

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
July 12, 2005 (10:30 a.m.)**

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

Robert Kirby, Board member, presided. No other Board members were present.

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

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

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

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

Participants

- | | |
|---|--|
| 1. James R. Jackson Jr.
t/a Jimmy's Homeworks
File Number 2004-04819 (Disc)
(No decision made) | Jackson – R |
| 2. Kevin Hardin
t/a Hardin Contracting
File Number 2005-01103 (Disc) | None |
| 3. Ray Gaskins
t/a Ray's Construction
File Number 2005-00879 (Disc) | Gaskins – R
David Whittington – C
Margaret Whittington – C
William Knight – W |
| 4. Virginia S. Ruger
t/a Iron Horse Construction Co.
File Number 2005-03380 (Disc)
(No decision made) | Ruger – R (by phone)
David Morris – C
David Swiney – W (by phone) |

5. Larry Hooper and
Earl G. Bailey
t/a Bailey's Custom Builders
File Number 2005-00516 (RF)
(No decision made)

Hooper – C
Louis J. Richman Jr. – C Atty
Bailey – R

The meeting adjourned at 3:35 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: Kevin Hardin, t/a Hardin Contracting

File Number: 2005-01103
License Number: 2705031546

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On June 6, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Kevin Hardin, t/a Hardin Contracting ("Hardin"), to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service and was marked "Unclaimed."

On July 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: Joseph Haughwout, Staff Member; and Robert Kirby, Presiding Board Member. Neither Hardin, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

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

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

The record indicates that Hardin utilized a Job Work Order in place of a written contract. The record further indicates that the Job Work Order was not signed by either Hardin or Randy Fralin ("Fralin"). Hardin's failure to obtain the requisite signatures on the Job Work Order is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

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

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

The record indicates that Hardin utilized a Job Work Order in place of a written contract. The record further indicates the Job Work Order used by Hardin in the transaction failed to contain six required subsections.

Hardin's failure to include subsections a., d., e., f., h., and i. is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$300.00 and remedial education be imposed.

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

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

The record indicates that Hardin failed to obtain a required permit, in violation of Section 111.1 of the Uniform Statewide Building Code. Hardin's violation of the building code constitutes misconduct in the practice of contracting, and is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

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

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

The record indicates that during the renovation of the Florida room, walls were ripped out in the Florida room and termite damage was discovered in several two by fours and the header on the left wall. Hardin agreed to replace the two by fours and header for an additional \$1,000.00, but he did not use a written change order.

Hardin's failure to obtain a signed, written change order modifying the scope of work and cost of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

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

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

The Job Work Order specified, "Install new thru wall heat pump." The record indicates that Hardin wired the wall for the heat pump; however, the heat pump was never installed

because Hardin was unable to get the heat pump order filled. Hardin last worked at the subject property in March or April 2004.

Hardin's failure to complete work contracted for is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____

Robert Kirby
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: May 25, 2005 (revised June 1, 2005)

FILE NUMBER: 2005-01103
RESPONDENT: Kevin Hardin, t/a Hardin Contracting
LICENSE NUMBER: 2705031546
EXPIRATION: November 30, 2005

SUBMITTED BY: E. Nathan Matthews
APPROVED BY: Wayne Mozingo

COMMENTS:

None

Kevin Hardin ("Hardin"), t/a Hardin Contracting, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705031546).

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

BACKGROUND:

On September 13, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Randy Fralin ("Fralin") regarding Hardin. (Exh. C-1)

In the end of 2003, Hardin commenced work at 12259 River Road, Richmond, Virginia 23233. (Exh. I-5)

On January 20, 2004, Hardin provide Fralin with a Job Work Order, in the amount of \$9,000.00, to redo a Florida room at the subject property. (Exh. C-2)

On January 20, 2004, Fralin paid Hardin \$6,500.00 by check. On March 15, 2004, Fralin paid Hardin \$2,000.00 by check. (Exh I-2 and I-5)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The Job Work Order was not signed by Hardin or Fralin. (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:

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

FACTS:

The Job Work Order used by Hardin in the transaction failed to contain subsections: a., d., e., f., h., and i. (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

As of March 3, 2005, Hardin failed to obtain a required permit, in violation of Section 111.1 of the Uniform Statewide Building Code. (Exh. I-7)

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:

When the walls were ripped out in the Florida room, Hardin found termite damage in several two by fours and the header on the left wall. Hardin agreed to replace the two by fours and header for an additional \$1,000.00, but he did not use a written change order. (Exh. I-5)

Hardin rebuilt the damaged header at the subject property. (Exh. I-4)

5. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

The Job Work Order specified, "Install new thru wall heat pump." (Exh. C-2)

Hardin wired the wall for the heat pump. Hardin left the wire rolled up inside the wall. (Exh. I-5)

As of December 8, 2004, Hardin failed to install the wall heat pump because Hardin was unable to get the heat pump order filled. (Exh. I-5)

The last time Hardin performed any work at the subject property was March or April of 2004. (Exh. I-5)

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

Re: Ray Gaskins, t/a Ray's Construction

File Number: 2005-00879
License Number: 2705065789

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On June 7, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Ray Gaskins ("Gaskins"), t/a Ray's Construction, to the address of record. The Notice included the Amended 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 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: Ray Gaskins, Respondent; David and Margaret Whittington; Complainants; William Knight ("Knight"), Witness; Joseph Haughwout, Staff Member; and Robert Kirby, Presiding Board Member.

RECOMMENDATION

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

In November 2003, Gaskins contracted with David Whittington ("Whittington") to construct a garage, install replacement siding, and replace the front windows at the subject property.

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

The record indicates Gaskins obtained his Class C contractor's license in January 2002. The contract used in the transaction reflected a price of \$15,000.00 to \$16,000.00. Gaskins also agreed to perform additional work, increasing the value of the work performed.

During the IFF, Gaskins testified that he told Whittington he was licensed to perform work up to \$7,500.00 and that he would do the work in installments. Based on Gaskins' testimony, it appears that Gaskins does not understand that his actions are a violation of the Board's regulations.

Gaskins's action of practicing in a class of license for which he is 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 and remedial education be imposed.

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

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

Based on the record, the contract used by Gaskins in the transaction failed to contain six subsections required by the Board's regulation. Specifically, subsections a., d., e., f., h., and i. were deficient.

Gaskins' failure to include the required subsections in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$600.00 and remedial education be imposed.

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

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

The record indicates Gaskins utilized written change orders on February 14, 2004 and on February 22, 2004; however, Whittington did not sign them. Gaskins provided Whittington with additional invoices, which reflected additional work performed by Gaskins; however, the invoice was not signed by either Gaskins or Whittington.

During the IFF, Whittington stated he did not sign written change orders for additional work performed by Gaskins. Whittington also stated he verbally authorized the work according to the invoices.

Gaskins testified that he did not obtain Whittington's signature on the change orders for the work performed in excess of the \$16,000.00 contract. The additional work included items such as drywall in the garage and front porch steps.

Gaskins's failure to obtain the requisite signatures on the aforementioned change orders is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

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

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

According to the record, Gaskins installed the replacement windows; however, the windows were the wrong length and width, were improperly secured, and there was a two-inch gap on top of one of the windows. At the request of Whittington, William Knight ("Knight"), Chief Building Official for Northumberland County, inspected the windows and front porch steps and, in a letter dated October 29, 2004, stated, "the work is of very poor quality, the windows are installed completely wrong and are not re-useable."

During the IFF, Whittington stated he noticed gaps around the windows and the windows were loose in the jam. Whittington stated Gaskins wanted an additional \$1,500.00 to correct the windows. Whittington hired other contractors to install new windows and siding because the windows installed by Gaskins was causing water damage to his property.

Knight testified that he was contacted by Whittington regarding the windows. Knight went to the property and observed the installation of the windows. In his opinion, the windows were installed improperly. Knight further testified that he did not issue a Notice of Violation because the homeowners were the permit holders.

During the IFF, Gaskins testified that the condition of the windows was because Whittington terminated him and he did not have an opportunity to complete the installation of the windows. Gaskins also presented pictures of windows completed on another property.

Based on the record and testimony presented at the IFF, it is my opinion that Gaskins improperly performed the work at the subject property, including, but not limited to, the installation of the windows. Specifically, I refer to Knight's letter and testimony that indicates his assessment that windows were installed improperly, and also notes possible violations of the building code. Additionally, the letter from the contractor Whittington hired to correct the deficiencies also reflects that work performed by Gaskins was of poor quality, requiring the work to be redone, at additional cost to Whittington. In addition, Whittington incurred additional costs for additional work performed because of the water damage sustained due to the improper window installation.

Gaskins's action of improperly performing work constitutes negligence or incompetence in the practice of contracting, and is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

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

According to the record, Gaskins last performed work at the subject property on June 18, 2004. Several items were left unfinished, or were performed incorrectly.

During the IFF, Gaskins stated Whittington "ran him off" the job. Whittington admitted to demanding Gaskins leave his property. Accordingly, it appears Gaskins was justified in not completing the work. Therefore, I recommend Count 5 of this file be closed with a finding of no violation of 18 VAC 50-22-20.B.14.

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

Based on the record and testimony during the IFF, Whittington paid Gaskins \$25,123.00 towards the contracted amount, including change orders. The record also indicates Gaskins did not complete the work. In August 2004, Whittington was provided an estimate by another contractor, which reflected an additional cost of \$12,780.00 to correct and complete the work performed by Gaskins. In November 2004, Whittington requested Gaskins refund him funds received for work that was not completed.

During the IFF, both Whittington and Gaskins agreed that Gaskins has not provided a refund to Whittington.

Based on the record and testimony presented at the IFF, it appears that Whittington paid most of the contract's value, including amounts for change orders, yet much of the work was not completed, or not completed correctly. Considering that Whittington had to pay an additional \$12,780.00 to have the work completed, it is my opinion that Gaskins did not complete items for which he had already been paid.

Gaskins'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 \$2,500.00 and license revocation be imposed.

By: _____
Robert Kirby
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

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

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

AMENDED
REPORT OF FINDINGS

BOARD: Virginia Board for Contractors
DATE: May 27, 2005 (revised June 1, 2005 and amended June 6,
2005)

FILE NUMBER: 2005-00879
RESPONDENT: Ray Gaskins, t/a Ray's Construction
LICENSE NUMBER: 2705065789
EXPIRATION: January 31, 2006

SUBMITTED BY: Investigator Wayne J. Ozmore, Jr.
APPROVED BY: Assistant Director Janet Creamer

COMMENTS:

The week of May 23, 2005, Investigation Wayne J. Ozmore, Jr., the Board's agent, left four telephone messages for William Knight ("Knight"), Chief Building Official for Northumberland County, requesting building permits and inspections information on the work that Ray Gaskins performed on David Whittington's property. On or about May 24, 2005, the Board's agent faxed a request for permits and inspections information to Knight. As of May 27, 2005, Knight failed to provide the requested information.

Ray Gaskins ("Gaskins"), t/a Ray's Construction, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705065789).

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 20, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from David Whittington ("Whittington") regarding Gaskins. (Exh. C-1)

On November 15, 2003, Gaskins entered into a written contract, in the amount of \$15,000.00 to \$16,000.00, with Whittington to construct a garage, install replacement siding on the end and front of the home, and replace the existing windows on the front of the home with new windows at 76 Knottingham Drive, Reedville, Virginia. (Exh. C-2)

On November 22, 2003, Gaskins commenced work. (Exh. I-2)

1. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

On January 14, 2002, Gaskins was issued Class C contractor's license number 2705065789. (Exh. I-1)

Section 54.1-1100 of the Code of Virginia states "Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500 . . ."

2. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

- h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
- i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

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

3. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

- 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 February 14, 2004, Ray's Roofing & Exterior Trim provided Whittington with a change order, in the amount of \$933.00, for wrapping the house in tyvek. The change order indicated, "Extra's not included in original contract." The change order was signed by Ray Gaskins, but not Whittington. (Exh. C-2-1)

On February 22, 2004, Ray's Roofing & Exterior Trim provided Whittington with a change order, in the amount of \$6,800.00, for tearing off the old roof and installing a new one. The change order was signed by Ray Gaskins, but not Whittington. (Exh. C-2-2)

On March 6, 2004, Gaskins provided Whittington with an invoice. The invoice indicated, "Extra's on siding" at a cost of \$1,650.00, steps at cost of \$250.00, and sheetrock at a cost of \$65.00. The invoice was not signed by Ray Gaskins or Whittington. (Exh. C-2-3)

On March 6, 2004, Gaskins provided Whittington with an invoice, in the amount of \$1,375.00, for "Extra's." The invoice was not signed by Ray Gaskins or Whittington. (Exh. C-2-4)

In a written response dated September 24, 2004, Gaskins stated, "Then he began to add on more work and wanted more things done, to which I told him I was very busy with my roofing and I would get to him as soon as I could. This was agreed to." (Exh. R-1)

4. Board Regulation (Effective January 1, 2003)

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

B. The following are prohibited acts:

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

FACTS:

Gaskins installed replacement windows that were the wrong length and width and the windows were not secured properly. There was a two inch gap on top of one of the windows where Whittington was able reach outside. (Exh. C-1)

On June 25, 2004, Whittington visited the subject property to look at the windows. When Whittington touched the aluminum wrapping, it fell to the ground. (Exh. C-1)

On June 26, 2004, during a meeting at the subject property, Whittington asked Gaskins about the problems with the windows and told Gaskins that he was not satisfied with the work on the windows. (Exh. C-1)

On August 18, 2004, Benchmark Custom Builders Inc. ("Benchmark") provided Whittington with a written estimate to remove siding and windows, install new windows, reframe openings, replace the front deck, reinstall siding, and repair areas of soffit, fascia, and trim at the subject property. (Exh. W-2)

At the request of Whittington, William Knight ("Knight"), Chief Building Official for Northumberland County, visited the subject property to inspect the windows and front porch steps. In a letter dated October 29, 2004, Knight stated, "the work is of very poor quality, the windows are installed completely wrong and are not re-useable." (Exh. W-1)

In a letter dated January 12, 2005, Scott Pierce ("Pierce") of Benchmark described the siding and window installation by Gaskins and outlined the corrective actions taken by Benchmark to correct and complete the project. (Exh. W-2)

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:

In addition to the facts outlined in Count 4:

The last day Gaskins performed work at the subject property was June 18, 2004. (Exh. I-2)

In a written response dated September 24, 2004, Gaskins stated, "Then, I assume, the work was not getting done as fast as he wanted so he started 'picking' and things began to go down hill. As I told him I was busy on other jobs. Upon one of our meetings he cursed me and told me to leave. I never, at any time was not willing to finish his job to the best of my ability. I believe that through communication on both our parts, we could have solved this matter and the job could have been done to his satisfaction." (Exh. R-1)

On November 17, 2004, Whittington sent, via certified mail, Gaskins a letter regarding completion of the work. On November 19, 2004, Gaskins signed for and received the certified letter. (Exh. I-2)

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 in Count 4 and Count 5:

On November 22, 2003, Whittington paid Gaskins \$5,000.00 by check. On December 20, 2003, Whittington paid Gaskins \$850.00 by check. On February 1, 2004, Whittington paid Gaskins \$5,000.00 by check. On February 16, 2004, Whittington paid Gaskins \$933.00 by check. In February 2004, Whittington also paid Gaskins \$5,000.00 by check. On March 13, 2004, Whittington paid Gaskins \$5,340.00 by check. On April 17, 2004, Whittington paid Gaskins \$3,000.00 by check. (Exh. C-1)

On August 18, 2004, Benchmark provided Whittington with a written estimate, in the amount of \$12,780.00, for labor only. (Exh. W-2)

In a written response dated September 24, 2004, Gaskins stated, "I do not feel that I owe him any money. Materials and labor were provided with that money." (Exh. R-1)

On November 17, 2004, Whittington sent, via certified mail, Gaskins a letter requesting Gaskins return the funds received for the unfinished work. On November 19, 2004, Gaskins signed for the certified letter. (Exh. I-3 and Bd. Exh. 2)

As of May 27, 2005, Gaskins failed to return the funds received for work not performed. (Exh. I-3)

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

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

1. Name: Robert Kirby
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on July 12, 2005
5. Nature of Personal Interest Affected by Transaction: RES. DE
KIRBY, INC.

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:

ALC OF VA, BUILDERS + CONTRACTORS EXCH., PMPVA

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

Robert Kirby
Signature

7-12-2005
Date