

S. C. Department of Labor, Licensing and Regulation
Contractors' Licensing Board Quarterly Meeting
110 Centerview Drive, Room 111, Columbia, S.C.

Minutes of January 22, 2004, Quarterly Board Meeting

BOARD MEMBERS PRESENT:

Joe Chandler, Chairman
Lewis Caswell
Daniel B. Lehman
Kim Lineberger
Mark Plyler
Jim Tharp
Frank Walker, Vice Chairman

ABSENT:

Wendi Nance

OTHERS PRESENT:

Rick Wilson, Deputy General Counsel
Geoffrey Bonham, Assistant General Counsel
Shirley Robinson, Hearing Advisor
David M. Morrison, Prosecuting Attorney

BOARD STAFF PRESENT:

Ron Galloway, Administrator
Joyce Thurber, Program Coordinator
Stan Bowen, Investigator
Chas Nicholson, Investigator
Michael Anderson, Investigator
Andrew Dempsey, Investigator

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

Call to Order:

The meeting was called to order at 10:02 A.M. by Chairman, Frank Walker. A quorum was present. Mr. Walker 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) Excused Board Member:

Motion: A motion was made by Kim Lineberger to excuse Wendi Nance from the board meeting due to illness. The motion was seconded and passed.

(2) Election of New Officers:

Mr. Plyler nominated Joe Chandler as Chairman. No other nominations were made.

Motion: Mr. Plyler moved that Joe Chandler be appointed as Board Chairman for the calendar year of 2004. The motion was seconded and passed.

Mr. Plyler nominated Frank Walker as Vice Chairman. No other nominations were made.

Motion: Mr. Plyler moved that Frank Walker be appointed as Board Vice Chairman for the calendar year 2004. The motion was seconded and passed.

Motion: Mr. Caswell asked that the Board pass a Resolution thanking Frank Walker for service as Board Chairman for the last two years. The motion was seconded and passed.

Following the election, Mr. Chandler assumed the role of chairman for the remainder of the meeting.

Approval of Agenda:

The agenda was reviewed and approved with no changes.

Approval of the October 16, 2003, S.C. Contractors' Licensing Board Quarterly Board Meeting Minutes:

Motion: A motion was made by Ms. Lineberger to approve the minutes as printed. The motion was seconded and passed.

Chairman's Remarks:

(1) Discussion of Letter from Kirk Nivens and Nivens Fabrication & Construction, Inc.
Mr. Galloway explained that Mr. Nivens never received his license from the 2001-2003 renewal period, but never notified the board office of that fact. His 2004-2006 renewal was also delayed. Mr. Nivens wants an apology because the delay caused him to have to cancel a contract. The licensing section did apologize.

Motion: Mr. Tharp made a motion for the past chairman, Mr. Walker, to send a letter to Mr. Nivens from the board apologizing for any misunderstanding and inconvenience in the delay of his license has caused. The motion was seconded and passed.

Administrator's Remarks:

(1) Approval of IRC Recommendations of October 2, 2003:

The Investigative Review Committee (IRC) Reports were presented for the board's discussion and approval. It was suggested that the qualifying party name and license number be added to the report under the Respondent column. Following a discussion of the cases, the following motion was made:

Motion: A motion was made by Mr. Caswell to approve the October 2, 2003, IRC Report. The motion was seconded and passed.

(2) Approval of IRC Recommendations of November 06, 2003:

In discussion regarding sending the Final Order to Coastline Marine, Mr. Galloway explained the problems that the board staff is having with service of formal disciplinary documents to Respondents, i.e., Coastline Marine Construction, who has moved and will not accept the certified mail sent, although he is still working in the Myrtle Beach area. The board discussed the service procedures for delivery of the Notices of Hearing and Complaint, Hearing Officer's Recommendations and Final Orders with advice counsel, Rick Wilson. Mr. Wilson suggested that he, Mr. Galloway, board administrator, and Shirley Robinson, hearing advice counsel, meet to clarify the proper service procedures and report to the board at the April board meeting.

Mr. Wilson also stated that if a Final Order fine issued by the board is not paid in a reasonable period of time, interest can be added. Consent Orders can be corrected to stipulate that if a fine is not paid in a certain time frame, the license would be automatically suspended. This procedure will also be reviewed and recommendations added to the report to be submitted in April.

Motion: Mr. Tharp made a motion to approve the November 6, 2003, IRC Report. The motion was seconded and passed.

(3) Approval of IRC Recommendations of December 18, 2003:

During discussion of the December 18, 2003, IRC Report, Mr. Lehman expressed concerns regarding sales brokerage groups working as registered employees under other alarm entities' licenses. After some discussion, Mr. Lehman accepted the procedures for registered employees that have been developed by staff.

On page 12 of the December 18, 2003, IRC Report, under the "Disposition" column, at Rodda Construction V03/04-99, add "Letter of Caution" and delete "No violation".

Motion: Following discussion, the motion was made by Mr. Walker to approve the December 18, 2003, IRC Report as amended. It was seconded and passed.

Public Comment: None

Unfinished Business: None

New Business:

(1) Discussion Items: Any Board Member:

Mr. Walker commented on the status and lack of progress of the Task Force meetings with the State Fire Marshal's Office regarding revision of the statutes and regulations pertaining to the State Fire Marshal's Office.

(2) Request to Approve Experience for Licensure for Reggie McBeth:

Mr. McBeth requested approval of his electrical and HVAC experience in the performance of his duties as a building official through the Laurens County Inspections and Permits Department and waive the two year full-time experience requirement required to qualify for a contractor's license. This would permit him to test and apply for a license as a Mechanical Contractor, in the classifications of electrical and air conditioning. He showed the board the many certifications he currently holds and answered questions pertaining to his qualifications.

Motion: Mr. Walker made a motion to accept Mr. McBeth's experience as a building official in electrical and HVAC as required for the experience requirement for licensure. The motion was seconded and passed. He is therefore approved to take the electrical and air conditioning exams.

J. Andrew Dempsey, Investigator for the Contractors' Licensing Board, also requested consideration of his seventeen years of certified code enforcement experience toward meeting the experience requirement for licensing. He explained his credentials to the board.

New Business continued:

(2) Motion: Mr. Walker moved to accept Mr. Dempsey's experience in lieu of the two years experience requirement within the last five years toward meeting the experience requirement for a General Contractor in the building classification. He is therefore approved to take the general contractor building examination.

(3) State Ethics Commission Statements Due:

Mr. Galloway reminded board members that the State Ethics Commission statements are due prior to April 15, 2004. Board members can be fined if statements are not submitted by the deadline.

(4) Discussion of Exam Waiver with Alabama:

Mr. Galloway reported that an agreement had been reached with the Alabama Electrical Board to accept the Electrical examination administered by Experior, which is stronger than the South Carolina Mechanical Contractor's electrical examination administered by PSI. The Alabama electrical examination would then be accepted as fulfilling the licensing requirement in lieu of the S.C. Electrical exam and Business Management and Law exam upon receipt of a Letter of Good Standing confirming examination, grade and date taken, from the Alabama Electrical Board.

Motion: Mr. Walker moved to accept the waiver agreement with the Alabama Electrical Board. The motion was seconded and passed. The effective date will be January 22, 2004.

Old Business:

(1) Request for Reapplication of General Contractor License of NAVCO Builders and Nasser V. Rad.

Mr. Galloway explained that Mr. Rad was not present, but is applying for reinstatement of his General Contractor's license, building classification, after his license was revoked January 30, 2002. However, the board has received another complaint on the same kind of tile problems as when previously disciplined. Mr. Rad was sent the complaint and responded that he had built two homes as owner/builder. However, the homes were sold prior to two years, which may be a violation of the law. It needs to be investigated.

Motion: Mr. Caswell moved to deny his request for reapplication until the complaint issues are resolved. The motion was seconded and passed.

Vote on Panel Officer Hearing Recommendations:

(1) C-02/03-107, Joseph Pendarvis, Complainant vs J & B Industries and John Hunt, Respondents (G-106242).

At the Final Order Hearing, the State was represented by Geoffrey Bonham, Esquire, Assistant General Counsel. Shirley Robinson served as advice counsel. The Complainant, Joseph

Pendarvis, was not present. The Respondent did appear to represent himself, but was not represented by legal counsel.

A panel hearing was held before hearing officer C. W. Hogan on October 30, 2003. Mr. Bonham presented the Complaint and Hearing Officer's Report and Recommendations from that hearing. The Complaint alleged the general contractor, J & B Industries, failed to construct a pole shed to square. Other charges were that several truss ends on the right backside of the building were exposed because the metal covering was not evenly aligned with the roof's framing. A citation (V02/03-149) had also been issued and a \$500.00 fine levied for failure to obtain a permit prior to construction as required. Testifying for the State were Mr. Pendarvis and Andrew Dempsey, board investigator. Mr. Hunt testified on his own behalf.

Mr. Pendarvis testified that he did inspect the shed prior to paying the Respondent, and although he had some concerns at that time, he did not address them with Mr. Hunt. Mr. Hunt testified that while the work was in progress, Mr. Pendarvis instructed his workers to move one or more of the posts. Therefore, it was unclear to the Hearing Officer whether the problem was caused by the Respondent or by the subsequent work done by the owner.

The Hearing Officer's Report and Recommendation stated that there was insufficient evidence to show that the Respondent performed substandard work. Therefore, the Hearing Officer recommended that the Complaint be dismissed. The Respondent is obligated to pay the \$500.00 fine assessed pursuant to the citation. He can reinstate his license.

Mr. Bonham requested that the Hearing Officer's Recommendation be accepted.

Motion: Mr. Caswell moved to approve the Hearing Officer's Recommendation to dismiss the Complaint. The motion was seconded and passed.

(2) C02/03-102 , Ivory C. Williams, Complainant vs Payne Adams Construction (G-14625) and Jesse Payne Adams, Qualifying Party, and Armani Construction (G-108250) (M106149), Respondents.

At the Final Order Hearing, David L. Morrison, Esquire, represented the State. Shirley Robinson, Esquire, served as advice counsel. The Complainant, Ivory C. Williams was present. The Respondent, Jessie Adams, was not present due to illness, but was represented by Baron Stanton, Esquire.

A panel hearing was held before hearing officer, C. W. Hogan on September 11, 2003. Mr. Morrison presented the Hearing Officer's Report and Recommendations from that hearing and gave an overview of the case. The Complaint alleged negligence and substandard work against Payne Adams Construction. The Complaint also alleged fraud and deceit in obtaining a license, misrepresentation of material facts in obtaining a license, failure to take corrective action after a directive from the Richland County Inspections Section, failure to maintain the net worth requirements and failure to comply with a directive from the Department. Armani Construction was not named in the complaint, but Jessie Adams was the qualifying party and owner/president for both companies, and pursuant to the South Carolina Code of Laws Section 40-11-110(B) (1976, amended), both companies, management and qualifying party could be held accountable.

Mrs. Williams testified that Mr. Adams was hired on November 2002, to perform an addition to their home in Gadsden, South Carolina. After the work began, the homeowner became concerned about the quality of the work being done and contacted the Richland County Inspection Department. On January 6, 2003, Inspector Scott Bennett came, reviewed the work and found a number of violations and presented them to the contractor. A re-inspection was performed on January 14, 2003, at which time additional violations were found. The Respondent was given thirty days to make corrections before the project could proceed. Both homeowner and Respondent testified that the corrections never were made.

On or about March 4, 2003, in response to a complaint filed against Payne Adams Construction with the S.C. Contractors' Licensing Board by Mrs. Ivory Williams, an investigator inspected the Williams' property and verified the previous noted violations in his March 12, 2003, report to the contractor. Mr. Adams was given 30 days to make corrections. The Respondent testified that he took exception to most of the violations, and that the Complainants forfeited on the contract. Therefore, he was not obligated to complete the project. The board could not address contractual issues.

However, the board investigator had on two occasions requested a new financial statement from Payne Adams Construction because the board was aware of several judgments filed against the contractor that preceded the 2001 application. Mr. Adams had signed a sworn statement as the owner/president and qualifying party on the 2001 license application that he had no judgments, liens or claims filed against either him individually or his company. The Respondent also applied as qualifying party and owner/president for a second entity, Armani Construction, on March 12, 2003, and signed the same sworn statement that he had no judgments or liens against him or any company he owned. Therefore, the board also brought charges of alleged fraud and deceit in obtaining a license and misrepresentation of material facts. No financial documentation was ever submitted as requested by the board. Mr. Adams closed Payne Adams Construction after expiration of his license on October 31, 2003.

Mr. Adams admitted his knowledge of the judgments and his mistake in signing the license application statement that he had none. Attorney Baron Stanton pointed out in testimony that during this time Mr. Adams had a lobe of his lung removed and was under-going chemotherapy on his kidney.

The Hearing Officer recommended the following sanctions in this matter:

- 1) That the Respondent's general and mechanical license and qualifying party certificate be immediately suspended, and that the suspension be for an indefinite period of time. Prior to reinstatement of the Respondents' license and qualifying party status, the following conditions should be satisfied:
 - a. The Respondents shall provide to the board a financial statement complied by a licensed certified public accountant or licensed public accountant in accordance with GAAP and with all disclosures required by GAAP;
 - b. The Respondents shall provide a listing of current assets, liabilities and documented encumbrances, including all liens, judgments and forfeitures, and

shall include a signed and notarized statement that all information provided in true and accurate.

- c. The Respondents shall be required to provide satisfactory proof that they meet the minimum financial net worth requirements for the group under which the Respondents are seeking licensure and certification.
- d. The Respondents shall pay a fine of \$5,000.00, and shall be jointly and severally responsible for payment of the fine which shall not be deemed paid until received by the Board.

In his closing statement for the Respondent, Mr. Stanton requested that the Hearing Officer's Recommendations not be accepted. He stated that the penalty and \$5,000 fine were unduly harsh and asked for some reduction of the fine.

Following further questions from the board members and discussion, a motion was made. **Motion:** Mr. Walker made a motion to accept the Hearing Officer's Recommendations as written. The license of Armani Construction will be suspended as well. The motion was seconded and passed.

(3) V-02/03-182, CLB, Complainant vs Chris Gibson, Respondent and Qualifying Party (G108282) and (M-103613).

At the Final Order Hearing David L. Morrison, Esquire, represented the S.C. Contractors' Licensing Board, Complainant, bringing the charges against the Respondent, Chris Gibson. Mr. Gibson was not present and was not represented by legal counsel. Shirley Robinson, Esquire, served as advice counsel. Stan Bowen, board investigator, testified for the state.

Mr. Morrison presented a letter from Mr. Gibson asking for a Continuance of the Final Order Hearing because he was unable to make it. No definite reason was given. Mr. Morrison presented a history of Continuance requests from Mr. Gibson for the last two proceedings scheduled by the board. The advice counsel, Shirley Robinson, asked if Mr. Gibson had been notified by certified mail and by regular mail. Program Coordinator, Joyce Thurber, confirmed that the hearing notice had been sent by both means to the last official address of record. The green card was never signed and returned. Mr. Morrison pointed out to the board that Mr. Gibson had not returned the green cards on the last couple of attempts at service. Ms. Robinson reiterated that her advice to the board has been that the initial hearing should be sent by certified mail to ensure that there is personal service. But for any subsequent hearings, notice can be sent by regular mail. Ms. Robinson confirmed that notice was sufficient and the hearing could proceed.

A panel hearing before hearing officer, C. W. Hogan, was held on September 11, 2003. Mr. Morrison presented the charges and the Hearing Officer's Recommendations to the board. The Respondent had lied on his January 9, 2001, Mechanical Contractors' and April 2003, General Contractor's grandfather applications when he answered "No" to the question on both stating, "Within the last ten years, have you or any business entity of which you are or were an officer, principal, or major shareholder received any notice of any final judgment, liens or claims of any

kind.” The State placed into evidence a copy of a final judgment filed within the preceding ten years, and several judgments filed against him after that period.

He also lied on both applications about any prior arrests, when in fact, he was charged with several counts of “breach of trust”, “fraud with fraudulent intent” and several counts for his probative services under contract where he took the money and never supplied the services.

The Hearing Officer recommended that the Respondents’ license and qualifying party certificate be immediately revoked for a period of one year. The Respondent shall also pay a fine of \$5,000.00.

Since there was no one present to respond to the charges, following discussion, a motion was made.

Motion: Mr. Caswell moved to approve the Hearing Officer’s Report and Recommendations. The motion was seconded and approved.

The next regularly scheduled meeting of the board will be held on Thursday, April 15, 2004, at 10:00 A.M. in Room 111 of the Synergy Office Park, Kingstree Building, 110 Centerview Drive, Columbia, South Carolina.

There being no further business, the meeting was adjourned at 12:41 P.M.

Ronald E. Galloway, Administrator

/jt