

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

Minutes of the October 21, 2004, Quarterly Board Meeting

BOARD MEMBERS PRESENT

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

OTHERS PRESENT:

Rick Wilson, Board Advice Attorney
Geoffrey Bonham, Staff Attorney
Shirley Robinson, Hearing Advice Attorney
Daniel Patterson, Esquire, Representing Mauldin Electric

BOARD STAFF PRESENT

Ron Galloway, Administrator
Joyce Thurber, Program Coordinator
Stan Bowen, Deputy Chief of Investigations, OIE
Don Hayden, Operations Manager, OIE
Charles Ido, Deputy Chief of Investigations, OIE

GENERAL PUBLIC PRESENT

Leslie Bomar, Association of General Contractors (AGC)
Ramona Cowen, Complainant (C02/03-77)

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 10:00 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 Kingstree Building where the board office is located.

Vote on Absent Board Members:

Motion: A motion was made that Wendy Nance not be excused from the meeting. The motion was withdrawn upon the late arrival of Ms. Nance.

Approval of Agenda:

The agenda was reviewed. Mr. Walker asked that the Final Order Hearing for Mauldin Electric, where he served as the Hearing Officer, be held first, because he would have to recuse himself from the Hearing of that case. Mr. Galloway asked that two items be added to his report for information. Dan Lehman asked to be able to address an additional item under new business as an issue of concern for information.

Motion: Mr. Walker made a motion to approve the agenda as amended. The motion was seconded and passed.

Approval of Minutes:

Ms. Lineberger pointed out that the July 15, 2004 minutes state that she was absent, but she was present and Mark Plyler was absent.

Motion: Kim Lineberger moved that the July 15, 2004 minutes be corrected as amended to reflect that Ms. Lineberger was present and Mr. Plyler was absent. The motion was seconded and passed.

Mr. Tharp also pointed out that on page 3 under New Business, the Tennessee Waiver Agreement was not just accepted as information, but was approved by the board. The July 15, 2004 minutes should be amended accordingly.

Therefore, Mr. Caswell made a motion amending the amended motion to correct the minutes to state that the board had approved the Tennessee Waiver Agreement by previous motion of the board. The amended motion was seconded and approved.

Public Comment: None

Chairman's Remarks: None

Administrator's Remarks:

1. Approval of the Investigative Review Committee Recommendations of July 6, 2004 and September 2, 2004 Reports:

The Investigative Review Committee (IRC) Reports were presented for the board's discussion and approval. Mr. Caswell questioned why the Respondents' names were no longer identified on the reports. Mr. Wilson explained that leaving the Respondents' names off the report was a protection to the board from allegations that the board may have gotten information from outside of the process. The General Counsel asked for this change in letting the board know what happened in a particular case, but preventing the name from influencing a decision to be made. This protection is certainly needed for the cases recommended for hearings. The concern is that a case should be looked upon by its facts, not by who the Respondent is. Several of the board members did not agree with that procedure for other categories, i.e., Paid Consent Agreements, Paid Citations, Closed and Dismissed cases. Members questioned the purpose of voting on the cases in various categories if they don't know who they are. The members were concerned about entities, committing multiple offenses within a five year period, being able to be identified in order to be brought to a hearing before the board. It was suggested that Chairman Joe Chandler and Rick Wilson meet with General Counsel, Lynn Rogers, concerning the issue and report back to the board. Following further discussion, the following motions were made:

Motion: A motion was made by Lewis Caswell to approve Case # C-03/04-116 on the July 6, 2004, IRC Recommendations as scheduled for a hearing. The motion was seconded and approved.

Motion: A motion was made by Lewis Caswell to approve Cases C03/04-127 and C03/04-117 on the September 2, 2004, IRC Recommendations as scheduled for hearings. The motion was seconded and approved.

Pursuant to discussions with General Counsel, the other cases in the July 6, 2004 and September 2, 2004 IRC Recommendations will be considered for closure at the January 20, 2005 board meeting for closure.

Administrator's Remarks (Continued):

- (2) Mr. Galloway reported on the NASCLA Annual Conference held the last week of September, 2004, in Newport, Rhode Island. Last year the Executive Director was fired because he was making decisions without the knowledge of the members of the organization being told pertinent information about various projects. A job search was conducted, and all three candidates that were being considered, took jobs elsewhere. The current staff is doing a good job covering the director's position, so it was recommended to let them continue in that role. It was also recommended that the NASCLA President accept a greater role in running the organization.

Other discussions were held on the status of developing five national exams. It was decided to develop only a national unlimited building exam before venturing into other exam areas because of the great expense involved.

- 3) Mr. Galloway read a Board Resolution for the late Marshall E. Walker, former board member from 1957 – 1987. Mr. Walker died on August 30, 2004 at age 86, and is the father of current board member and past chairman, Frank Walker. The board extended their gratitude and appreciation for Marshall Walker's extraordinary service and accomplishments to the board and citizens of the State of South Carolina. A copy of the Resolution was given to Frank Walker to share with his family. (Copy attached)

Unfinished Business:

- (1) Discussion of Task Force Meeting concerning administering examinations for individuals that do not speak English:

The minutes of the Task Force of July 21, 2004, along with the responses and positions on the topic from several state boards, were furnished for the board's information and comment. Mr. Wilson asked that the Committee's report be forwarded to the department management for their information and consideration. (Minutes attached)

Motion: Mr. Caswell made a motion to forward the Task Force Meeting minutes to the department management. The motion was seconded and passed.

Mr. Caswell also extended the board's thanks to all the Committee members for their work.

- (2) Mr. Galloway stated that the examination provider, PSI, Inc., had written a letter asking for an exam change on exam requirements that compromised the contracting statutes. In order to submit the changes to the legislature by the deadline of November 14, 2004, the change will be drafted and sent to Mr. Wilson and Bob Selman, assistant deputy director, for approval and submission to the LLR

administration, upon the board's approval. The language changes will be sent to each board member and approved via conference call. (Minutes of the board member conference call, November 18, 2004 are attached.)

- (3) The election of officers will be held at the January 20, 2005 board meeting.
- (4) There is a concern from the Office of General Counsel about the individuals being used as panel hearing officers. Staff members will no longer be used as hearing officers because of possible conflicts of interest. Hearing officers used should be either board members or individuals in the profession that are knowledgeable of the contracting statutes. Board members were asked to consider serving in that capacity.

New Business:

1. Discussion of Exam Waiver Agreement with Louisiana:

Mr. Galloway presented the waiver agreement with Louisiana in the following ten classifications: unlimited building, grading, bridges, asphalt paving, concrete paving, gas lines, boring & tunneling, water & sewer lines, water & sewer plants, and pressure process piping. Following a brief discussion, a motion was presented.

Motion: Mr. Tharp moved to accept the waiver agreement with the State of Louisiana. The motion was seconded and passed.

2. Alarm Industry and Monitoring Companies – Dan Lehman:

Board member, Dan Lehman, commented on a situation of concern regarding the alarm industry and alarm monitoring companies. When an alarm monitoring contract expires, the control key pad is locked. When a new alarm monitoring company is hired, the new company can ask the former company to unlock the key pad. However, many times the former monitoring company will refuse to do so, thus, requiring the consumer to buy a new control key pad. This is not fair to the consumer. After consulting with the S.C. Alarm Association, new legislation would be needed to correct this situation. This information was offered to the board for consideration during the next revision of the statutes, S.C, Code of Laws, Title 40, Chapter 79, (1976, as amended).

3. Mr. Galloway introduced the staff of the newly formed Division of the Office of General Counsel, Office of Investigation and Enforcement (OIE), in place effective July 1, 2004. Don Hayden is Operations Manager, Edwin Farnell is the Chief of Investigations, and Charlie Ido is the Deputy Chief of Investigations, and direct supervisor for the investigators for commercials complaints. Stan Bowen is Deputy Chief of Investigations and direct supervisor for the investigators for residential complaints.

New procedures in place require all complaints to be addressed by investigative staff, even those within the first two years of construction, without sending them to the local building officials first, as previously done.

Old Business:

1. Board Approval of Chairman to approve Recommendations of the Investigative Review Committee.

Mr. Galloway explained that, if approved by the board, the board chairman could approve the recommendations of the Investigative Review Committee to expedite the process.

Motion: Jim Tharp moved to allow the chairman to approve the recommendations of the Investigative Review Committee. The motion was seconded and passed.

Vote on the Panel Hearing Officer Recommendations :

1) C03/04-88 Mauldin Electric and Mike Mauldin, Inc., Respondents, M-102251 vs Norman G. Davis, Complainant.

At the Final Order Hearing , the State was represented by Geoffrey Bonham, Esquire, assistant general counsel. Complainant Norman Davis was not present. Respondent Mike Mauldin was present and was represented by Daniel Patterson, Esquire, of Leatherwood, Walker, Todd and Martin, Greenville, S.C.

Mr. Bonham presented the Hearing Officer's Report and Recommendation from the panel hearing held June 15, 2004. Frank Walker served as the hearing officer. On or about February 2000, the Respondent contracted with homeowner, Norman G. Davis of Greer, South Carolina, to do the electrical work on a new residence being built at 1927 Gibbs Shoal Road in Greer. Mr. Davis was acting as his own contractor on the project. A building official from Greenville County testified that he inspected the property on November 21, 2003, and noted five (5) items that needed to be corrected. A copy of the inspection report was placed into evidence. During the course of the investigation, the property was inspected by an investigator from the SC Department of Labor, Licensing and Regulation (LLR) who also testified about deficiencies he observed at the property. A copy of the investigator's written report was placed into evidence. The homeowner testified that the Respondent did not return to repair any of the deficiencies and code violations listed in the reports from Greenville County and LLR, nor did the Respondent return to correct or complete the items listed on the punch list provided to the Respondent by Mr. Davis.

The Respondent denied that several of the problems listed in the reports existed at the time he ceased working at the property. He acknowledged that he did not return to complete the punch list items, and testified that he did not return because he was not paid. The evidence shows that the Respondent was paid a total of \$21,659.00 and was due an additional \$4,133.08. However, given the number of items not completed or the substandard work performed, it was not unreasonable for the homeowner to refuse to pay the final amount until the work was satisfactorily completed.

The hearing officer recommended that the mechanical contractor's license of Mauldin Electric, M 102251, be revoked.

Mr. Patterson presented a letter signed by the Respondent stating that he regretted the whole situation with Mr. Davis. Mr. Patterson stated that during the time frame Mr. Mauldin was working on that project, his seventeen-year marriage was collapsing, and he did not defend himself very well at the panel hearing. In his letter, Mr. Mauldin stated that he has been an electrical contractor since September 9, 1999 and has never had any complaints or law suits, but rather has received compliments on his workmanship. Mr. Patterson asked for leniency and asked that Mr. Mauldin's mitigating circumstances

be taken into consideration. Mr. Patterson asked for a lower penalty, so Mr. Mauldin could move to Florida, start over after the divorce and continue to practice electrical contracting there.

Following a short discussion, **Jim Tharp moved to go into Executive Session to receive advice from the board legal counsel. The motion was seconded and passed. Out of Executive Session by motion of Wendi Nance, seconded and passed,** the following motion was made:

Motion: Mr. Caswell moved that the Hearing Officer's Recommendation be modified to a civil penalty of \$1,000.00, due in 45 days, The motion was seconded and passed.

A Final Order will be issued and mailed to the appropriate parties.

2) C-03/04-66 BAC Diversified Services and Bernard Fripp, Respondents, G-104236, vs CLB Complainant.

At the Final Order Hearing, the State was represented by Geoffrey Bonham, Esquire, assistant general counsel. Frank Walker served as the hearing officer. The Respondent nor his legal counsel were present. Evidence of service was presented by certified mail green response card signed 8/23/04 by the Respondent, giving the Respondent the required 30-day notice. Board members had received the transcript of the June 15, 2004 panel hearing and the Hearing Officer's Report and Recommendation to review and consider the evidence.

Mr. Bonham presented the Findings of Fact. The State alleges that the Respondent obtained a license through fraudulent means by listing Clarence p. Hucks as the Qualifying party for BAC Diversified on their initial licensing application as well as on their renewal application. The State presented testimony from Mr. Hucks and placed into evidence a copy of a hand-written affidavit signed by Mr. Hucks on September 19, 2003. In the affidavit, Mr. Hucks stated that he was never a full-time employee of BAC and did not give his approval to BAC for the submission of the renewal. A second hand-written statement was placed into evidence by the Respondent. The second statement, which Mr. Hucks identified as being signed by him, stated that the affidavit was dictated by an employee of the Department of Labor, Licensing and Regulation (LLR) and that he signed it after being promised that his license would be reinstated. The Respondent and Mr. Hucks testified that the initial application was completed with the assistance of a LLR employee, and that they were told that Mr. Hucks could serve as the qualified for BAC Diversified Services. The employee identified by the Respondent did not recall the encounter as related in the testimony of the Respondent and Mr. Hucks. Because Mr. Hucks was not a full-time employee of BAC at the time of initial licensure and at the time of the renewal, BAC did not meet the statutory requirements for licensure by having a full-time employee who had taken and passed the appropriate examinations.

The State also alleged that the Respondents failed to maintain a business address accessible to the public. The Respondent testified that he had relocated three blocks from the address on the board records and had failed to notify the board of the address change.

There was insufficient evidence to prove the State's allegations that the Respondents aided and/or abetted the unlicensed practice of contracting or that the Respondents allowed their license to be used by an unlicensed entity.

Therefore, Mr. Bonham read the Hearing Officer's Recommendation to impose the following sanction into the record:

1. That the license of BAC Diversified Services, G-104236, be revoked;
2. That the Respondent be required to pay a fine of \$2,500.00;
3. That should the Respondent reapply after revocation period, they would be required to submit a financial statement compiled by a CPA or licensed public accountant prepared according to generally accepted accounting principles with all disclosures.

Motion: Mr. Caswell moved that the Hearing Officer's Recommendation be accepted. The motion was seconded and passed.

A Final Order will be prepared and distributed to the appropriate parties.

- 3) V03/04-144 2 C, Inc. and David Culver, Respondents, G99876 and G-107772, vs Romona C02/03-77 Cowin, Complainant.

At the Final Order Hearing, the State was represented by Geoffrey Bonham, Esquire, assistant general counsel. He presented the Hearing Officer's Report and Recommendation Findings of Fact from a panel hearing held before hearing officer, Gary Wiggins, on July 26, 2004. Shirley Robinson, Esquire, served as advice counsel. The Respondent was not present nor was represented by legal counsel. Testimony was heard and evidence was presented by the State to support the Complaint charges in the case.

The Hearing Officer's Recommendation was presented as follows:

- 1) Revocation of current license G-99876, 2 C, Inc. ;
- 2) Revocation of the qualifying party status of David Culver ; and
- 3) A civil penalty of \$5,000.00.

Motion: Mr. Tharp moved that the Hearing Officer's Report and Recommendation be approved. The motion was seconded and passed.

The next regularly scheduled board meeting will be held on Thursday, January 20, 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 11:55 A.M.

Ronald E. Galloway, Administrator

Addendum:

After the 2 C, Inc. hearing was adjourned and upon closer review of the service documentation by Ms. Robinson, advice counsel, it was discovered that due to a technical error in the address where documents were mailed, the Respondent may not have received the Notice of the Final Order Hearing within the required 30-day period prior to the hearing, as required by the Administrative Procedures Act. Therefore, the Hearing Officer's Recommendation will have to be heard by the board again at the next board meeting January 20, 2005, and a new notification sent by regular and certified mail to the correct address.