

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, 2006, Quarterly Board Meeting

BOARD MEMBERS PRESENT:

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

OTHERS PRESENT:

Gregory Clemson
Andrew Rice
John Casbarro

ABSENT MEMBERS:

Joe Chandler, Chairman
Mark Plyler

BOARD STAFF PRESENT:

Ron Galloway, Administrator
Richard Wilson, Esq., Advice Counsel
Mike Anderson, Chief Investigator, OIE
Stan Bowen, Investigator, OIE
Joe Martin, Investigator, OIE
Gary Wiggins, Program Manager, CHACS Section
Joyce Thurber, Program Coordinator
Richard Simmons, Esq., Board Counsel
Shirley Robinson, Esq., Hearing Counsel

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:

Vice Chairman Kim Lineberger called the meeting to order at 10:09 A.M. with a quorum of members present.

Ms. Lineberger announced that the meeting was being held in accordance with the Freedom of Information Act by notice sent to The State, The Charleston Post & Courier, The Greenville News, and The Myrtle Beach Sun newspapers, and all other requesting persons, organizations or news media. In addition, notice was posted on the bulletin boards located at both of the main entrances of the Kingstree Building where the board office is located.

Vote of Absent Board Members:

Chairman Joe Chandler had to be out-of-town to attend a business meeting in New York City.

Motion: Mr. Caswell moved to approve the absence of Joe Chandler to attend an out-of-town meeting. The motion was seconded and passed.

Mark Plyler had to serve on jury duty the week of July 17 – 21, 2006. He could not be excused.

Motion: Mr. Greer moved to approve the absence of Mark Plyler for serving on jury duty. The motion was seconded and passed.

Approval of Agenda:

Mr. Galloway commented that the case 2005-190, Aabstract Pool and Spa, Inc., will be continued until the next board meeting, October 19, 2006, due to the Respondent's attorney's conflict involving another client.

Motion: Mr. Caswell moved to approve the Agenda with the noted change. The motion was seconded and passed.

Approval of the April 19, 2006, S.C. Contractors' Licensing Board Quarterly Board Meeting Minutes:

After a review of the minutes, a motion was made.

Motion: Ms. Nance made a motion to approve the minutes as written. The motion was seconded and passed.

Public Comment: None

Chairman's Remarks: None

Administrator's Remarks:

Mr. Galloway asked the Board to update the approval of board staff to review license applications for approval or disapproval.

Motion: Mr. Walker made a motion to reaffirm the Board's authorization to allow the Board staff to approve or disapprove applications for licensure. The motion was seconded and passed.

Mr. Galloway also asked the Board to reaffirm the authorization given to the Board Chairman go sign Consent Agreements.

Motion: Mr. Walker made a motion to reaffirm the Board's authorization given to the Board Chairman to sign Consent Agreements. The motion was seconded and passed.

Unfinished Business:

Mr. Galloway presented the reformatted Investigation Review Committee (IRC) Reports of January 12, February 2 and March 2, 2006, to be reviewed and approved by the Board as requested.

The January 12, 2006 reformatted IRC Report was reviewed and discussed.

Motion: Mr. Caswell moved to approve the January 12, 2006, IRC report as reformatted. The motion was seconded and passed.

The February 2, 2006 reformatted IRC Report was reviewed as information.

Motion: Mr. Neely moved to approve the February 2, 2006, reformatted IRC Report as corrected and received for information. The motion was seconded and passed.

The March 2, 2006 reformatted IRC Report was reviewed and discussed.

Motion: Mr. Walker moved to approve the March 2, 2006, reformatted IRC Report. The motion was seconded and passed.

New Business:

Approval of IRC Recommendations for April 13, May 4, and June 7, 2006:

(1) The April 13, 2006, IRC Report was reviewed and discussed. The Formal Complaint – Citation section did not have the action taken and amount of fine noted in IRC Logic.

Motion: Mr. Walker moved to approve sections Dismissed and Formal Complaints – Hearings in the April 13, 2006 IRC Report, but asked OIE staff to add the action taken and amount of the fine under the IRC Logic on the Formal Complaints Section where a Consent Order or Citation was issued on pages 2 & 3. The motion was seconded and passed.

The May 4, 2006, IRC Report was reviewed and discussed. Mike Anderson, newly appointed Chief Investigator, Office of Investigation and Enforcement (OIE), for the Contractors' Licensing Board, discussed the investigation and Investigative Review Committee process. He wanted to be certain of what information the Board wanted included on the IRC reports to properly instruct staff in the report preparation. His understanding was that the Formal Complaint -Consent Agreement and Citation Sections should include the sanction and disposition with the amount of fine and the name of the Respondent on each entry. Rick Wilson stated that instead of the IRC LOGIC heading, it should be DISPOSITION/SANCTIONS. However, Mr. Anderson commented that the IRC Report format is standard for all boards and cannot be changed.

Motion: Mr. Walker moved to approve the May 4, 2006, IRC Report with the addition of the sanction and disposition information, including the amount of penalty and the Respondent's name on the Formal Complaint – Citation and Consent Agreement Sections. The motion was seconded and passed.

The June 7, 2006, IRC Report was review and discussed.

Motion: Mr. Lehman moved to approve the June 7, 2006, IRC Report minus the section to continue to the next IRC.

(2) Request for License Reinstatement for William DeTorre.

Mr. Galloway stated that this request to appear before the Board had been continued from the April 13, 2006 Board meeting. However, Mr. DeTorre did not appear and did not notify the Board staff why he could not appear. Neither has he paid the Final Order civil penalty of \$5,000.000 issued at the time of revocation of his qualifying party certificate and General Contractors' license of Southern Construction issued at the April 17, 2003 Board Meeting.

Motion: Mr. Caswell moved to deny William DeTorre's request for reinstatement of his qualifying party certificate and General Contractors' building classification license. The motion was seconded and passed.

(3) Request for Approval of Financial Statement for Port City Electric by John Sheppard.

Mr. Galloway presented the financial statement for review. He pointed out that the statement showed a deficit net worth; however, the stockholders owned the debt. Following a discussion, a motion was made. Mr. Sheppard was not present to address the issue.

Motion: Mr. Walker moved to continue the further discussion of the financial statement until the next board meeting when Mr. Sheppard could attend.

(4) Request for License Reinstatement for BAC Diversified Services by Bernard Fripp.

Mr. Galloway stated that this request to appear before the Board had been continued from the last board meeting. Mr. Fripp requested reinstatement of the General Contractors' license, formerly BAC Diversified Services, license CLG 104236 building classification, revoked on October 21, 2004. He did not notify the Board that he could not appear at this time and was not present. In order to reinstate, Mr. Fripp must test and apply as a qualifying party himself or hire a certified qualifying party. He paid the civil penalty of \$2500 required by the Final Order.

Motion: Mr. Walker moved to deny Bernard Fripp's request for reinstatement of the license of BAC Diversified Services. The motion was seconded and passed.

(5) Request for Approval of Qualifications for Licensure of Gregory Clemson.

Mr. Clemson was present to request approval of his experience for the classifications of plumbing, electrical and air conditioning. Mr. Clemson explained that he works for Clemson University Pee Dee Research and Education Center as Buildings/ Grounds Manager and does all the work himself with two other crew members. He has a Bachelors of Science in Mechanical Engineering degree and has passed the Mechanical Fundamentals Exam for the Professional Engineering license. His intention is to establish his own business within the next two years. Following questions about his work and experience, a motion was made.

Motion: Mr. Caswell moved that Mr. Clemson's experience be approved and that he be allowed to sit for the plumbing, electrical and air conditioning exams with PSI, Inc.

(6) Approval of the National Building Contractor Exam from NASCLA.

Mr. Galloway reported that the National Association of State Licensing Agencies (NASCLA) has hired a new company to develop the national building examination, and upon approval of each member state, the examination would be reciprocal from state to state. Twenty states have agreed to accept the exam. The development has taken two and one half years and will be available after January 1, 2007. The exam will contain 115 questions with a time limit of three to four hours. State board committees have had input into the format and scope of the questions. Following a discussion, a motion was made:

Motion: Mr. Walker moved to ask the building classification board member, Bill Neely, to review the format of the examination, and if he approves, the Board will approve it. The motion was seconded and passed.

Old Business:

(1) Final Discussion of General Policy for Recreational Projects and Recreational Surfaces.

Mr. Galloway presented the draft policy for review and discussion. Questions discussed were:

- Is a license required?
- Who can bid?
- Needed definition of a recreational project; and
- Does the name of the policy need to be changed to add statement about regulated work?

Motion: Mr. Walker moved to reword the policy and defer approval until the next board meeting. The motion was seconded and passed.

Vote on Administrative Hearing Officer Recommendations:

- (1) 2004-0064 CLB vs Andrew G. Rice, Respondent and Qualifying Party, CLG 105688

Bill Neely, Administrative Hearing Officer, recused himself from the proceeding. Mr. Rice was present but was not represented by legal counsel.

Richard Simmons, Esquire, presented the Hearing Officer's Report and Recommendation charges to the board. The matter had come before Hearing Officer Bill Neely and Marcie LaMar, Esquire, Advice Counsel on March 23, 2006, at an administrative hearing. The Respondent, Andrew Rice, was present but was not represented by legal counsel.

Mr. Rice was charged with failing to disclose information on his application regarding the pending complaint and investigation before the Residential Builders Commission (RBC), when applying for the General Contractor's License on or about September 25, 2001. The Commission had charged Mr. Rice with engaging in gross negligence, incompetence or misconduct in the practice of residential home building. An Order was issued on November 16, 2001 by the Residential Builders Commission to make corrections on the residence he built. When he did not fully comply with the Order, his license was temporarily suspended and he was fined. The fine was not paid until the matter arose with the Contractors' Licensing Board in 2004. Pursuant to S.C. Code Ann. Section 40-11-130(B)(3), an entity having unresolved complaints or charges pending against them before this or any other professional licensing board in this or any other state, is a ground for denial of a license or certificate.

Therefore, the Contractors' Licensing Board charged Mr. Rice with S.C. Code Ann. Section 40-11-110(A)(1), in light of subsequent discovery of facts which if known at the time of issuance or renewal of the Respondent's license or certificate would have been grounds to deny the issuance or renewal of the license or certificate.

At the time of his application on October 16, 2001, to the Contractors' Licensing Board (CLB), Mr. Rice had an outstanding complaint and fine with the S.C. Residential Builders Commission, and therefore, the Respondent made a misrepresentation of a material fact in obtaining a license in the initial application with board, which is a violation of S.C. Code Ann. Section 40-11-110(A)(6) 1976, as amended.

From the evidence presented at the March 26, 2006 administrative hearing, the Hearing Officer recommended that the Respondent be fined \$2,500.00 and will be due within 60 days of the effective date of the Order. A Public Reprimand was also recommended to be issued.

Mr. Rice read a brief statement on his behalf and humbly apologized to the board for not acknowledging information on his Contractors' licensing application. He commented that he was embarrassed to tell the board that during the last twelve months, he has been foreclosed on two properties. Two years ago he and his wife had triplets who had month's stay in the hospital ICU, causing enormous medical bills to accumulate, some of which are still unpaid. He therefore, humbly requested a reduction in the amount of the fine.

Motion: Mr. Caswell moved to go into Executive Session. The motion was seconded and passed.

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

Motion: Ms. Nance moved to adopt the Hearing Officer's Report and Recommendation Findings of Fact, and Conclusions of Law to issue a Public Reprimand and a civil penalty of \$2,500, but to be paid within two years of the date of the Final Order. The motion was seconded and passed.

(2) 2004-0118 CLB vs Shib Brown d/b/a Amps Builders, Inc., Shib Brown Qualifying Party
CLG 15831

Frank Walker, Administrative Hearing Officer, recused himself from the proceeding. The Complainant, Johnny Waddell Gates, was present to testify. Mr. Brown was not present and had not responded to the board notices.

The Certificate of Service was sent by certified and regular mail, but no green card was returned. Neither the certified nor the regular mail notice was returned to the board office. Therefore, proper service to the Respondent was accepted as sent to the address of record.

The Respondent was hired to renovate a fire damaged house located at 1701 Standish Avenue, Columbia, South Carolina on or about June 10, 2004. Mr. Gates testified that the Respondent performed some of the work such as replacing the roof, installation of drywall and some electrical wiring. He did not return to complete the work after being paid \$32,000.00 of the \$46,500.00 contracted price. Mr. Gates discovered that the permit had expired and that the Respondent had rigged the electrical meter so that he was obtaining electrical power illegally. Mr. Gates hired another contractor to complete the work.

The Respondent was charged with violation of S.C. Code Ann. Section 40-11-110(A)(2) (1976, as amended), performing substandard work and demonstrating incompetence or misconduct, as evidenced by the Respondent's failure to complete the renovation of the property.

The Respondent also violated S.C. Code Ann. Section 40-11-110(A)(3) (1976, as amended), that without legal excuse for the abandonment, he abandoned the contract he entered into for repairs to the property at 1701 Standish Street, Columbia, South Carolina.

The Hearing Officer recommended that the following sanctions be imposed:

1. That the Respondent's license and qualifying authority be revoked; and
2. That the Respondent be assessed a civil penalty of \$5,000.00 which should be paid within a time frame specified by the Board, not to exceed six months.

Motion: Mr. Caswell moved to accept the approve the Hearing Officer's Report and Recommendation to revoke the General Contractor license and qualifying party certificate of Shib Brown, d/b/a Amps Builders, Inc. (CLG 15831) and assess a civil penalty of \$5,000.00 to be paid within six months.

(3) 2004-80 CLB vs John Casbarro (CLG 94849), John Casbarro Qualifying Party.
An administrative hearing was held on April 5, 2006, with Frank Walker serving as Hearing Officer and Shirley, Robinson, Esq. serving as Advice Counsel. The State was represented by Richard W. Simmons, II, Esquire. The Respondent appeared but was not represented by legal counsel.

The Respondent was charged with failing to pay a \$2,000.00 civil penalty in a timely manner after he was cited on or about March 3, 2005, for four instances of failing to apply for required permits on work he had contracted to perform on a residence at 7603 Coteswood Drive, Myrtle Beach, South Carolina.

When the case was called at the Final Order Hearing, July 19, 2006, Mr. Simmons moved to dismiss the Formal Complaint. He explained that it had just come to his attention that the fine in question was paid in cash on May 22, 2006, to the Office of Investigation and Enforcement staff. However, it wasn't properly noted on the Enforcement database at the time, and the cash was taken directly to the OPEDACS Business Office for direct deposit without notifying the Contractor's staff person who normally processes all compliance deposits. The Respondent was present and consented to the motion.

Motion: Mr. Caswell moved to dismiss the Formal Complaint against John Casbarro. The motion was seconded and passed.

Ms. Lineberger handed out an Investigator Summary Report showing how many CLB cases the Office of Investigation and Enforcement currently has open by investigators. This report was accepted as information.

Mr. Lehman commented that he would be out-of-town at the next board meeting October 19, 2006.

There being no further business, the meeting was adjourned by motion of Dan Lehman. The motion was seconded and passed.

The meeting was adjourned at 12:31 P.M.

Respectively submitted,

Ronald E. Galloway, Administrator

