

**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 21, 2005, Quarterly Board Meeting

BOARD MEMBERS PRESENT

Joe Chandler, Chairman
Frank Walker
Daniel B. Lehman
Mark Plyler
Kim Lineberger, Vice Chairman
Wendi Nance
Bill Neely

ABSENT MEMBERS:

Lewis Caswell

OTHERS PRESENT:

Leslie Holt, Association of General Contractors
Kendall Furtick
Bill Rich
Curtis Boon, Weldon Construction
Baron Stanton, Esquire
Mr. and Mrs. Tommy Edgemon
Steve Parks

OTHERS PRESENT:

Rick Wilson, Board Advice Attorney
Geoffrey Bonham, Staff Attorney
Shirley Robinson,

BOARD STAFF PRESENT

Ron Galloway, Administrator
Joyce Thurber, Program Coordinator
Andrew Dempsey, Investigator
Chas Nicholson, Investigator

Carroll Shore, C. Douglas Shore & Company
Clint Turner, Hoover Building Systems
H. G. Johnson, Camden Building Supply
Jeff Till, Orangeburg Redi-Mix Concrete, Inc.
Leon Prosser
Mary A. Thomas
Marie Wicker, Hardaway Concrete

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 10:02 A.M with a quorum of members present.

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 Member:

Motion: Frank Walker moved that Lewis Caswell be excused from the meeting due to an out-of-town appointment. The motion was seconded and passed.

Ms. Nance asked to be excused at 1 PM due to a conflicting meeting.

Chairman's Remarks:

Mr. Chandler introduced and welcomed Bill Neely, M. B. Kahn Construction Company, as the new building contractor member of the board. An orientation about LLR and the board was given to Mr. Neely in February 2005.

Approval of Agenda:

Mr. Chandler asked if there were any changes to the Agenda.

Motion: A motion was made by Mr. Walker to approve the Agenda as written. The motion was seconded and passed.

Approval of January 20, 2005 Board Minutes:

The minutes of the January 20, 2005 meeting were previously sent to the board members for review.

Motion: A motion was made by Ms. Lineberger to approve the minutes of January 20, 2005 as printed. The motion was seconded and passed.

Public Comments: None

Administrator's Remarks:

Mr. Galloway commented that the newsletter was printed, but the miscellaneous list was not sent out. Additional copies have been printed and sent.

At the last board meeting Stewart Mungo explained to the board the problems he was having regarding being fined for the disturbance of wetlands. He was asking the board to explore looking into providing an exam or other educational efforts to alert contractors of the problem and repercussions of wetlands disturbance when developing land. An article was included in the last newsletter regarding that matter to alert contractors of the requirements. Mr. Galloway checked to see if any testing service or certifying organization had developed a wetlands examination. No test was found and no one was interested in developing such a test. An article in The State newspaper on April 21, 2005, stated that the Army Corps of Engineers fined the Mungo Company \$550,000, and stipulated in the settlement, some additional alternatives to a much heavier fine. Mr. Mungo's company agreed to hire an in-house environmental consultant for ten years, develop a traveling exhibit on the subject of wetlands to schools and civic organizations, promote and conduct a seven hour state-wide seminar to teach the public about wetlands and other environmental issues, and contribute \$100,000 to environmental agencies for purchase of a significant wetlands system. The Mungo Company has restored or mitigated all the wetlands that were disturbed.

Mr. Galloway gave the board an update on the Boiler Safety Act going through the State Legislature in both houses. The bills have been rewritten and are acceptable with the least intrusion on Board activities, since it was assigned to the Department for implementation. It was expected to pass this year.

Unfinished Business:

- (1) Approval of July 6, September 2, and December 12, 2004 IRC Recommendations.

Following a review and discussion, a motion was made.

Motion: Mr. Walker moved to approved the IRC Recommendations Reports of July 6, September 2, and December 12, 2004 as printed. The motion was seconded and passed.

New Business:

- (1) Approval of IRC Recommendation for March 3, 2005.

Following a review and discussion of the March 3, 2005 IRC Recommendations, a motion was made.

Motion: Ms. Lineberger made a motion to approve the IRC Recommendation Report of March 3, 2005. The motion was seconded and passed.

- (2) Review of resume for two years of work experience for Kendall Furtick.

Mr. Furtick was present and requested a review of his mechanical experience in HVAC work to be approved, satisfying the requirement for licensure. The requirement for licensure is two years of full

time experience in the requested classification within the last five years. A copy of his resume was sent to the board for review. Mr. Furtick answered questions about the work he had done at Carolina Eastman as a shift employee, doing work in many areas of the plant. He is currently taking a HVAC course at Midlands Technical College. Mr. Caswell, mechanical member of the board, was sent the resume for review. He commented to Mr. Chandler that under a strict interpretation of the law, Mr. Furtick's experience does not meet the requirements for the HVAC classification. Mr. Galloway recommended that if he was only going to be performing residential work, he should be licensed with the S.C. Residential Builders Commission. Mr. Wilson commented that the Residential Board does not have a experience requirement, just required references that one is competent in that area of work. After working two years in residential, it was suggested that he then apply for the commercial license if needed. Therefore, Mr. Furtick withdrew his request for approval of his experience for the commercial license.

Motion: Mr. Walker moved to allow Mr. Furtick to withdraw his request for approval of his experience for a commercial license. The motion was seconded and passed.

(2) Review resume for two years of work experience for Bill Rich.

Mr. Rich was present and had previously sent his resume to the board for a review of his construction experience to apply for licensure in the building classification. He has had 2 ½ years of construction experience, but not in the last five years. The buildings listed were explained to be buildings he owned, and had hired a general contractor to build. He confirmed he had acted as project manager and had no actual 'hands on' building experience. Following further discussion, a motion was made.

Motion: Mr. Walker moved that the request for approval of Mr. Rich's construction experience for licensure be denied. The motion was seconded and passed.

(3) Review resume for two years of work experience for Myra Neville.

Mr. Neville could not be present, but asked the board to review his experience. He is a building official from Florence, in charge of planning and development, and has thirty-five certifications.

Motion: Mr. Walker moved that the experience resume of Myra Neville be given to the building member of the board, Bill Neely, to review and give the board staff his recommendation. The motion was seconded and passed.

Upon review Mr. Neely recommended that the experience be denied because though Mr. Neville had numerous certifications, but he had no 'hands-on' construction experience.

Vote on the Panel Hearing Officer Recommendations :

Mr. Walker recused himself as the Hearing Officer from the Hearing Officer's Recommendation presentation to the Board . He was excused at 11:30 A.M.

(1) V03/04-127, L. A. Yates & Associates, G-105086 and Larry Yates, Qualifying Party vs Contractors' Licensing Board.

At the Final Order Hearing, the State was represented by Geoffrey Bonham, Esquire, assistant general counsel. The Respondent, Larry Yates, L.A. Yates & Associates, did not appear due to the death of a family member out-of-town as stated by a letter sent to the board.

Mr. Bonham requested that the board grant a continuance until the Respondent could be present. Mr. Bonham stated that he did not feel it was ethical as an attorney to present arguments without the Respondent being present.

Motion: Mr. Lehman moved for the board to go into Executive Session to obtain legal advice from the board advice counsel. The motion was seconded and passed.

Out of Executive Session, a motion was made.

Motion: Ms. Lineberger made a motion to deny the State's recommendation for a Continuance. The motion was seconded and passed.

Mr. Bonham presented the Hearing Officer's Report and Recommendation from the panel hearing held on December 13, 2004. Frank Walker served as the hearing officer. The allegations were as follows:

- 1) that the Respondent engaged in misconduct by engaging in the un-licensed practice of engineering, specifically that he had prepared design drawings for a water system that should have been prepared by an engineer. The design drawings were for a drinking water system for a small subdivision being developed by the Respondent.
- 2) that prior to the design drawings being submitted to the SC Department of Health and Environmental Control, Division of Water Supply Permitting, the Respondent was notified that the agency required a registered engineer's signature and seal on the design documents. The Respondent retained a registered engineer who reviewed the drawings prior to signing and placed his seal upon the drawings. However, the State contended that the design drawings should have been prepared by a registered engineer. By preparing the drawings himself, the Respondent was practicing engineering without being registered by the Board of Registration for Professional Engineers and Land Surveyors, which actions violated the laws of that board.
- 3) Further, the State alleged that the Respondent later revised the drawings without the engineer's approval or knowledge.

The Hearing Officer recommended that after a careful review of the evidence presented, the State did not show by a preponderance of the evidence that the Respondent violated the Board's practice act. Even though the State provided a copy of an administrative Order to Cease and Desist issued to the Respondent by the Board of Registration for Professional Engineers and Land Surveyors, the Respondent pointed out in the hearing that the Order was issued without his having the benefit of an evidentiary hearing with due process and would be of little value in determining any guilt on his part.

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

Board Hearings:

- 1) **C03/04-117 C. Douglas Shore & Company, Inc. and Carroll Shore, Qualifying Party, (G96115) vs Contractors' Licensing Board.**

The State was represented by Geoffrey Bonham, Esquire, assistant general counsel. The Respondent, Carroll Shore of C. Douglas Shore & Company, Inc. was present and wished to represent himself. The Complainant Joseph D. Griffin was not present.

Mr. Bonham alleged in the formal Complaint that the Respondent engaged in negligence or misconduct, demonstrated incompetence and/or performed substandard work, as evidenced by the original construction defects and subsequent inadequate repairs that fail to meet the requirements of the applicable building codes. S.C. Code Ann. Sections 40-11-110(A)(2).

Mr. Shore made his opening statement that he agreed that there were problems with the floor construction and did make attempts to fix the problems.

Mr. Bonham called LLR investigator, Andrew Dempsey, to testify as to what he observed at the interview on site at 1360 Russell Road, Rock Hill, South Carolina 29732, the Complainant's home. Douglas Shore, II and Mr. Joseph Griffin were present at the inspection. He testified as to his findings at the inspection of the complaint issues on March 30, 2004. Mr. Dempsey found that the floors were not level and had settled, and the brick veneer was substandard on the pre-fab fireplace with hearth on the floor and brick veneer going to the ceiling. Attempts had failed to correct the defects. The floors were still uneven and the brick veneer continued to crack and move with minimum pressure. The repairs failed to meet the 1997 Standard Building Code Performance Standards: 2101.3.2 (#3 Exception), 1403.1.2, and 1403.1.3.

The State called licensed Home Inspector, Richard Kettles, who was hired by the Complainant to perform a comprehensive inspection of the residence and issued a report of his findings from the June 8, 2004 inspection. He testified that the exterior brick veneer walls had continued cracks after attempted repairs were made, and that the brick veneer moved when minimum pressure was applied, which he remarked as highly unusual. The uneven floors he attributed to the lack of sufficient support underneath the brick fireplace, which he described as a full floor to ceiling fireplace with hearth and chimney through the roof, not just veneer. This lack of support caused the floor to dip toward the fireplace.

The Respondent testified that the brick veneer was not structural, but was for weather protection. Mr. Shore stated that he had attempted to make corrections, and that his corrections had stopped the problem, but had not corrected the continued cracking of the walls coming up through the foundation and movement of the brick. He expressed perplexity as to the cause of the problems with the brick veneer wall and said that he was willing to hire a consultant and correct the problems if a method of correction could be identified.

Motion: Ms. Nance made a motion to go into Executive Session to consult with legal counsel. The motion was seconded and passed.

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

Motion: Mr. Neely moved that C. Douglas Shore & Co. is found to be in violation of S.C. Code of Laws 40-11-(A)(2) for substandard work and is to be placed on a one year probation; is required to hire a structural engineer and make repairs under his supervision; and is to be assessed a civil penalty of \$2,500.00. The motion died for lack of a second.

Amended motion: Mr. Chandler made an amended motion that C. Douglas Shore & Co. is found to be in violation of S.C. Code of Laws 40-11-(A)(2) for substandard work and is to be placed on a one year probation; is required to hire a structural engineer approved by the board and make repairs under his supervision; and is to be assessed a civil penalty of \$2,500.00. The motion was seconded and passed.

- 2) **C03/04-166; 2004-0003, 0008, 0009, and 2004-0017 Mid-Carolina Builders, Inc. and James W. Wilson, IV, Qualifying Party, G109504, vs Contractors' Licensing Board.**

The State was represented by Geoffrey Bonham, assistant general counsel. The Respondent, James W. Wilson, IV, was not present nor represented by legal counsel, and could not be located.

The licensed entity, Mid-Carolina Builders, Inc., was closed at the location of record as verified by the investigator.

The Hearing Notice was served by Certified and Regular Mail and returned, Addressee Unknown. Because the Notice was returned, Mr. Bonham obtained a Proof of Service on the Administrator.

Testimony was presented by several representatives of several vendors and evidence was presented showing that the Respondents failed to pay for materials and/or supplies used on various projects.

- 1) Clint Turner of Hoover Building Systems, Inc. of Lexington, S.C., testified that two judgments had been issued in Kershaw County against Mid-Carolina Builders totaling \$13,422.07 for materials used. These have not been satisfied.
- 2) Jeff Till, Orangeburg Redi-mix Concrete, Inc. of Orangeburg, S.C., testified that the Respondents owed \$3,617.06 for materials delivered to the job site. The statements were entered into evidence and remain unpaid. Mr. Wilson also wrote three bad checks to Redi-mix in payment for materials delivered COD in another company name, which are still outstanding.
- 3) H. G. Johnson, Camden Building Supply of Camden, S.C., testified that a judgment was issued in August 31, 2004, in the amount of \$3,275.06 and for materials used and is still unsatisfied.
- 4) Marie Wicker, Hardaway Concrete, Columbia, S.C., testified that the Respondents owed invoices totaling \$11,451.94 for materials delivered at the job site and are still unpaid.

Mr. Bonham stated that the Respondents had contracted with several individuals to construct post framed buildings and received substantial sums of monies to perform the work, but either failed to construct the buildings or failed to complete the work. The following witnesses testified.

Case #2004-0009

Mr. Bonham submitted a De Bene Esse deposition transcript, taken on April 11, 2005, from one of the Complainants, Nancy See, for review by the board, because Ms. See could not be present to testify in person. On or about May 31, 2004, the Respondents contracted with Nancy See to construct a post framed building priced at \$17,500.00. She paid the Respondent an initial down payment of \$7,500 and had the site prepared where the building was to be located. The Respondent could not be contacted by telephone or otherwise and no work was ever performed, nor was the down payment returned.

Case # 2004-0003

Complainant Mary A. Thomas testified that she contracted with the Respondents on or about November 11, 2003, to construct two post framed buildings that were priced at \$6,700.00 per building. She paid the Respondents a total of \$13,400.00 for the two buildings, however the Respondents only partially constructed the buildings, and no monies were returned to Ms. Thomas. Copies of the checks written by Mrs. Thomas to the Respondents were placed into evidence.

Case #2004-0008

Complainant Steve Parks contracted with the Respondents in late February 2004, to construct a post framed building located at 3967 Marshall Rd., Rock Hill, S.C., priced at \$8,900.00. A down payment of \$4,450.00 was paid to the Respondent after which he framed the building and another \$3,560.00 for the next draw for approximately 90% of the cost of the building. The Respondent performed no further work, and no monies were returned to Mr. Parks. Mr. Parks wrote Mr. Wilson a letter stating what had been done and that he expected the Respondents to complete the contract. He received no response at that time. Mr. Parks had to pay an additional \$3,000 to put a roof on the building and 'dry it in' to keep what had been constructed from rotting.

Case # C03/04-166

Complainant Leo R. Prosser contracted with the Respondents on or about March 1, 2004, to construct a post framed building at 2088 McCarley Drive, Camden, S.C., priced at \$8,400.00. An initial down payment of \$4,200.00 was paid to the Respondents after which Mr. Wilson failed to complete the building. An additional \$2500.00 had to be paid to another contractor to finish the building. Pictures were submitted as evidence of the existing problems. Mr. Prosser later learned that some of the work done by the Respondents was substandard. The roof pitch wasn't as specified in the drawings, no retaining wall was built, no concrete floor was prepared or poured, no footings were supported with bracing lumber and no doors were installed on the building, among other problems. Mr. Prosser testified he went to Mid-Carolina's business located at 338 Sumter Highway, Camden, S.C., and found the building closed. He has not been able to contact Mr. Wilson since. Mr. Prosser stated that the S.C. State Law Enforcement Division (SLED) contacted him about Mid-Carolina Builders and James Wilson, and asked about his incomplete project.

Case # 2004-0003

Complainant Mary Ann Thomas contracted with the Respondents on or about November 11, 2003 to construct two post framed buildings located at 6229 Lola Dr., Kershaw, S.C., priced at \$6,700.00 per building. Mrs. Thomas paid the Respondents a total of \$13,400.00 for the two buildings, however, the Respondents only partially constructed the buildings. Roll-up doors were paid for but were never received. No monies were returned for the project. Mrs. Thomas also was contacted by SLED inquiring about her dealings with Mid-Carolina Builders and James Wilson. She has not been able to contact Mr. Wilson since. Mr. Bonham presented copies of the checks written to Mr. Wilson as evidence for the record.

Case # 2004-0017

Complainant Tommy W. Edgemon contracted with the Respondents on or about January 30, 2004, to construct a post framed building located at 50 Sharon St., Bamberg, S.C., priced at \$21,000, to be used as a metal garage with a carport at one end. A down payment of \$10,500 was paid to the Respondents on or about January 30, 2004 and another draw of \$7,150 was paid when the building was framed and final amount when completed. The building was to be contracted in seven days, but it took seven weeks. A lien was placed on Mr. Edgemon's property by Orangeburg Redi-mix Concrete for nonpayment of \$3,500.00 worth of concrete used by Mr. Wilson. Mr. Wilson had been paid in full for the building. Mr. Edgemon testified that he requested proof from Mr. Wilson that he had paid his vendors. Mr. Wilson produced a statement that he had paid his vendors. The Respondent's actions resulted in the issuance of an arrest warrant in which Respondent James W. Wilson was charged with breach of trust with fraudulent intent. The Judge gave him a \$3,600 bond and offered him the opportunity to pay the Redi-mix invoice, but he refused at that time.

A letter was received dated June 21, 2004 notifying the above owners that Mid-Carolina Builders and James Wilson was filing bankruptcy. Mr. Wilson stated that he had intentions of completing the work started on their projects and that he would try to make restitution. However, Mr. Wilson has not completed the projects nor returned monies to any Complainant, nor has he been located to-date. No one has been able to find evidence verifying that a bankruptcy petition was ever filed by the Respondents.

Upon consideration and discussion of the evidence presented, a motion was made.

Motion: Ms. Lineberger moved that the license of Mid-Carolina Builders (G-109504) and Qualifying Party certificate of James W. Wilson, IV, be revoked and that a fine of \$5,000 for each of four violations be assessed: 1)misconduct/substandard work; 2)abandonment of contracts

without a legal excuse; 3)unethical or unprofessional act as evidenced by a false statement to Owner Tommy Edgemon regarding payment for concrete materials, and 4)violated a provision of Article 1, Chapter 1 and Chapter 11 of Title 40 of the Code of Laws of South Carolina, as amended. Mr. Wilson would be required to appear before the Board for approval of the re-issuance of a license. The motion was seconded and passed.

The next regularly scheduled board meeting will be held on Thursday, July 21, 2005, 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 3:10 P.M.

Respectfully submitted,

Ronald E. Galloway, Administrator