

South Carolina Department of Labor, Licensing and Regulation

Contractors' Licensing Board
110 Centerview Drive, Room 201-03, Columbia, S.C.
10:00 A.M.

Minutes of July 19, 2007, Quarterly Board Meeting

BOARD MEMBERS PRESENT:

Lewis Caswell, Chairman
Kim Lineberger, Vice Chairman
Bill Neely
Frank Walker
Daniel Lehman
Mark Plyler
Douglas Greer
Wendi Nance

BOARD AND STAFF PRESENT:

Christa Bell, Esq., Assistant General Counsel
Gary Wiggins, Program Manager, CHACS Section
James Saxon, Esq., Hearing Attorney
Sheridon Spoon, Esq., Assistant General Counsel
Michael Anderson, Administrator
Joyce Thurber, Program Coordinator
Andrew Dempsey, Investigator
Joe Martin, Investigator
Maurice Smith, Investigator
Stan Bowen, Chief Investigator

OTHERS PRESENT:

Tommy State, YRT2 Security
Robert LaPorte, License Protest Hearing
Mike Boyce, Reinstatement
Aaron Youmans, Criminal Background Check Review
Bill Mitchell, Citation Protest
Gary Mason, The Home Depot

Where action is recorded below, it is taken in each case on a motion duly made, seconded and carried unanimously unless indicated otherwise.

Call to Order:

Chairman Lewis Caswell called the meeting to order at 10:00 A.M. with a quorum of members present.

Mr. Caswell stated that the Notice and Agenda for the July 19, 2007 meeting was posted and forwarded in accordance with Section 30-4-80 of the South Carolina Code of Laws, (1976, as amended), relating to the Freedom of Information Act.

Approval of Agenda: The agenda was reviewed and approved as printed by motion of Ms. Nance and seconded by Ms. Lineberger and passed.

Approval of the April 26, 2007 Quarterly Meeting Minutes:

The minutes were reviewed.

Motion: Mr. Lehman made a motion to approve the Minutes of the April 26, 2007 Quarterly Board Meeting. The motion was seconded by Ms. Nance and passed.

Public Comment: None

Chairman's Remarks: Mr. Caswell reminded all present that Robert's Rules are used to conduct the meeting. All comments should be directed to the chairman for recognition before speaking.

1) The NASCLA Annual Meeting will be held in Little Rock, Arkansas September 25 -- 28, 2007. Michael Anderson, Administrator, and two board members are allowed to attend. Bill Neely and Wendi Nance expressed interest and will check their schedules to see if they can attend. The deadline for registration is August 10, 2007.

2) Sheridan Spoon, Assistant General Counsel, was introduced as the board's new advice counsel, replacing Rick Wilson, who retired.

Administrator's Remarks:

- 1) Mr. Anderson reported that Title 40 Chapter 10, Section 230 was amended by Act 93 on June 20, 2007, regulating Fire Sprinkler Contractors, so as to provide that Chapter 10 does not apply to persons who are employed by public institutions to repair, alter, maintain, test, or inspect fire sprinkler systems, water spray systems, or water foam systems, if this work is conducted by persons under the control or supervision of a person with a NICET Level III certification, and if the public Institution is responsible for acts of these exempt employees. The Governor's veto was overridden.
- 2) The copies and mailing of transcripts of the administrative hearings being sent to board members for review in preparation for the final order hearings has become very expensive, costing about \$400 for several hearings. Therefore, the staff has requested that condensed transcripts be prepared by the court reporter and will be sent instead of the full version, effecting huge printing and mailing cost savings for the board.
- 3) Mr. Anderson stated that a written policy had been prepared for the Board's review and approval regarding "Requests for Proposal (RFP)", as requested from the April Board Meeting. Upon its review, a motion was made.

Motion: Mr. Greer moved to approve the RFP Policy Statement as printed. The motion was seconded by Ms. Nance and passed.

New Business:

(1) Approval of IRC Recommendations for May 18 and June 7, 2007:

The May 18, 2007 IRC Report was reviewed as previously sent to members. There being no discussion, a motion was made.

Motion: Mr. Greer moved to approve the May 18, 2007, IRC Report and Recommendations. The motion was seconded by Ms. Nance and passed.

The June 7, 2007 IRC Report was reviewed as previously sent to members and questions answered by the assigned investigator. Mr. Lehman asked that the report list that Cease & Desist Orders were sent where unlicensed practice or exceeded project limitations are the issues.

Motion: Mr. Walker moved to approve the June 7, 2007, IRC Report and Recommendations as written. The motion was seconded by Ms. Nance and passed.

(2) Criminal Background Reports Reviewed:

- Thomas M. State was present to answer questions regarding his arrest record. He was applying as a Registered Employee for YRT2, Inc, a burglar alarm company. Following questions and discussion regarding his arrests, **a motion was made by Mr. Greer to go into Executive Session to receive legal counsel. The motion was seconded by Mr. Lehman and passed.**

Out of Executive Session by motion of Mr. Greer and seconded by Ms. Nance, a motion was made.

Motion: Mr. Lehman moved to deny the Registered Employee application of Thomas M. State, based on the fact of another criminal violation after he was employed by YRT2, Inc. and request that a case be opened on YRT2 for employing Mr. State for a year as a registered employee without registering him with the board. The motion was seconded by Mr. Greer and passed.

- Aaron Youmans applied for a General Contractor, Building classification license. He appeared to answer questions regarding his previous criminal record. Mr. Anderson stated that Mr. Youmans had appeared before the Real Estate Commission for licensure and had been approved. He had been in no trouble since his probation was completed in 2005, and his record was now completely cleared. He is currently working under a contractor with a Residential Specialty Contractor license issued by the Residential Builders Commission. Mr. Anderson reported that he has reviewed his experience, but can only approve him for the General Contractor Interior Renovation classification. He will have to work on commercial projects under properly licensed building general contractors to gain commercial building experience.

Motion: Mr. Walker moved to go into Executive Session, and the motion was seconded by Mr. Greer and passed. Out of Executive Session by motion of Mr. Greer and seconded by Mr. Lehman, the following motion was made:

Motion: Mr. Walker stated that after review and consideration of the criminal record of Aaron Youmans, the Board will not deny the application based on the drug charges, but will turn it over to the licensing staff to approve by the statute requirements. The motion was seconded by Mr. Lehman and passed.

3) License Application Protest of Robert Laporte :

Mr. Laporte appeared on his own behalf as a result of Hearing Officer James Tharp denying his license application at a License Review Hearing on May 2, 2007. He was denied for submitting false information on his Mechanical Contractor application. On the application, he had checked "no" to the question, "Is there any investigation or disciplinary action currently pending against you or an organization of which you were, or are, an officer, principal, or qualifying party, or major shareholder?". Actually he did have an open investigation, 2006-147, as of 12/7/2006 and had applied for a new license in February 2007. Therefore, the licensing staff could not approve the application at staff level.

Mr. Laporte stated that he had forty years of experience qualifying other businesses. He wanted to open his own company and checked the question "no" as an oversight.

Motion: Mr. Walker moved that the Board postpone any decision until the investigation be concluded and the Board can then make a fair and reasonable decision. The motion was seconded by Mr. Greer and passed.

4) Citation Protest for Unlicensed Practice: William (Bill) C. Mitchell, Breakwater Docks, Chapin, South Carolina, Respondent:

Mr. Mitchell appeared on his own behalf and testified that he had been in business for twenty-one years performing marine work on Lake Murray. Since no license had ever been required when he began work, he did not know that after April 1, 1999, a license was required by the State. Because he was working for a utility company, Lexington County did not check for licensure. He also mentioned that his identity had been confused with another William Mitchell in the lower part of the state.

Mr. Mitchell is willing to be licensed, but requested that the unlicensed practice citation fine of \$500.00 be waived.

Motion: Frank Walker moved to get legal advice in Executive Session. The motion was seconded by Ms. Nance and was passed.

Motion: Mr. Leman moved to come out of Executive Session. The motion was seconded by Mr. Walker and passed .

Motion: Ms. Nance moved to uphold the citation based on the statute requiring a license for marine work. The motion was seconded by Mr. Neely and passed.

(5) License Reinstatement Request for Robert M. Boyce dba Boyce & Boyce, Inc.:
Mr. Walker recused himself as the Hearing Officer at the 2003 Administrative Hearing.

Mr. Boyce appeared and testified on his own behalf.

Administrator Michael Anderson presented the facts that the license of Boyce & Boyce, Inc.(G-98304, BD2) had been previously disciplined twice in 1998 and again in 2003. A \$1,000 fine remains outstanding. A Cease and Desist Order had been issued at that time.

It has come to the attention of the Board that Mr. Boyce entered into a contract in April, 2007, with an owner to construct a metal building and is therefore under investigation for unlicensed practice. Mr. Boyce testified that the money paid was for the metal building and that he returned the check and told the owner he could not perform the work. He is asking for reinstatement before August, 2007 or he will have to retest, since it has been four years that he has not had an active license.

Motion: Mr. Neely moved to go into Executive Session to seek legal counsel. The motion was seconded by Mr. Greer and passed. Out of Executive Session by motion of Mr. Greer and seconded by Mr. Plyler and passed, a final motion was made.

Motion: Bill Neely moved to deny the request for reinstatement based on the evidence presented. The motion was seconded by Mr. Greer and passed.

OLD BUSINESS:

1) Mr. Anderson asked the Board if he should contact the City of Columbia regarding a change on the bumper stickers issued by the City for a paid business license. The decals have a number that is similar to the Contractors' Board license number signified by a G or M for General or Mechanical contractor and is confusing to the public whether they are State licensed or not. Mr. Anderson is still looking into issue with other counties to see if they have any such decals, and if so, what is specified on them.

2) Mr. Anderson reported on the issue of American Contractors Seminars and a marketing brochure stating that the candidates are allowed to sit for the exam three times within a year. In speaking with American Contractors, they stated that this was an old brochure and that the statement in question has been corrected on new marketing material for commercial contractors. Residential builders are allowed to sit for the exam three times within a year.

The business portion of the meeting concluded and adjourned for the Final Order Hearings.

Vote on Administrative Hearing Officer Recommendations:

- 1) Case # 2005-131, CLB vs Cornerstone Construction of the Carolinas and Willie Whitaker, Respondents, License # CLG 15536:

Chairman Lewis Caswell brought the final order hearing to order and introduced participants. The Hearing Officer's Report and Recommendation was presented by the State, represented by Christa Bell, Esquire. The Respondents, Cornerstone Construction of the Carolinas and Willie Whitaker were not present and were not represented by counsel. Board Member Frank Walker recused himself as the Administrative Hearing Officer in this matter. Ms. Thurber confirmed that the Respondent had been properly served by sending the Notice of Hearing and Hearing Officer's Recommendation by certified and regular mail to the mailing address of record.

Issue in Brief: The Respondent contracted with a homeowner to remodel, renovate and make additions to a residence in Irmo, S.C. Mr. Whitaker received all but \$19,000 of the \$98,000 dollar contract amount to complete the job in four months. One week prior to the four month completion date, the Respondent informed the home owner that he lacked the funds to complete the project and was filing bankruptcy. Therefore he abandoned the project and failed to report the bankruptcy to the Board as required.

Mrs. Bell presented the Hearing Officer's Recommendations from the evidentiary hearing held on March 13, 2007, as follows:

1. The Respondent's license as a contractor be revoked.
2. The Respondent shall pay a fine of five thousand dollars (\$5,000.00). This fine shall be paid within a period specified by the Board. This fine shall not be deemed to be paid until the Board receives it.
3. This final order shall take effect from the date of receipt of this order by the Respondent or his counsel.

After consideration of the Recommendation, a motion was made.

Motion: Dan Lehman moved to accept the Hearing Officer's Recommendation. The motion was seconded by Ms. Nance and passed.

- 2) Case # 2006-54, CLB vs Stanley L. Dixon dba Dixon's Plumbing & Gas, Respondents, License # CLM 104659:

Chairman Lewis Caswell brought the hearing to order and introduced participants. The Hearing Officer's Report and Recommendation was presented by the State, represented by Christa Bell, Esquire. The Respondents, Dixon's Plumbing and Gas and Stanley L. Dixon were not present and were not represented by counsel. Douglas Greer recused himself as the Administrative Hearing Officer in this matter. Ms. Thurber confirmed that the Notice of Hearing and Hearing Officer's Recommendation had been properly served by certified and regular mail sent to the mailing address of record. The signed green card was received 5/1/2007.

Issue in Brief: The Respondent engaged in a mechanical construction business under a name other than that which appears on the license as required. He performed substandard plumbing work on a restaurant, but the work failed inspection by DHEC inspectors; and after receiving final payment, the Respondent never returned to complete the work.

Mrs. Bell presented the Hearing Officer's Recommendations from the evidentiary hearing held on April 30, 2007:

1. The Respondent shall pay a fine of fifteen hundred dollars (\$1500.00). This fine shall not be deemed to be paid until it is received by the Board.

2. This final order shall take effect immediately on receipt of this order by the Respondent or his counsel.

Motion: Mr. Walker moved that the Hearing Officer's Recommendation be approved, adding a time period, that the fine shall be paid within thirty (30) days of the service of this order upon the Respondent or his counsel. Should the fine not be paid within the specified thirty (30) days, the Respondent's license shall be suspended immediately. The motion was seconded by Ms. Lineberger and passed.

2) Case # 2006-212, CLB vs Hudson's Heating & Air Conditioning and Thomas H. Hudson, Respondents, License # CLM 104125:

Chairman Lewis Caswell brought the hearing to order and introduced participants. The Hearing Officer's Report and Recommendation was presented by the State, represented by Christa Bell, Esquire. The Respondents were not present and were not represented by counsel. Douglas Greer recused himself as Hearing Officer in this matter. Ms. Thurber confirmed proper service by receipt of the signed green card on 5/1/2007.

Issues in Brief:

The Respondent installed a new heating and air conditioning unit in the amount of \$2,600.00, but did not pull a permit. Complaint problems included: high utility costs and unit failing to cool residence. Respondent tried to fix problems with additional charges, but failed to do so. An evaluation of the unit showed deficiencies in installation of the duct work, unsealed unit, improper size of vents and returns, lack of a concrete pad under unit, and excessive charging for replacement parts and adding coolant several times to new unit. He also failed to respond to the department regarding the complaint charges filed.

Ms. Bell presented the Hearing Officer's Recommendation from the evidentiary hearing held March 20, 2007 as follows:

1. The Respondent's license shall be suspended indefinitely. This suspension shall be stayed and the Respondent's license reinstated in a probationary status only after he has paid a fine of \$5,000.00. This fine shall not be deemed to be paid until it is received by the Board.
2. Thereafter, the Respondent's license shall be continued in a probationary status for an indefinite period of time, upon the following terms and conditions of probation, which shall remain in effect until further order of the Board.
3. The Respondent must attend and successfully complete, at his own expense, an educational course approved by the Board. Thereafter, he must file written proof of compliance with the Board within fifteen days of completing this requirement.
4. Failure by the Respondent to abide by any of the aforementioned conditions of probation during this period shall warrant the immediate revocation of probation, and the immediate imposition of the aforementioned indefinite suspension of his license pending a hearing into the matter and until further order of the Board.
5. The Respondent shall cooperate with the Board, its attorneys, investigators, and other representatives in the investigation of his practice and compliance with the provisions of this final order. It is the Respondent's responsibility to demonstrate compliance with each and every provision of this final order. The Respondent may be required to furnish the Board additional information as deemed necessary by the Board or its representatives. In addition to such requests, the Board, in its discretion, may require the Respondent to submit further documentation regarding his practice, and it is the Respondent's responsibility to comply fully with all such requests in a timely fashion. Failure to comply satisfactorily with such requests shall be deemed a violation of this final order.

6. The final order shall take effect immediately upon receipt of this order by the Respondent.

Ms. Bell requested adoption of the Recommendation. After consideration of the Recommendation by the Board, a motion was made.

Motion: Ms. Lineberger moved to accept the Hearing Officer's Recommendation. The motion was seconded by Mr. Lehman and passed.

4) Case # 2005-59, CLB vs Hunter Construction Co, Inc. and Anthony Hunter, Respondents, License # CLG 14917:

Chairman Lewis Caswell brought the hearing to order and introduced participants. The Hearing Officer's Report and Recommendation was presented by the State, represented by Christa Bell, Esquire. Anthony Hunter was present, but was not represented by counsel. Ms. Nance recused herself as Hearing Officer of the Administrative Hearing in this matter. Mrs. Thurber stated that the Notice of Final Order Hearing and Hearing Officer's Recommendation was sent certified and regular mail. Mr. Hunter stated that he had an attorney, but the attorney was not notified; however, there was no record of his attorney's name in the files.

Issue in Brief: The Respondent aided and abetted an unlicensed contractor and pulled permits on two projects for the unlicensed contractor, who had signed the contracts to build two residences in Columbia, South Carolina.

Ms. Bell presented the Hearing Officer's Recommendation from the evidentiary hearing held April 3, 2007 as follows:

1. The Respondent shall pay a fine of five hundred (\$500.00) dollars for each of two violations for a total of one thousand (\$1,000.00) dollars. This fine shall not be deemed to be paid until it is received by the Board.
2. The Respondent's license shall be in a probationary status until he has paid the above-listed fine. Any further violations of the practice act or Board's regulations during the probation period shall, in the Board's discretion, result in the temporary suspension of the Respondent's license until further hearing and order of the Board.

Ms. Bell asked the Board to modify the Recommendation by adding a time limit to pay the fine and terms of probation upon payment of the fine.

Upon consideration of the Hearing Officer's Recommendation and modification requested by Ms. Bell, a motion was made.

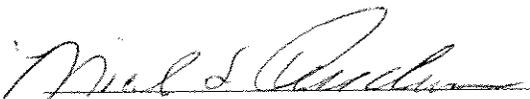
Motion: Mr. Greer moved to uphold the Hearing Officer's Recommendation and add a time limit of sixty days (60) upon receipt by the Respondent or his attorney or the license will be suspended until such time as it is paid. The motion was seconded by Mr. Neely and passed.

The hearing was adjourned.

The next special-called Board meeting will be August 16, 2007 at the Synergy Office Park, 110 Centerview Drive, Kingstree Building in Room 201-03 at 10:00 A.M., Columbia, South Carolina 29210.

The meeting was adjourned at 11:50 P.M. by motion of Mr. Lehman, seconded by Ms. Lineberger, and passed. Lunch was served from 12:30 P.M. – 1:30 P.M.

Respectively submitted,



Michael S. Anderson, Administrator