

South Carolina Department of Labor, Licensing and Regulation

Contractors' Licensing Board

110 Centerview Drive, Room 201-03, Columbia, S.C.

Minutes of January 18, 2007, Quarterly Board Meeting

BOARD MEMBERS PRESENT:

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

ABSENT MEMBERS:

BOARD STAFF PRESENT:

Richard Wilson, Esq., Board Advice Counsel
Mike Anderson, Chief Investigator, OIE
Gary Wiggins, Program Manager, CHACS Section
Joyce Thurber, Program Coordinator
Richard Simmons, Esq., Board Counsel
Shirley Robinson, Esq., Hearing Counsel
Kent Lesesne, Esquire

OTHERS PRESENT:

Charles Tribble
Raymond Frett
Steven McIntyre
Wayne Charpia
James M. McDowell

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 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 Kingtree Building where the board office is located.

(1) Vote of Absent Board Members:

Wendi Nance was thirty minutes late, due to icy conditions of the roads and delayed school openings, to take her child to school.

(2) Resolutions:

Gary Wiggins, Section Supervisor of the Codes, Housing and Construction Services Group, read into the record a Board resolution for former board administrator, Ronald E. Galloway. Mr. Galloway faithfully served the Board as LLR Administrator from September 16, 1990 until his retirement on December 31, 2006. The Board gratefully acknowledged the many contributions he made to the construction industry and to the protection of the public, during a period of time when the construction industry experienced unprecedented growth. His diligence and attention to duty fostered a better understanding of the regulatory process in protecting the public without unduly inhibiting the industry; (Attached resolution)

Mr. Wiggins also read a Board resolution into the record for H. Joe Chandler, former chairman of the Board, serving as Board chairman from May 15, 2000 until August 28, 2006 upon his resignation. The Board gratefully acknowledged his service and his many contributions to the Board. Through his general business experience, diligence and attention to duty and construction perspective, he enhanced the effectiveness and accountability of the Board in protecting the public and serving the construction industry. (Attached resolution)

Approval of the Agenda:

A motion was made by Doug Greer to approve the agenda as printed. The motion was seconded and passed.

Approval of Minutes of the October 19, 2006, scheduled quarterly board meeting:

Motion: A motion was made by Bill Neely to approve the minutes of the October 19, 2006 quarterly board meeting as printed. The motion was seconded and passed.

Public Comment: None

Chairman's Remarks:

- (1) Frank Walker was asked to report on coax cable/cable TV industry being regulated by other states, and to investigate whether the Board should regulate coax cable. Mr. Walker commented that the research so far found that the only states regulating cable TV were regulating for revenue purposes, not to protect the public necessarily. He will report fully on this issue at the April Board meeting for a Board recommendation on the regulation of coax cable.
- (2) Mr. Caswell relayed his gratitude for the Board's confidence in him as chairman, and he looked forward to serving in this capacity. Gary Wiggins will be serving as interim board administrator and is also administrator of the Building Codes Counsel. Mr. Caswell stated his appreciation for Mr. Wiggins helping board members and staff as interim board administrator until the position can be filled.
- (3) Mr. Caswell stated that the Board will be abiding by Robert's Rules of Order as the meetings are conducted. Mr. Wiggins prepared some guidelines of Robert's Rules to help those addressing the Board know the correct procedure. Mr. Caswell reminded all present to raise their hand and wait to be recognized by the chairman before speaking.

Administrator's Remarks:

- (1) Mr. Wiggins stated that he had been interviewing candidates for the position of Contractors' Board administrator and hopes to have the position filled prior to the April meeting.

New Business:

(1) Approval of IRC Recommendations for Oct. 5th, Nov. 2nd, and Dec. 7th, 2006:

The Investigative Review Committee (IRC) Recommendations were reviewed for October 5, 2006. Douglas Greer was the board representative for that meeting. Dan Lehman asked questions regarding the seven cases on page 2 of the report being forwarded to the Administrative Law Court (ALC) and asked what that meant. Board Counsel, Rick Wilson explained that a Cease and Desist Order had been issued to the same unlicensed Respondent on all those cases. The Cease and Desist Order had been violated, and the procedure was to refer those cases to the ALC for further disciplinary action.

Motion: A motion was made by Kim Lineberger to approve the IRC Recommendations for October 5, 2006. The motion was seconded and passed.

Approval of the November 2, 2006 IRC Recommendations:

No Board Representative was available for the meeting. Upon discussion, Mr. Lehman asked that the Issue Description be expanded to indicate more description if the issue is unlicensed practice, i.e., lapsed, licensed, but no classification, etc. After further discussion, a motion was made.

Motion: A motion was made to approve the November 2, 2006 IRC Recommendations by Douglas Greer. The motion was seconded and passed.

Approval of the December 7, 2006 IRC Recommendations:

Dan Lehman was the Board Representative for the meeting. After review of the report, a motion was made.

Motion: A motion was made to approve the December 7, 2006 IRC Recommendations by Frank Walker. The motion was seconded and passed.

- (a) An updated list of Board Representatives was distributed to the members for calendaring.
- (b) Investigative Summary Reports of opened and closed cases as requested by the Board were reviewed:

Ms. Thurber presented the investigative summary reports as follows:

- ? Number of open cases from 7/1/06 – 12/31/06 to be 97 for general and mechanical contractors;
- ? Number of open cases for burglar/fire cases from 01/01/04 to 12/31/06 to be only 1. Mr. Lehman asked if that could be accurate? Ms. Thurber replied that it may have been the way the report was pulled from the database. She stated that she will try to pull the reports differently to make them more inclusive and more accurate.
- ? Number of closed cases from 7/1/06 – 12/31/06 to be 169 for general and mechanical contractors.
- ? Number of closed cases for burglar/fire contractors to be 3.

(2) Approval of LLR Staff to be Hearing Officers:

Ms. Thurber introduced two LLR staff members to be approved for Staff Hearing Officers to hear citation protests and application hearings.

- ? Ed Coleman is the Compliance Coordinator for the Real Estate Appraisers Board, has worked as a contractor for 12 years in Alabama and has been at LLR for nine years.
- ? Jay Pitts is the former board administrator for the Engineering and Land Surveying Board, is currently administrator for the Real Estate Commission, and has been with LLR for eight years.

Motion: A motion was made by Bill Neely to approve Ed Coleman and Jay Pitts as Administrative Hearing Officers. The motion was seconded.

Frank Walker made a motion to go into Executive Session to receive legal advice on this matter. The motion was seconded and passed.

A motion to come out of Executive Session was made by Douglas Greer and was seconded and passed.

Amended Motion: The previous motion made by Bill Neely to approve Ed Coleman and Jay Pitts as Administrative Hearing Officers was amended to add for citation protests and application hearings only if a board member is not available. Board members will hear these cases initially since these types of hearings haven't been heard previously and the procedures are new to this board. The amended motion was seconded and passed.

Application Review Hearing:

(1) Wayne Charpia and Charpia/General Contractor, License #CLG 106210:

Mr. Caswell called the hearing to order and stated that the purpose of the hearing was to determine if Charpia/General Contractor should be granted a license as a general contractor, Building Classification (BD), Group 4. Mr. Charpia was present and was sworn in as a witness.

Kent Lesesne, Esq., represented the State in stating some facts about what brought Mr. Charpia before the Board. On the 2006-2008 renewal application for his general contractor's license, questions on the application were asked if the licensee had ever been disciplined by another board or had a license revoked. He did answer yes to that question. However, in that regard, Mr. Charpia previously held a Residential Builders license. On October 13, 2004, he had appeared before the Commission as a result of a complaint. Mr. Charpia had built a custom home for a couple in 2003. The plans were prepared by an architect and submitted to Dorchester County for review and approval. The plans did not contain a bonus room, however, the contract Mr. Charpia signed called for a bonus room. So Mr. Charpia changed the slope of the roof causing the bonus room not have enough head room. There were also several other code violations found in the house. During the course of the proceeding Mr. Charpia walked out of the hearing. The hearing continued however and resulted in a \$5,000 civil penalty and revocation of his home builders license. The \$5,000 fine remains outstanding. So, during the general contractor's renewal in October of 2006, the staff could not approve that renewal application based on the outstanding fine and revocation.

Mr. Charpia did appeal the Commission's Order with the Administrative Law Court (ALC), but did not follow through with the requirements of the ALC's procedure. Thus, that appeal was dismissed by the Court on 9/5/05, and the Commission's Order is a Final Order.

Mr. Charpia represented himself and distributed copies of several documents. Mr. Lesesne reminded him that he could not rehash the previous proceeding, but was present to explain why his general contractors' license should be renewed.

He explained that the couple for whom he had built the house wanted to move into the home before the Certificate of Occupancy (CO) was issued by Dorchester County. He had begged the couple not to move into the home before the CO was issued and all inspections had been completed. He hired the same architect to redraw the house plans to include the bonus room, thus, correcting the slope of the roof. The county officials would not require the home owners to hire a design professional to be in responsible charge as required by Code, when the plans had to be redrawn. The couple would not let him back in the home even to fix the punch list.

Mr. Charpia commented that he walked out of the hearing because of the attitude and bias of the chairman of the Residential Builder's Commission. Summing up his presentation, he requested that the general contractors' license be renewed.

After hearing the comments of both sides, **a motion to go into Executive Session was made by Wendi Nance. The motion was seconded and passed. A motion was made by Frank Walker to come out of Executive Session. The motion was seconded and passed.**

Motion: Dan Lehman moved to deny the request to approve the 2006-2008 renewal application of Charpia/General Contractor, License CLB 106210 pursuant to the S.C. Code of Laws 40-11-130 (B) (1976, as amended).

The hearing was adjourned.

Application Review Hearing:

(2) Charles Tribble, Qualifying Party and AAA Tribble's Electric Service , Lapsed License # CLM 101001, Electrical Classification, Group 5 (10/31/2005).

Mr. Caswell called the hearing to order and stated the purpose of the hearing was to consider the reinstatement application of AAA Tribble's Electric Service. Mr. Tribble represented himself and was sworn in as a witness. Joyce Thurber, Program Coordinator, presented the facts of the case for the Board staff.

Ms. Thurber stated that a job was bid with S.C. Vocational Rehabilitation Department, and it was discovered that Mr. Tribble's license had lapsed 10/31/2005. The violation was assigned OIE Case # 2006-264 for Unlicensed Practice and a Cease and Desist was issued. The citation and fine have yet to be issued.

Mr. Tribble had sent in a renewal application, financial statement and check for the 2005-2007 renewal period. However, the financial statement was not signed or notarized and was returned as incomplete. Mr. Tribble never returned the completed financial statement and therefore his license was never renewed.

After receiving the case, it was discovered that Mr. Tribble also had an outstanding judgment in the amount of \$19,256.00, but had not acknowledged it on his renewal application as required. He was notified that to reinstate his license, he would have to pay the judgment and appear before the board to explain why he did not acknowledge the judgment. He did satisfy the judgment on 12/21/06 and supplied the Board staff with proof of payment.

Mr. Tribble stated that it was a mistake on his part for not acknowledging the judgment and that he had taken care of it. He doesn't ever remember receiving the judgment Order from the Orangeburg Court. He also stated that the renewal check of \$350 never cleared the bank, so he didn't think the return of the financial statement would prevent his license from being issued. He did submitted a completed, properly notarized financial statement, and requested that the board reinstate his license.

Motion: Bill Neely moved to go into Executive Session to seek legal counsel. The motion was seconded and passed.

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

Motion: Frank Walker made a motion that an Agreement be offered with the Applicant, requiring a fine of \$2,500 for falsifying his application. He can be issued a license following compliance with all license requirements, but will be placed on probation for one year. He must petition the Board to remove the Probation, if all conditions of the Probation have been met which are: (1) comply with all state and federal laws governing mechanical contracting , and (2) promptly advise the Board in writing of any changes in address, business professional status or compliance with this Agreement.

Mr. Tribble agreed to the conditions and agreed to pay the fine.

The hearing was adjourned. The Board recessed for lunch at 1:00 P.M.

Application Hearing:

(3) Ramon Frett and Frett's Construction, General Contractor, CLG #104892 Lapsed 10/31/2006; Classifications: IR2, MS2, HI2.

Back in session, Mr. Caswell called the hearing to order and stated that the purpose of hearing was to determine if the applicant's general contractor's license should be renewed. The renewal application could not be approved at staff level because of an outstanding complaint with the S.C. Residential Builders Commission, and civil judgment received from the Complainant. Mr. Frett represented himself and was sworn in to testify.

Ms. Thurber presented the facts of the case for the board staff. The applicant had previously held a residential builder's license, which he let lapse in the face of disciplinary action by the S.C. Residential Builders Commission. By Order of the Commission on November 12, 2003, they refused to renew Mr. Frett's license because of an outstanding complaint, Case# 969628 with Wyonna Counts, Complainant, and owed the Complainant a civil judgment of \$24,000.00, related to construction of her residence.

Mr. Frett briefly explained his situation with the outstanding complaint and stated that he could not pay the judgment at this time. He requested that the renewal fee of \$350.00 be refunded.

Motion: Douglas Greer moved to go into Executive Session. The motion was seconded and passed.

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

Motion: Kim Lineberger moved to deny the renewal application of Raymond Frett and Frett's Construction pursuant to Sections 40-1-130 and 40-11-130 (A)(10) of the S.C. Code of Laws, (1976, as amended), and based upon the Order of the Commission dated November 12, 2003.

Mr. Frett's renewal fee, which had been deposited, was to be refunded by the Board. Should the complaint be resolved and the judgment paid, the applicant may reapply to the Board and supply proof from the S.C. Residential Builders Commission of said compliance.

The hearing was adjourned.

Citation Protest Hearing:

OIE Case # 2005-223 Palmetto Plumbing Services, Inc. and Steve Horton, License CLM – 109552.

Mr. Caswell stated that the hearing was held at the request of Steve Horton to protest the Citation issued 10/6/06 for exceeding his licensed financial limit and fine for \$1,500. Mr. Horton did not appear. Therefore a motion was made.

Motion: Bill Neely moved that since Mr. Horton had requested the hearing and did not appear, the Citation for \$1500 would be upheld. The motion was seconded and passed.

Vote on Administrative Officer Hearing Recommendation:

2004-104 McIntyre Construction and Samuel McIntyre, Qualifying Party, Respondents, License # CLG 102298, vs CLB.

Mr. Caswell called the hearing to order. Bill Neely recused himself as the Administrative Hearing Officer. The Complainant, James M. McDowell, 4121 Red Doc Road, Lancaster, S.C. 29720, was present and sworn in to testify. The Respondent, Samuel McIntyre represented himself and was sworn in to testify.

Richard Simmons, II, Esquire, presented the Hearing Officer's Report and Recommendations from the evidentiary hearing held on September 14, 2006. Mr. McIntyre contracted to construct the McDowell home for \$209,875 on May 24, 2003. When the contract was signed, the Respondent held a residential builder's license and a general contractor's license. The permit was pulled on the general contractor license. Complaint charges included nine (9) instances of substandard work including improperly installed piers causing the floors to

be uneven; 30 items on the punch list to be repaired; failure to pay subcontractors; and exceeding the general contractor's license limits of a Building classification, \$100,000 project limitation.

Mr. McDowell testified about the problems he encountered with the Respondent which led to his terminating the Respondent from the project in August 2004.

Mr. McIntyre apologized to the Board for having to come before them. He stated that he has had the general contractor's license for ten years and has had few problems. Mr. McIntyre did not deny that the piers were improperly installed to Code. He contended that several problems with the quality of the work were caused by subcontractors that were referred by the homeowner. He stated that he completed all but seven of the 30 item punch list when he was terminated. As to the licensing issues, he had intended to pull the permit on the residential license, but he did not renew that license after 6/30/2004. The permit was pulled on his general contractor's license and he didn't notice the project restriction until he was answering the complaint.

After careful review of the facts, the Board went into Executive Session by motion of Douglas Greer. The motion was seconded and passed. A motion was made to come out of Executive Session by Mark Plyler. The motion was seconded and passed.

Motion: Dan Lehman made a motion to accept the Hearing Officer's Report and Recommendation which called for a penalty of \$1,000. Failure to comply with the provisions of the Order would warrant immediate temporary suspension of his general contractor license pending a hearing and further order of the Board.

Shirley Robinson, Hearing Advice Counsel, asked what time period the Respondent had to pay the penalty? **The motion was amended by Frank Walker to include that the penalty must be paid within sixty (60) days of the date of the final order. The amended motion was seconded and passed.**

The hearing was adjourned.

Mr. Greer asked if the date of the April 19th Board Meeting could be changed to April 26, 2007, because he had a conflict with a continuing education course that was only offered on that date. After discussion, the next regularly scheduled meeting was set for April 26, 2007.

The meeting was adjourned at 1:40 P.M. by motion of Dan Lehman and was seconded and passed.

Respectfully submitted,

Joyce Thurber

