

**S.C. Department of Labor, Licensing and Regulation**

**Contractors' Licensing Board Quarterly Meeting  
110 Centerview Drive, Room 111, Columbia, S.C.**

Minutes of the January 19, 2006, Quarterly Board Meeting

BOARD MEMBERS PRESENT

Joe Chandler, Chairman  
Frank Walker  
Daniel B. Lehman  
Wendi Nance  
Doug Greer  
Lewis Caswell  
Bill Neely  
Kim Lineberger

ABSENT MEMBERS:

Mark Plyler

OTHERS PRESENT:

Michael Mullinex, Esq. (2004-0041)  
Jeff Greenway, CPA, Elliott Davis LLC, Greenville, SC  
Todd Sudway, CPA, Construction Accounts, Elliott Davis LLC  
Leslie Bomar, Association of General Contractors  
Billy Patterson, Investigator (2004-0041)

OTHERS PRESENT:

Richard Wilson, Esq., Board Advice Attorney  
Kent Lesesne, Esq., Staff Attorney  
Shirley Robinson, Esq., Hearing Advice Attorney

BOARD STAFF PRESENT

Ron Galloway, Administrator  
Joyce Thurber, Program Coordinator  
Chas Nicholson, Investigator  
Stan Bowen, Investigator  
Joe Martin, New Investigator  
Ed Farnell, Chief Investigator

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 Joe Chandler called the meeting to order at 10:04 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 Kingstree Building where the board office is located.

**Vote on Absent Board Members:**

Mark Plyler asked to be excused because he was moving his business to another location and had run into some problems.

**Motion: Mr. Caswell moved that the absence of board member, Mark Plyler, be approved. The motion was seconded and passed.**

Wendi Nance had to leave at 12:30 P.M. for a 1:00 P.M. appointment.

**Approval of Agenda:**

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

**Motion: A motion was made by Mr. Caswell to approve the Agenda as printed. The motion was seconded and passed.**

**Approval of Board Minutes for October 20, 2005:**

The minutes of October 20, 2005, were reviewed and the following motion was made.

**Motion: A motion was made by Mr. Walker to approve the Minutes of October 20, 2005, as written. The motion was seconded and passed.**

**Public Comment:**

None

**Election of Officers for 2006:**

Ms. Lineberger nominated Joe Chandler to continue as chairman.

**Motion: Ms. Lineberger moved to re-elect Joe Chandler as chairman. Mr. Greer seconded the motion. The motion was approved by acclamation. Mr. Chandler thanked the board for re-election.**

Ms. Nance nominated Kim Lineberger to continue as vice chairman.

**Motion: Ms. Nance moved to re-elect Kim Lineberger as vice chairman. Dan Lehman seconded the motion. The motion was approved by acclamation.**

**Chairman's Remarks:**

None

**Administrator's Remarks:**

- 1) Mr. Galloway reminded the board members to submit their Statement of Economic Interest form to the S.C. Ethics Commission by April 15, 2006.
- 2) All board members were encouraged to attend the LLR Board Member Forum on February 17, 2006, from 9:00 A.M. until 1:00 P.M., at the S.C. Fire Academy, Denny Auditorium in Columbia. Updated board member policies and an orientation for new board members will be presented.

**Unfinished Business:**

None

**New Business:**

- 1) Vote on the IRC Recommendations of November 17, 2005.  
Following a review of the IRC Recommendations for November 17, 2005, the board members asked Mr. Farnell to explain the meaning of the heading terminology on the report, and when each are to be applied, i.e., Formal Charge, Dismissal, Closed, Letter of Caution, etc.

**Motion: Mr. Caswell moved to approve the IRC Recommendation Report of November 17, 2005. The motion was seconded by Ms. Lineberger and passed.**

- 2) Request to Discuss Financial Implications Regarding Consolidation of Related Entities under FASB FIN 46 presented by Jeff Greenway, CPA.  
Mr. Galloway introduced Jeff Greenway, CPA of the accounting firm Elliott Davis, LLC, in Greenville, South Carolina. Mr. Greenway conducts a three-day seminar on Construction Contractors Industry Developments in 2004/2005 to Strengthen Audit Integrity and Safeguard Financial Reporting. He was present to alert the board and staff members of new requirements and information regarding the review and acceptance of financial statements when presented for licensure. The Board requires financial statements to be prepared according to Generally Accepted Accounting Principals (GAAP). The Financial Accounting Standards Board (FASB)

issued Interpretation No. 46, Consolidation of Variable Interest Entities (VIE), that may have a significant impact on construction companies. Partnerships, Corporations, Joint ventures and Leases and financing arrangements are subject to its provisions. Consolidated financial statements should show individual related entities. The net worth of the operating company will be presented, but the supplemental schedules should also be reviewed for each related entity that has been consolidated. Financial Statements of consolidated companies should not be accepted unless these schedules of their related entities are included.

Mr. Greenway committed to get together with other South Carolina construction CPA's in May, after the tax season, to draft a letter explaining GAAP departures to the Board and Staff. Mr. Walker suggested that this information be included in the next Board newsletter. The chairman thanked Mr. Greenway for providing this new information to the Board and staff.

### **Old Business:**

- 1) Follow Up for General Counsel to make a Recommendation concerning Monetary Requirements for Multiple Scopes of Mechanical Work on a project – Rick Wilson, Esq.

Richard Wilson, board advice counsel, was asked to make a recommendation regarding the interpretation of the South Carolina Code of Laws Section 40-11-30, ' No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the *total coast of construction* is greater than five thousand dollars for general contracting or greater than five thousand dollars for *mechanical contracting* without a license issued in accordance with this chapter.' The term mechanical construction as defined in 40-11-20(15) states 'Mechanical construction means the installation, replacement, or repair of plumbing, heating, air conditioning, process piping, refrigeration, lightning protection equipment, or electrical components, fixtures or devices of any kind, excluding burglar alarm work.'

Mr. Wilson lead a discussion regarding the total cost of construction of mechanical work would mean total of all the mechanical classifications on the job. There is a problem with the exact wording of the statute and the intent of the statute. Mr. Walker, electrical board member, stated that he wrote the provision, and the intention was for each contractor to hold the project limitation to their license limit, not be clumped together. Mr. Galloway stated that the problem is with the wording, "total cost of construction". Mr. Caswell, mechanical board member, added that the statute should read, "total cost of the contract " in a particular discipline.

Mr. Wilson suggested that these changes need to be made by the legislature at the next revision of the statutes. The Association of General Contractors (AGC) was asked to select some of the "hot" topics and ambivalent wording that need to be addressed or clarified in the General and Mechanical Contracting Act, Title 40, Chapter 11. Mr. Wilson will work with Mr. Galloway to get something drafted for submission to the AGC and the Mechanical Association for review and submission at the next legislative session to resolve some of these problems in the law.

### **Vote on Administrative Hearing Officer's Reports and Recommendations:**

- 1) 2004-0041 J & H Renovation, Inc. and Hershel Clark (G-107568)

At the Final Order Hearing, the State was represented by Kent Lesesne, Esquire, assistant general counsel. The Respondent, Hershel Clark, was represented by Michael Mullinex, Esquire, of Greenville, South Carolina. Mr. Clark was ill and unable to attend. The Complainant was Mary Perullo and was not present. Board member/Hearing Officer, Frank Walker, recused himself from the hearing and was excused.

Mr. Lesesne presented the Hearing Officer's Report and Recommendation from the administrative hearing held on June 14, 2005. The state at that time was represented by Geoffrey Bonham, Esquire, assistant general counsel. The Respondent was charged with South Carolina Code of Law violation in 40-11-110(A)(2), (1976, as amended), performing substandard work, negligence or misconduct.

On or about February 25, 2003, the Respondents contracted with the owners of a residence located at 1024 Chantilly Lane, Anderson, South Carolina, to complete construction of a sunroom with a walk-on roof deck accessible from the owners' second floor master bedroom. Mr. Lesesne stressed that when the Respondent was hired, he had to accept responsibility for the entire project. The owners initially contracted with a different individual for the construction, however, that relationship was severed, and the owners hired the Respondent to complete the project. There was uncontroverted testimony that the work performed by the first individual was substandard, and no permit was obtained prior to performance of the work. A permit for the project was secured on February 13, 2003, and the owner was listed as "Owner-Builder" as the electrical and building contractor.

The owners testified that they complained to the Department after water from the roof deck began seeping into the bedroom at the sliding glass door entry, leading from the bedroom onto the deck. Photographs showing water pooling at the entry were placed into evidence by the State. Prior to the complaint, the owners had contacted the Respondent about the problem, but got no satisfactory resolution. The owners contended that the water pools at the entry door because the roof was built with the pitch slanted toward the house as opposed to away from the house so as to facilitate proper drainage.

The State contended that based on the evidence and testimony that the Respondent was in violation of the Practice Act. The homeowners pulled the permit; however, that does not change the responsibility of the contractor. The Hearing Officer had recommended a civil penalty in the amount of Two Thousand Five Hundred Dollars to be paid within thirty days.

Mr. Mullinax, counsel for the Respondent, wrote a brief presenting their position in this matter. He presented the following arguments that there was no real proof that the contractor was responsible for the water collecting toward the house:

- 1) The Respondent constructed a flat roof, and had told the owners that a flat roof would hold water and that the flat, black rubberized roof would not evaporate water well;
- 2) The Respondent was not notified in the Formal Complaint that the roof was slanted toward the house. There is an issue that Mr. Perullo, husband of the Complainant, provided testimony after Mr. Bonham had rested his presentation. That testimony stated that the roof slanted back toward the house.
- 3) A raised portion of the roof, essentially a ramp in Exhibit 4, was not constructed by Mr. Clark, but by a roofer.
- 4) Mr. Patterson, investigator on the case, did not testify that the roof was slanted.

**Mr. Greer moved to go into Executive Session. The motion was seconded and passed. Out of Executive Session by motion of Ms. Nance, it was seconded and passed.**

There was a brief discussion of picture #2 showing the pooling of water, and the fact that the Respondent was not given the slanted roof as an issue in the formal Complaint.

**Motion: Mr. Greer moved that the Hearing Officer's Recommendation of the Findings of Fact and civil penalty be accepted, but the fine be reduced to \$1,000. Wendi Nance seconded the motion. The motion passed with five in favor and three against the fine reduction. (Lehman, Lineberger and Chandler).**

2) 2004-0023 Cornerstone Construction of the Carolinas and Willie Whitaker (G-106882)

At the Final Order Hearing Mr. Kent Lesesne, assistant general counsel, presented the Hearing Officer's Report and Recommendation from the administrative hearing held on September 15, 2005. Mr. Whitaker was not present, but had been served proper notice of the hearing and complaint as evidenced by the returned signed certified green card. Board member/Hearing Officer Bill Neely, recused himself and was excused from the Final Order Hearing.

Mr. Lesesne stated that the Respondent was charged with violation of the South Carolina Code of Laws 40-11-110 (A)(2), (1976, as amended), performing substandard work, negligence in failing to adequately supervise the project and his employees and 40-11-110 (A)(3), 1976, as amended), abandonment of a contract without legal excuse for the abandonment or refusal.

The Finding of Fact were as follows:

On or about September 5, 2003, the Respondent entered a contract with Marvin Davila for the construction and landscaping of a residential dwelling located at Lot #7, Edisto Ridge Subdivision in Pelion, South Carolina. After the scheduled completion date, although the home was not complete, Mr. Divila discovered that the Lexington County Building/Inspection Department had issued the Certificate of Occupancy (CO) and the mortgage company had disbursed all the proceeds from his loan to the Respondent. An individual employed by the Respondent to supervise the work on Mr. Divila's home, was the individual who obtained the CO and received the payment from the mortgage company without the knowledge of the Respondent. Both Mr. Davila and the Respondent had testified to these findings.

At the evidentiary hearing, Investigator Chas Nicholson testified that the following construction defects were found at his inspection on August 24, 2004:

- 1) There was no water leading to the home; the well did not have electrical service and no piping leading from the well to the home;
- 2) The septic tank installation had not been completed, and there was no sewer pipe leading to the septic tank;
- 3) There were no footing underneath the porch columns or the porch slab as required by the building code;
- 4) The roofing was improperly installed in that the shingle overhang was inconsistent;
- 5) The attic access had not been completed; and the window screens had not been installed.

Mr. Divila had also hired a private home inspector to conduct an inspection of the home. The home inspector found several of the same defects noted by the LLR inspector's report. The home inspector's report was entered into evidence.

The Respondent had testified that during the construction of the Davila home, he was working on another job and had visited the site approximately three times. Because the CO had been issued, the Respondent assumed that the workmanship was good and the house was completed. After the LLR investigator contacted him about the deficiencies with the construction, he attempted to assess what work needed to be done, but was locked out of the property. Mr. Davila would not allow him to do any work without first signing a document prepared by Mr. Davila's attorney. The document specified that the work would be completed in 30 days and required the Respondent to pay \$6,000 to Mr. Davila. The Respondent desired to fix the deficiencies, but Mr. Davila had the work completed by another contractor.

Conclusions:

Based upon the evidence presented, the Hearing Officer found that the work was substandard and the Respondent was negligent in failing to adequately supervise the project and his employees.

As to the charge of abandonment, based on the evidence, the State presented insufficient evidence to prove this charge.

Mr. Lesesne presented the Hearing Officer's Recommendation that the following sanctions be imposed:

1. That the Respondent be issued a public reprimand; and
2. That the Respondent be assessed a civil penalty of Five Thousand Dollars (\$5,000), to be paid within sixty (60) days of the date of the Final Order.

**Motion: Mr. Caswell moved that the board go into Executive Session to obtain advice from the board advice counsel. The motion was seconded and passed.**

**Motion: Mr. Lehman moved to come out of Executive Session. The motion was seconded and passed.**

**Motion: Mr. Caswell moved that the Hearing Officer's Recommendations be accepted and that the sanction of a Public Reprimand and \$5,000.00 civil penalty, to be paid within 60 days of the Final Order, be imposed. Ms. Lineberger seconded the motion, and it was passed.**

3) 2004-0015 C. Douglas Shore & Co., Inc. and Carroll D. Shore (G-96115)

At the Final Order Hearing the board was represented by assistant general counsel, Kent Lesesne. The Respondent was duly served the hearing notice at the address of record as evidenced by the returned certified green card signed by Lynn Shore, wife of the Respondent. However, the Respondent was not present and was not represented by legal counsel. Bill Neely, Hearing Officer, had recused himself and had been excused from the proceedings.

Mr. Kent Lesesne presented the Hearing Officer's Report and Recommendation from the administrative hearing held on September 29, 2005. The formal complaint alleges that the Respondent engaged in negligence, performed substandard work, incompetence or misconduct.

Findings of Fact:

The Respondent constructed a single family residence located at 5029 Crofton Drive, Fort Mill, South Carolina. The residence was purchased on or about December 8, 2003, on the condition that the Respondent would complete construction and repair several items in the home within twelve months. The owner, Clara Allen, notified the Respondent that the work needed to be completed, but there was no response from the Respondent. A complaint was filed with LLR on June 7, 2004, outlining the repairs, code violations and the owner's inability to contact or communicate with the Respondent after repeated attempts.

On June 16, 2004, a York County Building Official conducted an inspection of the home and forwarded correspondence to the Respondent regarding code violations and directed the Respondent to make repairs within thirty days. Testimony was presented of the code violations found during the inspection including, leaks in the master shower, grout joints in the bath counter without grout, broken tiles and missing grout in the kitchen floor, improper wiring, uninsulated attic doors, an improperly installed kitchen hood, missing seep holes in the brick veneer, open electrical splices in the shower walls, buckled hardwood floors and an improperly installed fireplace, among other violations. LLR investigator, Chas Nicholson, testified that Mr. Shore presented a check to the owner for tile repairs, but it was returned for insufficient funds.

In a previous Order dated May 18, 2005, the Board found the Respondent in violation of the Practice Act and placed the Respondent's license (G-96115) on probation for one year. Further, the Respondent was fined \$2,500 and ordered to make repairs to the residence in question in that previous hearing.

Based on the preponderance of the evidence, the Respondent was found in violation of the board's Practice Act as set forth in the allegations. Mr. Lesesne presented the Hearing Officer's Recommendations below:

1. That the Respondent's license be suspended for one year;
2. That the Respondent be fined \$5,000, due within 60 days of the board's order as the effective date;
3. That a search be conducted to determine if the Respondent holds additional licenses, and if so, a copy of the Final Order be forwarded to those Boards for investigation of violation under their Acts.

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

**Motion: Mr. Greer moved to come out of Executive Session. The motion was seconded and passed.**

**Motion: Ms. Lineberger moved that the Findings of Fact, Conclusions of Law be accepted, but that one Sanction be revised to Revocation in lieu of the Suspension, and other sanctions be approved. The motion was seconded and passed.**

4) V03/04-135 Colonial Restoration and Frank Lauro G-103238

At the Final Order Hearing, the board was represented by assistant general counsel, Kent Lesesne. The Respondent was duly served the hearing notice and complaint at the address of record as evidenced by the returned, signed certified green card. Frank Lauro, Respondent, was not present and was not represented by legal counsel. Bill Neely served as Hearing Officer and had recused himself from the hearing and was excused.

Mr. Lesesne stated that the Respondent was charged with violations of the S.C. Code of Laws 40-11-110 (A (2), substandard work, negligence or misconduct and (9) aiding or abetting an unlicensed entity, allowing one's license to be used by an unlicensed entity or acting as agent partner, or associate, or an unlicensed entity, to evade the provisions of the Practice Act .

The Findings of Fact:

The Hearing Officer's Report and Recommendations were presented from the administrative hearing held on October 12, 2005. On or about January 22, 2001, Dr. Beulah Brooks accepted a proposal from Manigo Brothers & Associates to renovate a doctor's office at 172 Spring Street in Charleston, South Carolina. Manigo Brothers & Associates was not a licensed entity with the Board. In December of 2000 or January 2001, Eric Manigo had contacted the Respondent to ask if he would be interested in renovating Dr. Brook's office. The Respondent was to be provided with a set of plans, after Mr. Manigo set up a meeting between the Respondent and Dr. Brooks. Based on assurances from Eric Manigo that Dr. Brooks was interested in hiring the Respondent as the general contractor, the Respondent applied for a building permit sometime between April and August 2001, from the City of Charleston to renovate the office, which would initiate the plan review process. When Eric Manigo notified the Respondent that Dr. Brooks was not hiring him as the general contractor, the Respondent notified the City of Charleston that he would not be the general contractor, but did not cancel the permit until April 2002.

Conclusions of Law:

There was no evidence presented that Mr. Lauro consented or knew of the transaction between Manigo Brothers & Associates and Dr. Brooks. And while Mr. Lauro did not exercise the best judgment by applying for the permit before having a signed contract, and did not cancel the permit in a more timely manner, there is no evidence that the Respondent received any benefit from the transactions.

Mr. Lesesne presented the Recommendation of the Hearing Officer, that based on the evidence presented, the Complaint should be dismissed and a Letter of Caution be issued to the Respondent.

**Motion: Mr. Caswell moved to go into Executive Session. The motion was seconded and passed.**

**Motion: Mr. Caswell moved to come out of Executive Session. The motion was seconded and passed.**

**Motion: Mr. Lehman moved to accept the Hearing Officer's Report and Recommendations that the Complaint be dismissed and a Letter of Caution be issued to the Respondent. The motion was seconded and passed.**

The next regularly scheduled board meeting will be held on Thursday, April 20, 2006, at 10:00 A.M. in Room 108 in the Kingtree Building in the Synergy Office Park, 110 Centerview Drive, Columbia, South Carolina.

There being no further business, the meeting was adjourned at 1:12 P.M.

Respectfully submitted,

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Ronald E. Galloway, Administrator