

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
October 31, 2006 (9:00 a.m.)**

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

Anthony Orange, 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 Disciplinary Case/Application

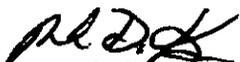
C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

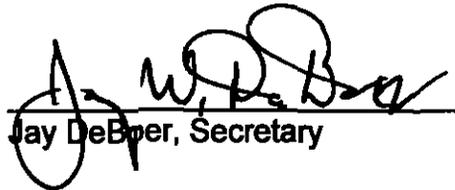
- | | |
|--|---|
| 1. Michael Clifford Vanwey Jr
t/a First Choice Construction Services
File Number 2006-04084 (Disc) | None |
| 2. Michael D Tomlin
t/a Mike's Home Improvements
File Number 2005-03601 (Disc) | None |
| 3. Baker's Remodeling & Restoration Inc.
File Number 2006-02639 (Disc) | Frank Ware – R
Hilda Nelson – C
John Hurley – W |
| 4. Davis Martinez
t/a Martinez Bros
File Number 2006-04172 (Disc) | Martinez – R
Deborah Eagan – C |
| 5. Lynnhaven Salvage Inc
File Number 2006-03127 (Disc) | Paul Dickson – C |
| 6. David Booth
t/a Millenium Construction
File Number 2006-04634 (Disc) | None |

The meeting adjourned at 1:30 p.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Jay DeBoer, Secretary

COPY TESTE

Custodian of Records

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

Re: **Davis Martinez, t/a Martinez Bros
Virginia Beach, VA 23452**

**File Number 2006-04172
License Number 2705092881**

CONSENT ORDER

Respondent Davis Martinez, t/a Martinez Bros ("Davis Martinez") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's Regulations provides:

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

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

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

On September 8, 2006, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Davis Martinez ("Martinez"), t/a Martinez Bros to the address of record. The certified mail was received. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter.

On October 31, 2006, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF. Davis Martinez, Respondent, Deborah Eagan ("Eagan"), Complainant; Joseph Haughwout, Staff Member; and Anthony Orange, Presiding Board Member.

During the IFF, Martinez stated he believed was the subcontractor and Eagan would obtain the permits, if necessary. In addition, Martinez's brother actually performed the electrical work. Based on the testimony, it appears Martinez got in over his head, misunderstood his limitations, and tried to satisfy Eagan. Martinez's brother has left the company and started his own business. Furthermore, Martinez has taken measures to correct his contract.

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

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

By signing this Consent Order, Davis Martinez acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Davis Martinez consents to the following term(s):

Count 1	18 VAC 50-22-260 B.9 (FOUR VIOLATIONS)	\$25.00 for each violation, for a total of \$100.00
Count 2	18 VAC 50-22-260.B.27	\$200.00
Count 3	18 VAC 50-22-260.B.6	\$200.00
TOTAL MONETARY PENALTIES		\$500.00

In addition, for violation of Count 1, Davis Martinez agrees to provide a copy of his current contract within thirty (30) days of the effective date of this order.

Further, for four violations of Count 1, Davis Martinez agrees to have a member of the Responsible Management successfully complete a Board-approved remedial education class by attending the class and passing the exam.

Davis Martinez also agrees to pay \$150.00 in Board costs

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

costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

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

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

SEEN AND AGREED TO:

Davis Martinez
t/a Martinez Bros

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____,
2006.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2006.

Board for Contractors

BY: _____
Jay W. DeBoer, Secretary

EOO

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

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: June 27, 2006 (revised September 1, 2006)

FILE NUMBER: 2006-04172
RESPONDENT: Davis Martinez, t/a Martinez Bros
LICENSE NUMBER: 2705092881
EXPIRATION: March 31, 2007

SUBMITTED BY: Johnathan Darden, Investigator
APPROVED BY: Janet Creamer, Assistant Director

COMMENTS:

On July 27, 2006, respondent added the trade name Martinez Bros to his license, and provided a new address of record. Therefore, charges for operating in a name other than licensed, and failing to inform the Board of a change of address were not pursued.

On May 15, 2006, respondent entered into an arbitration agreement with the complainant, and agreed to reimburse her for costs to repair the garage.

Davis Martinez ("Martinez"), t/a Martinez Bros, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705092881).

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 27, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Deborah A Eagan ("Eagan") regarding Martinez. (Exh. C-1)

On November 1, 2005, Martinez entered into a written contract, in the amount of \$3,327.00, with Eagan to perform a number of home improvement tasks at 1132 Homestead Drive, Virginia Beach, Virginia 23464. (Exh. C-2)

On December 22, 2005, Martinez entered into a written contract, in the amount of \$1,560.00, with Eagan to install a cement floor for a garage at the subject property (Exh. C-3)

On January 14, 2006, Martinez entered into a written contract, in the amount of \$1,600.00, with Eagan to construct a pre-fabricated garage at the subject property. (Exh. C-3)

On January 19, 2006, Martinez entered into a written contract, in the amount of \$2,575.00, with Eagan to finish the garage, including running electrical wire, and installing lights. (Exh. C-3 and I-4)

In January 2006, Eagan terminated Martinez from the project. (Exh. I-6)

1. Board Regulation (FOUR VIOLATIONS)

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.

Historical Notes

Derived from VR220-01-2 1 §5.7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Print Date August 1, 2005

FACTS:

The four contracts used by Martinez in the transaction failed to contain subsections: a., d., e., f., h., and i. (Exh. C-2 and C-3)

2. Board Regulation

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.

Historical Notes.

Derived from VR220-01-2 1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Print Date August 1, 2005

FACTS:

On March 7, 2005, Martinez was issued Class C contractor's license number 2705092881 with the roofing contracting ("ROC"), painting and wallcovering contracting ("PTC"), home improvement contracting ("HIC"), and concrete contracting ("CEM") specialty services. (Exh. I-1)

18 VAC 50-22-30 specifies, "Home improvement contracting' (Abbr. HIC) means that service which provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property The BLD classification also provides for this function The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings."

During the home improvement project, Martinez removed the 220 electrical wire and receptacle from the left wall to the right wall, in the existing garage, in order to convert the existing garage into a laundry room (Exh. I-2 and I-4)

On December 22, 2005, Martinez began performing work to construct the detached, prefabricated garage. (Exh I-2 and I-4)

During the construction of the garage, Martinez installed the electrical wiring for lights in the garage, installed the lights, and connected the new electrical wiring to the electrical panel. (Exh. I-2 and I-4)

3. Board Regulation

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

B. The following are prohibited acts:

6. Misconduct in the practice of contracting

Historical Notes

Derived from VR220-01-2.1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001.

Print Date August 1, 2005

FACTS:

In addition to the facts outlined in Count 2:

Sometime after January 19, 2006, Eagan learned that a building permit was required for construction of the garage (Exh I-4)

On March 1, 2006, Eagan obtained building permit number 2006-03670B0 for construction of the prefabricated garage. (Exh. I-5 and I-7)

On June 20, 2006, Martinez stated that he never obtained a building permit for any of the work performed at the subject property. (Exh. I-2)

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

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

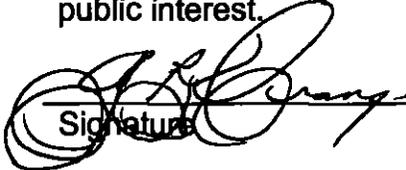
1. Name: Anthony Orange
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on October 31, 2006
5. Nature of Personal Interest Affected by Transaction. _____
_____ N/A _____

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:

I. B. E. W. Lull 2066

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

 _____
Signature Date 10-31-06