In a written response received December 3, 2004, Michael Kayne ("Kayne"), President of GSC, stated, "Great Southern Contracting Company, Inc. spent numerous business hours working on the job for the Langfords. The work that Great Southern Contracting Company, Inc. completed includes many different trips to the Langfords home in Dale City by Associate Michael Goodrich-Stuart to work with the Langfords on drawings, planning, color choices, material choices, etc., drawings of the exterior rear covered porch/deck, scheduling of the job with sub-contractors, etc." (Exh. R-1)

As of May 12, 2005, GSC failed to satisfy the judgment or refund the payment received for work not performed. (Exh. I-1)

3. <u>Board Regulation (Effective January 1, 2003)</u>

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

<u>FACTS:</u>

On May 3, 2005, in the Prince William County General District Court, the Langfords were awarded a $7,500.00 judgment against GSC. (Exh. I-4)

As of May 12, 2005, GSC failed to satisfy the judgment. (Exh. I-1)

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 23, 2005 (revised April 20, 2005 and May 19, 2005)

FILE NUMBER: 2005-01502
RESPONDENT: The Great Southern Contracting Co. Inc.
LICENSE NUMBER: 2705030631
EXPIRATION: September 30, 2005

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

COMMENTS:

None.

****

The Great Southern Contracting Co. Inc. ("GSC") was at all times material to this matter a licensed Class A contractor in Virginia (No.2705030631).

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

BACKGROUND:

On October 1, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Michaela and Robert Langford ("the Langfords") regarding GSC. (Exh. C-1)

On June 26, 2004, GSC provided the Langfords with a written estimate, in the amount of $25,000.00, to do exterior renovation work and construct a deck at 14224 Bremerton Drive, Woodbridge, Virginia 22193. On July 13, 2004, GSC entered into the contract and the Langfords signed the estimate. (Exh. C-2)

GSC and the Langfords voided the first contract and modified the work to be performed at the subject property. (Exh. C-2)

On July 13, 2004, GSC provided the Langfords with a written estimate, in the amount of $22,000.00, for the work to be performed at the subject property. The estimate was agreed to and signed by GSC and the Langfords. (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:

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, "APPROXIMATE STARTING DATE: 7/26/04" and "APPROXIMATE COMPLETION DATE: 8/9/04." (Exh. C-3)

GSC failed to commence work on July 26, 2004. (Exh. C-1 and C-4)

Prior to August 24, 2004, the Langfords made attempts to resolve the matter; however, GSC did not return the calls. (Exh. C-1 and C-4)

In a letter dated August 24, 2004, Jenine Elco Graves ("Graves"), attorney representing the Langfords, advised GSC that the Langfords were terminating the contract because GSC breached the contract for non-performance. (Exh. C-4)

2. 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, "In the event the Buyer(s) fail to comply with the provision of this Agreement, they shall pay Contractor, upon demand, a sum in cash equal to all direct and indirect costs incurred by the Contractor in connection herewith, plus an amount equal to twenty-four per centrum (24%) of the contract price as liquidated damages." (Exh. R-1)

The contract also specified, "Buyer(s) agree that if this Contract is cancelled by him or them for any reason, other than set forth under Federal or State Statutes allowing Recision, to pay the Contractor a sum of money equal to twenty-five percent of the Contract price herein agreed to be paid, as fixed, liquidated and ascertained damages without proof of loss or damage." (Exh. R-1)

On June 26, 2004, the Langfords paid GSC $7,500.00, in cash. (Exh. C-2 and I-1)

In a letter dated August 24, 2004, Graves demanded GSC immediately return the $7,500.00 deposit and $500.00 in attorneys' fees. (Exh. C-4)

In a letter dated September 16, 2004, Graves stated, "We had several telephone conversations in an attempt to resolve these issues, but as of today's date, I do not have a response from you as to whether Great Southern will agree to refund the above sums. In this regard, the Langfords are again requesting that Great Southern return their deposit and reimburse them for attorney fees, for a total amount of $8,000.00." (Exh. C-4)

On November 10, 2004, in the Prince William County General District Court, the Langfords filed a Warrant in Debt, in the amount of $7,500.00, against GSC. (Exh. I-4)

In a written response received December 3, 2004, Michael Kayne ("Kayne"), President of GSC, stated, "Great Southern Contracting Company, Inc. spent numerous business hours working on the job for the Langfords. The work that Great Southern Contracting Company, Inc. completed includes many different trips to the Langfords home in Dale City by Associate Michael Goodrich-Stuart to work with the Langfords on drawings, planning, color choices, material choices, etc., drawings of the exterior rear covered porch/deck, scheduling of the job with sub-contractors, etc." (Exh. R-1)

As of May 12, 2005, GSC failed to satisfy the judgment or refund the payment received for work not performed. (Exh. I-1)

3. <u>Board Regulation (Effective January 1, 2003)</u>

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

<u>FACTS:</u>

On May 3, 2005, in the Prince William County General District Court, the Langfords were awarded a $7,500.00 judgment against GSC. (Exh. I-4)

As of May 12, 2005, GSC failed to satisfy the judgment. (Exh. I-1)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: *The Great Southern Contracting Co. Inc.*

File Number: 2005-01502
License Number: 2705030631

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On June 2, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to The Great Southern Contracting Co. Inc. ("GSC") 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 July 7, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Michael Kayne ("Kayne"), on behalf of GSC, Respondent; Michaela Langford ("Langford"), Complainant; 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:

In June 2004, GSC contracted with Michaela and Robert Langford ("the Langfords") to perform exterior renovation work and construct a deck at the subject property. This contract was subsequently voided when the Langfords decided to change the scope of work. A new contract was agreed to in July 2004.

Count 1: <u>Board Regulation (Effective January 1, 2003)</u>

The contract specified that work would begin on July 26, 2005. GSC did not commence work on that date. According to the Langfords, several attempts were made to resolve the matter, but GSC did not return their calls. In August 2004, the Langfords terminated the contract because GSC did not commence work.

Kayne testified that GSC did not start work due to delays caused by changes that the Langfords kept making to the scope of work. Kayne cited additional changes to the scope of work, including the elimination of the deck, as well as the elimination of additional doors. Conversely, the Langfords testified that only one change was made to the contract, which pertained to the removal of a bay window. Written change orders were not used.

GSC intentional and unjustified failure to complete work, or comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of $1000.00 and remedial education be imposed.

The Board's Basic Contractor Licensing course (remedial education) must completed by a member of the firm's responsible management within six (6) months of the effective date of this order.

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

The Langfords paid GSC $7,500.00 as a deposit on the contract. After GSC failed to commence work, the Langfords, through their attorney, requested GSC to return the deposit, plus attorney's fees. Based on the record, GSC and the Langfords' attorney were unable to *resolve the issue, despite several telephone conversations on the matter. GSC did not* refund the Langfords' deposit. The Langfords eventually obtained a judgment against GSC for the amount of the deposit.

During the IFF, Kayne stated that GSC retained the deposit because it spent numerous business hours working on the job, which included trips made to the Langfords' residence to work on drawings, planning, color choices, and material choices; as well as scheduling of the job with subcontractors. Kayne further stated that it was his understanding that the Langfords were unwilling to accept any type of reimbursement.

Based on the record and the testimony presented at the IFF, I find that the facts support a violation. The Langfords did terminate the contract, but only after GSC failed to commence work nearly a month after it was contractually obligated to do so. Since a court of competent jurisdiction has also adjudicated the facts of this case, and found in favor of the Langfords, it appears to me that GSC's stated reasons for retaining the deposit are not sufficient justification.

GSC retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of $500.00 and remedial education be imposed.

The Board's Basic Contractor Licensing course (remedial education) must completed by a member of the firm's responsible management within six (6) months of the effective date of this order.

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

In May 2005, in Prince William County General District Court, the Langfords obtained a judgment against GSC, in the amount of $7,500.00, with interest at 6%, $38.00 in court costs, and $591.64 in attorney fees. Documentation was submitted by the contractor substantiating that the judgment was paid in full. Moreover, the Langfords confirmed that the judgment was paid during the IFF.

Therefore, I recommend that Count 3 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.28.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: March 23, 2005 (revised April 20, 2005 and May 19, 2005)

FILE NUMBER: 2005-01502
RESPONDENT: The Great Southern Contracting Co. Inc.
LICENSE NUMBER: 2705030631
EXPIRATION: September 30, 2005

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

COMMENTS:

None.

****

The Great Southern Contracting Co. Inc. ("GSC") was at all times material to this matter a licensed Class A contractor in Virginia (No.2705030631).

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

BACKGROUND:

On October 1, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Michaela and Robert Langford ("the Langfords") regarding GSC. (Exh. C-1)

On June 26, 2004, GSC provided the Langfords with a written estimate, in the amount of $25,000.00, to do exterior renovation work and construct a deck at 14224 Bremerton Drive, Woodbridge, Virginia 22193. On July 13, 2004, GSC entered into the contract and the Langfords signed the estimate. (Exh. C-2)

GSC and the Langfords voided the first contract and modified the work to be performed at the subject property. (Exh. C-2)

On July 13, 2004, GSC provided the Langfords with a written estimate, in the amount of $22,000.00, for the work to be performed at the subject property. The estimate was agreed to and signed by GSC and the Langfords. (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:

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, "APPROXIMATE STARTING DATE: 7/26/04" and "APPROXIMATE COMPLETION DATE: 8/9/04." (Exh. C-3)

GSC failed to commence work on July 26, 2004. (Exh. C-1 and C-4)

Prior to August 24, 2004, the Langfords made attempts to resolve the matter; however, GSC did not return the calls. (Exh. C-1 and C-4)

In a letter dated August 24, 2004, Jenine Elco Graves ("Graves"), attorney representing the Langfords, advised GSC that the Langfords were terminating the contract because GSC breached the contract for non-performance. (Exh. C-4)

2. 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, "In the event the Buyer(s) fail to comply with the provision of this Agreement, they shall pay Contractor, upon demand, a sum in cash equal to all direct and indirect costs incurred by the Contractor in connection herewith, plus an amount equal to twenty-four per centrum (24%) of the contract price as liquidated damages." (Exh. R-1)

The contract also specified, "Buyer(s) agree that if this Contract is cancelled by him or them for any reason, other than set forth under Federal or State Statutes allowing Recision, to pay the Contractor a sum of money equal to twenty-five percent of the Contract price herein agreed to be paid, as fixed, liquidated and ascertained damages without proof of loss or damage." (Exh. R-1)

On June 26, 2004, the Langfords paid GSC $7,500.00, in cash. (Exh. C-2 and I-1)

In a letter dated August 24, 2004, Graves demanded GSC immediately return the $7,500.00 deposit and $500.00 in attorneys' fees. (Exh. C-4)

In a letter dated September 16, 2004, Graves stated, "We had several telephone conversations in an attempt to resolve these issues, but as of today's date, I do not have a response from you as to whether Great Southern will agree to refund the above sums. In this regard, the Langfords are again requesting that Great Southern return their deposit and reimburse them for attorney fees, for a total amount of $8,000.00." (Exh. C-4)

On November 10, 2004, in the Prince William County General District Court, the Langfords filed a Warrant in Debt, in the amount of $7,500.00, against GSC. (Exh. I-4)

In a written response received December 3, 2004, Michael Kayne ("Kayne"), President of GSC, stated, "Great Southern Contracting Company, Inc. spent numerous business hours working on the job for the Langfords. The work that Great Southern Contracting Company, Inc. completed includes many different trips to the Langfords home in Dale City by Associate Michael Goodrich-Stuart to work with the Langfords on drawings, planning, color choices, material choices, etc., drawings of the exterior rear covered porch/deck, scheduling of the job with sub-contractors, etc." (Exh. R-1)

As of May 12, 2005, GSC failed to satisfy the judgment or refund the payment received for work not performed. (Exh. I-1)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On May 3, 2005, in the Prince William County General District Court, the Langfords were awarded a $7,500.00 judgment against GSC. (Exh. I-4)

As of May 12, 2005, GSC failed to satisfy the judgment. (Exh. I-1)

IN THE

COMMONWEALTH OF VIRGINIA

BOARD FOR CONTRACTORS

Re: Linda G. Funk (Claimant) and Doug L. Ruckman, t/a DLR Contracting (Regulant)

File Number: 2004-01812
License Number: 2705024388

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On May 26, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Linda G. Funk ("Claimant") through her attorney Phillip Griffin, Esq. and Doug L. Ruckman, t/a DLR Contracting ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mailings to both the Claimant's attorney and the Respondent were each signed for and received. A copy of the Notice was also mailed, via certified mail, to the Claimant. The *certified mail was signed for and received.*

On July 7, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Linda Funk, Claimant; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Doug Ruckman, Regulant, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the recovery fund claim:

On June 29, 2001, the Regulant contracted with the Claimant to construct a screened-in porch, construct a roof over a deck, and perform other improvements at the subject property. The Claimant paid the Regulant $7,707.00 towards the contracted amount of $8,750.00. According to the record, the Regulant walked off of the job and failed to complete several items, including caulking the foundation and roof removal, for which he had already been paid. The Claimant's affidavit also states that there were numerous building code violations. The record includes a letter dated September 12, 2001, from the County of Frederick Inspections Department, which identifies eight building code violations.

On January 30, 2003, in Frederick County General District Court, the Claimant obtained a judgment against the Regulant, in the amount of $6,307.00. The judgment recites "contract" as the basis for judgment. According to the record, the Claimant conducted debtor

interrogatories, which revealed no assets; and the Regulant filed for bankruptcy protection in November 2000. The Claimant was originally seeking a payment from the Recovery Fund in the amount of $8,997.00, which includes the judgment amount, plus $34.00 in court costs, and $2,656.00 in attorney fees. During the IFF, however, the Claimant acknowledged that she incurred additional attorney fees. The Claimant subsequently provided documentation substantiating attorney fees totaling $3,144.00. Accordingly, the Claimant is now seeking payment from the Recovery Fund in the amount of $9,690.58.

During the IFF, Funk testified that, due to the poor quality of work, she paid a second contractor $1,400.00 to tear down the work constructed by the Regulant. Moreover, the second contractor was paid an additional $11,000.00 to re-construct the screened in porch and other exterior improvements, which were originally contracted with the Regulant.

The judgment does not specifically cite improper or dishonest conduct; nonetheless, I find the Regulant's conduct in this matter was both improper and dishonest. The Regulant abandoned the job and retained money already received for work he agreed to perform. Additionally, numerous building code violations resulted from the minimal work performed by the Regulant. As such, I find that the recovery fund claim meets the statutory requirements for payment.

Therefore, I recommend the recovery fund claim be approved for payment in the revised amount of $9,690.58.

By: _____
Ruth Ann Wall
Presiding Officer

Board for Contractors

Date: _____

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: May 9, 2005

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Linda G. Funk (Claimant) and Doug L. Ruckman t/a DLR Contracting (Regulant)
File Number: 2004-01812

BACKGROUND

On January 30, 2003, in the Frederick County General District Court, Linda G. Funk obtained a Judgment against Doug L. Ruckman, in the amount of $6,307.00, plus interest and $34.00 costs.

The claim in the amount of $8,997.00 was received by the Department of Professional and Occupational Regulation on September 23, 2003.

CLAIM FILE INFORMATION

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis for the suit.

Section 54.1-1120(A) also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant did contract with the regulant.

The Board issued Class B License Number 2705024388 to Doug L. Ruckman t/a DLR Contracting on June 9, 1994. The license was permanently revoked on September 20, 2001. The claimant entered into a written contract with DLR Contracting, Doug Ruckman on June 29, 2001 for construction of a screened in porch and other exterior improvements at the claimant's residence.

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Board for Contractors was not served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board for Contractors did not receive any pleadings or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on January 30, 2003. The claim was received on September 23, 2003.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with the DLR Contracting for the construction of a screened in porch and other exterior improvement.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial

or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Director's Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

Section 54.1-1120(A)(7) states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt does not recite the basis for the suit.
In the Affidavit of Facts dated December 18, 2003 the claimant asserts that the worked performed by the regulant had building code violations. There was also a breach of contract and retention of funds on the part of the regulant.

Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "Yes." In the Western District of Virginia, November 14, 2000. (Note: prior to the claimant's judgment)

Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT

TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government

1. Name: Ruth Ann Wall

2. Title: Presiding Officer

3. Agency: Board for Contractors

4. Transaction: Informal Fact-Finding Conferences on July7, 2005

5. Nature of Personal Interest Affected by Transaction: _____

_____

6. I declare that:

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

_____

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

Ruth Ann Wall _____ 7-7-05 _____
Signature Date