

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

Minutes of the April 15, 2004, Quarterly Board Meeting

BOARD MEMBERS PRESENT

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

OTHERS PRESENT:

Rick Wilson, Board Advice Attorney
Geoffrey Bonham, Staff Attorney
Shirley Robinson, Hearing Advice Attorney
Joseph Turner, Staff Attorney

ABSENT MEMBERS:

Kim Lineberger
Wendy Nance

BOARD STAFF PRESENT:

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

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

Call to Order:

Chairman Joe Chandler called the meeting to order at 10:10 A.M.

Mr. Chandler 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, 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.

Vote on Absent Board Members:

Motion: Lewis Caswell moved that Kim Lineberger be excused from the meeting to attend a required bid opening. The motion was seconded and passed.

Motion: Lewis Caswell moved that Wendi Nance be excused from the meeting to attend a conference out-of-state for her job. The motion was seconded and passed.

Approval of Agenda:

Due to a medical emergency of the board prosecuting attorney, Geoffrey Bonham, Mr. Galloway presented requests for Continuances of the Final Order Hearing regarding CSA Construction & Repair, Respondent, of the Board Hearing regarding BAC Diversified Services, Respondent. **Motion: Frank Walker moved that the both Continuances be approved and that the agenda be amended to reflect the changes. The motion was seconded and passed.**

Approval of Minutes:

Motion: After a review of the January 22, 2004 board meeting minutes, Jim Tharp moved that the minutes be approved as printed. The motion was seconded and passed.

Chairman's Remarks:

Mr. Galloway presented a Board Resolution to Frank Walker, with gratitude, for his two years of service to the board as chairman. The Resolution was read into the record (attached).

Administrator's Remarks:

1. Approval of the Investigative Review Committee Recommendations of February 5, 2004:

The Investigative Review Committee (IRC) Report was presented for the board's discussion and approval. Following a discussion of the cases, a motion was made.

Motion: A motion was made by Lewis Caswell to approve the IRC Recommendations of February 5, 2004. The motion was seconded and approved.

2. Approval of the Investigative Review committee Recommendations of March 4, 2004:

The Investigative Review Committee (IRC) Report was presented for the board's discussion and approval. Following a discussion of the cases, a motion was made.

Motion: A motion was made by Frank Walker to approve the IRC Recommendation of March 4, 2004. The motion was seconded and approved.

Unfinished Business:

Rick Wilson, Deputy General Counsel, at the last board meeting, was asked to research and report on requirements of mail service notification to Respondents. He presented his written report to staff and board members for their information. Disciplinary proceedings are formally begun by the service of a legal notice of formal charges. Because it is the first official notice of the charges, certainty of receipt is required. Therefore, formal charges should be initially sent by personal service or Certified Mail. (Report Attached)

New Business:

1. Discussion of experience for contractors' license for Chas Nicholson.

Chas Nicholson, board investigator since 1997, presented his experience and certifications to the board and asked that the board accept these in lieu of the required full-time employment under a General Contractor and two years experience within the previous five years in the license classification or sub-classification for which application is made. After review and discussion, a motion was made.

Motion: Jim Tharp moved to accept the experience and certifications of Chas Nicholson as meeting the experience requirement for licensure, allowing him to sit for General Contractor building examination. The motion was seconded and passed.

2. Discussion of experience for contractors' license for Stan Bowen.

Stan Bowen, board investigator since 1998, presented his experience and certifications to the board and asked that the board accept these in lieu of the required full-time employment under a General Contractor and two years experience within the previous five years in the classification or sub-classification for which application is made. After discussion, a motion was made.

Motion: Frank Walker moved to accept the experience and certifications of Stan Bowen as meeting the experience requirement for licensure, allowing him to sit for the General Contractor building examination. The motion was seconded and passed.

Old Business:

1. Request for License Application for Nassar Rad, NAVCO Builders:

The matter came before the S.C. Contractors' Licensing Board for a final hearing July 19, 2001, regarding Nassar Rad and NAVCO Builders (G-95437). The Respondent built a home located at 337 Clearview Drive, Columbia, South Carolina. About August 28, 1999, the home was purchased by John and Colleen Johnson. Approximately six months after moving into the home, the Johnsons discovered numerous defects in the structure. After several inspections and several attempts to fix the problems, the Respondent was charged with incompetence in the practice of his profession. The Final Order revoked the general contractor license of NAVCO Builders (# G-95437) and the qualifying party certificate of Nassar Rad for twelve months. The Final Order was signed on August 13, 2001, and became effective upon receipt of service.

Mr. Rad appeared before the board to ask for approval to re-apply for a general contractor's license to perform residential and commercial work. Mr. Rad produced evidence of continuing education at Midlands Technical College, having taken a 2002 Building Codes course (8 weeks, 3 hours credit). Mr. Chandler requested that a course outline or syllabus and copy of the completed certificate be added to the record. After further questioning and discussion, a motion was made.

Motion: Frank Walker moved to give the administrator the authority to review the application, and if the continuing education has been completed satisfactorily, and if the application meets the licensing requirements, the board would approve the re-application of Nasser Rad as qualifying party, and NAVCO Builders.

Hearing in the Matter of :

V03/04-60 BFC Construction, Inc. and John Luther, Respondents (G-106118) vs CLB, Complainant:

The matter came before the full board with Joe Chandler, Chairman, presiding as hearing officer on April 15, 2004. A quorum of the board was present. John Luther, Respondent, appeared and was represented by legal counsel, John R. Devlin, Jr., Esquire. The State was represented by prosecuting counsel, Joe Turner, Esquire. Michael Anderson, Investigator, appeared as a State witness.

Mr. Turner presented the formal complaint charges. The initial licensing application for BFC Construction, Inc., dated January 7, 2002, was received by the board. On the application, question 6(F) asks, "Within the last 10 years, have you or any business entity of which you were or are an officer,

principal or major shareholder, received any notice of any final judgments, liens or claims of any kind?" The question as stated was answered by both license applicant and the primary party as "Yes", and a letter of explanation signed by Respondent John Luther was attached to the application. Mr. Luther stated that within the past ten years judgments were filed against him in his personal capacity, and that "These have been satisfied and taken care of". Based on that statement, a license was issued to BFC Construction, Inc., and John Luther was certified as the primary qualifying party for BFC Construction, Inc. Subsequent discovery of facts which if know at the time of issuance or renewal of the license or certificate, could have been the basis for the board to deny the issuance of the above license and certificate. The board charged Mr. Luther with having forty-two (42) unsatisfied judgments against him and his previous companies. Judgments against Mr. Luther personally totaled \$222,995.65.

Mr. Devlin presented the Respondent's case and stated that fraud and deceit allegations were unsubstantiated and moved that they be thrown out.

Motion: It was moved by Mr. Caswell and was seconded and passed to go into Executive Session to obtain advice from legal counsel..

Out of Executive Session, the board granted the motion to delete fraud from the complaint, but left deceit in the allegation.

Mr. Anderson testified regarding the judgments found during the course of the investigation. Mr. Turner placed the pertinent documentation during that time period into the record.

Mr. Luther testified that several of the judgments were prior to the ten years limit. He stated that due to non-payment of what was owed him amounting to \$100,000 when he owned Mark Construction, caused him to assume some of the noted debt. He said that he sold some property to satisfy some of the debt, but was negligent in following up on the status of the judgments. He further stated that he could have gone bankrupt, but did not. He continued that he had approximately \$900,000 in contracts in process employing seven employees and would eventually pay off all the debt.

Mr. Tharp asked what proof he had to show that any payments had been made? Mr. Devlin stated that Mr. Luther had no documentation with him, but could supplement the record with that proof if needed.

Motion: Following closing arguments, Mr. Walker moved for the members to go into Executive Session. The motion was seconded and passed.

Out of Executive Session a motion was made.

Motion: Mr. Walker made a motion to revoke the qualifying party certificate of John Luther and issue a fine of \$10,000 for the three charges. The motion was seconded and passed.

The Board conceded that there were no claims or judgments on record with respect to Respondent BFC Construction, Inc. and therefore, the complaint against the entity would be dismissed. A Final Order would be prepared as soon as possible. The hearing was adjourned.

Vote on the Panel Hearing Officer Recommendation:

C02/03-145, Ardis Roofing, Respondent, G104210 vs CLB, Complainant

At the Final Order Hearing, the State was represented by Geoffrey Bonham, Esquire, Assistant General Counsel. Shirley Robinson, Esquire, served as advice counsel. The Complainant, Virgil Livingston was present. Jon E. Newlon, Esquire, represented the Respondent, who did not appear but had notified the board prior to the meeting.

A panel hearing was held before a hearing officer on March 2, 2004. Mr. Bonham presented the Hearing Officer's Report and Recommendation from that hearing. The Complaint alleged that the Respondent contracted with Virgil Livingston to replace the roof on the homeowner's residence. The homeowner subsequently filed a complaint with the board alleging that the Respondent failed to properly install the roofing material and failed to correct the deficiencies. Witnesses testifying during the hearing included Mr. Livingston, Complainant, Bill Ardis, the Respondent, and three individuals employed with Ardis Roofing, Inc.

Mr. Livingston provided detailed, descriptive testimony concerning deficiencies, which included the improper installation of the roofing material by the Respondent's employees and the use of a different material than called for in the contract. The Respondent charged that not only was the roofing material installed improperly, but Mr. Ardis's crew failed to complete the work within a reasonable time period, and never completed the project. Since his home was exposed to the elements, considerable costly damage was incurred to the structure and some of the contents from wetness and mold. Numerous photographs were entered into the record to show the damage and the state of the roof.

The Respondent and each of the witnesses testifying on the Respondent's behalf contradicted most of the homeowner's testimony. An affidavit signed by one of the Respondent's employees was entered into evidence. While the employee acknowledged signing the document, he denied the accuracy of the statements. He stated that the homeowner offered to pay him \$700.00 if he would sign the affidavit prepared by the homeowner. He contended that he received no money. He also testified that the homeowner made the same proposition to another employee of Mr. Ardis.

Motion: Mr. Walker moved to go into Executive Session to obtain legal counsel. The motion was seconded and passed

Out of Executive Session, after careful review of the evidence presented and without further evidence to support or corroborate the homeowner's account of the events, the board found that there was insufficient evidence to uphold the allegations in the Complaint.

Motion: Lewis Caswell moved that the Hearing Officer's Report and Recommendation be accepted and the Complaint against Ardis Roofing, Inc. be dismissed.

The hearing was adjourned.

The next regularly scheduled board meeting will be held on Thursday, July 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 1:40 P.M.

Ronald E. Galloway, Administrator

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