

South Carolina Department of Labor, Licensing and Regulation

Contractors' Licensing Board

110 Centerview Drive, Room 201-03, Columbia, S.C.

10:00 A.M.

Minutes of August 16, 2007, Quarterly Board Meeting

BOARD MEMBERS PRESENT:

Lewis Caswell, Chairman
Kim Lineberger, Vice Chairman
Bill Neely
Douglas Greer
Daniel Lehman
Mark Plyler

ABSENT MEMBERS:

Frank Walker
Wendi Nance

BOARD AND STAFF PRESENT:

Christa Bell, Esq., Assistant General Counsel
Sheridon Spoon, Esq., Assistant General Counsel
James Saxon, Esq., Hearing Attorney
Michael Anderson, Administrator
Joyce Thurber, Program Coordinator

OTHERS PRESENT:

William H. Cribb, Jr., Aabstract Pools & Spas, Inc.
Michael Chambers, Esquire
Carolyn B. Cribb
Michael J. Holt, Holt Contracting
H. Michael Bowers, Esquire
Jonathan Bursch, Complainant

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 Lewis Caswell called the meeting to order at 10:05 A.M. with a quorum of members present.

Mr. Caswell stated that the Notice and Agenda for the July 19, 2007 meeting was posted and forwarded in accordance with Section 30-4-80 of the South Carolina Code of Laws, (1976, as amended), relating to the Freedom of Information Act.

(1) Vote of Absent Members:

A motion was made by Mr. Greer to approve the absence of Frank Walker due to an emergency out-of-state. The motion was seconded by Mr. Neely and passed.

A motion was made by Mr. Greer to approve the absence of Wendi Nance due to a scheduled surgery. The motion was seconded by Mr. Neely and passed.

Approval of Agenda: The agenda was reviewed and approved as printed by motion of Mr. Greer, seconded by Mr. Lehman and passed.

Approval of the April 26, 2007 Quarterly Meeting Minutes:

The minutes were reviewed.

Motion: Mr. Lehman made a motion to approve the Minutes of the April 26, 2007 Quarterly Board Meeting. The motion was seconded by Mr. Plyler and passed.

Public Comment: None

Chairman's Remarks: None

Administrator's Remarks:

(1) Effective September 1, 2007, Mr. Anderson reported that he would be assuming the position of Administrator of the Manufactured House Board.

(2) Mr. Anderson stated that he and Wendi Nance would not be attending the NASCLA Conference to be held in Little Rock, Arkansas September 25 – 28, 2007. This is due to LLR lowering what could be paid on hotel rates, resulting in having to stay out of town and renting a car to travel to the conference, thus, incurring out-of-pocket expenses for South Carolina attendees of over \$250.00.

New Business:

(1) Experience Review of Machen H. White, License # RBB 20493, Expiring 6/30/08: Mr. Anderson presented a letter requesting an experience review and submitted a work experience list of projects. Mr. White did not appear.

Following a discussion involving questions about the experience, a motion was made.

Motion: Mr. Lehman moved to deny approval of the experience at this time, based on the information received and additional questions of the Board. Mr. White was not present to answer specific questions. Mr. Neely seconded the motion, and it passed.

(2) Mr. Anderson requested Board clarification of the last sentence regarding the General Contractor Specialty classification Glass and Glazing statute, Section 40-11-410(p), stating 'The Board may require an applicant to pass an examination before licensure as provided by this chapter.' Staff would like a statement from the Board requiring an examination if there is a classification for that work. Following a discussion of the issue, a motion was made.

Motion: Mr. Neely made a motion that a technical examination is required to obtain a Glass & Glazing classification as described in Section 40-11-410 (4) (p). Mr. Plyler seconded the motion, and it was passed.

OLD BUSINESS: None

Motion: There being no further business, Mr. Greer made a motion to adjourn the business portion of the Board meeting to convene the Final Order Hearings scheduled. The motion was seconded by Mr. Plyler and was passed.

VOTE ON ADMINISTRATIVE HEARING OFFICER REPORTS AND RECOMMENDATIONS:

1) Case # 2005-209, CLB vs Cinlor, LLC and Vincent E. Hall, Respondents, License # CLG-109232.

Chairman Lewis Caswell brought the final order hearing to order and introduced participants. The Hearing Officer's Report and Recommendation was presented by the State, represented by Christa Bell, Esquire. The Respondents, Cinlor, LLC and Vincent E. Hall, were not present and were not represented by legal counsel. James T. Tharp was the Hearing Officer for the Administrative Hearing in this matter and was not present.

Issue in Brief: The Respondent was licensed at the time with a building classification (BD) and a Group 2 project limitation of one hundred thousand dollars (\$100,000.00) per project. He requested a building permit to build a single family residence in Moncks Corner, South Carolina in the amount of One Hundred, Seventy-nine Thousand, Six Hundred Thirty-eight dollars and Seventy-six cents (\$179, 638.76), exceeding his general contractor's license project limitation. The Respondent contracted with an unlicensed contractor, Robert M. Welch, to perform the work, for which a license is required.

Mrs. Bell presented the Hearing Officer's Recommendation from the evidentiary hearing held on April 30, 2007, as follows:

1. The Respondent shall pay a fine of \$2,000.00 for two violations totaling \$4,000.00, to be paid within ninety (90) days of the date of this order. The fine shall not be deemed to be paid until it is received by the Board;

2. The Respondent's license is suspended for a period of six (6) months.

Motion: Ms. Lineberger moved to accept the Hearing Officer's Recommendation as written. The motion was seconded by Mr. Greer and was passed.

The hearing was adjourned.

2) Case # 2006-196, CLB vs Aabstract Pools and Spas, Inc. and William Cribb, Jr.,
License # CLG-15611:

Chairman Lewis Caswell brought the final order hearing to order and introduced participants. The Hearing Officer's Report and Recommendation was presented by the State, represented by Christa Bell, Esquire. The Respondents, Aabstract Pools and Spas, Inc. and William Cribb, Jr. were present and were represented by legal counsel, Michael Chambers, Esquire. Kim Lineberger recused herself as the Hearing Officer in this matter.

Issue in Brief: The Respondent is licensed as a General Contractor with a swimming pool classification, Group 3 project limitation of Three Hundred Fifty Thousand Dollars (\$350,000.00) per project. On April 11, 2002, the Respondent entered into a contract with a residential home owner to build a swimming pool in Moore, South Carolina, in the amount of Sixty-Nine Thousand, Seven Hundred Forty-two Dollars (\$69,742.00). The Contract specified five payments including a ten percent deposit and a final payment due on completion. The Complainant had made three payments and thought insufficient work had been done before the fourth payment was due. The Complainant refused to pay for one year until completion of the pool. The contract specified that the Respondent would cease work and remove all equipment from the job if the payment schedule was not followed. The Complainant charged the Respondent with abandonment.

Mrs. Bell presented the Hearing Officer's Recommendation from the evidentiary hearing held on May 22, 2007, as follows:

1. The matter be dismissed.

Ms. Bell stated that the State will not oppose the Recommendation because the State did not have access to witnesses involved in the civil matter regarding this case.

Michael Chambers, Esquire, counsel for the Respondent, respectfully requested that the Board accept the Hearing Officer's Recommendation.

Motion: Mr. Lehman moved to accept the Hearing Officer's Recommendation for dismissal. The motion was seconded by Mr. Neely and was passed.

The hearing was adjourned.

3) Case # 2007-25, CLB vs Holt Contracting and Michael Holt, Respondents,
License # CLG 102646:

Chairman Lewis Caswell brought the final order hearing to order and introduced participants. The Hearing Officer's Report and Recommendation was presented by the State, represented by Christa Bell, Esquire. The Respondents, Michael J. Holt and Holt Contracting, were present and represented by legal counsel, H. Michael Bowers, Esquire. Board Member, Bill Neely, recused himself as Hearing Officer in this matter.

Issue in Brief: Mr. Holt is licensed as a General Contractor with building and marine classifications, Group 4 (\$750,000) project limitation, License # CLG 102646. He contracted with a home owner on April 7, 2004, to build a pier with a metal roof and boat lift. On or about May 10, 2006 the Respondent admitted to certain misconduct issues for incomplete and substandard work and entered into a Consent Agreement and was sanctioned by the Board and given thirty days to satisfactorily complete the project or be subject to a one year suspension of his license. Following an inspection of the work by the board investigator, a list of things still were found to be incomplete and/or substandard, including no roof on the pier head, no boat lift, no railing, no dock extension to land, among other items. An extension was given to complete the work until September 8, 2006, but the work was not completed due to constant changes from the Complainant according to the Respondent.

Ms. Bell presented the Hearing Officer's Recommendation from the evidentiary hearing held April 19, 2007 as follows:

1. The Respondent's contractor's license should be suspended for a one year period;
2. The Board should adopt the Findings of Fact, Conclusions, and Recommendations of the Disciplinary Hearing Officer and incorporate the same in a Final Order.

Ms. Bell stated that the Respondent's attorney, Michael Bowers, will be protesting the Hearing Officer's recommendation and had submitted a Brief with additional evidence. She stated that she would not object if the Board wanted to consider the additional evidence as long as she had an opportunity to respond. Ms. Robinson, Board Advice Counsel, asked for copies of the Brief to be made and distributed to the Board members for their review and consideration. The Board recessed until the copies could be made. Ms. Bell and Mr. Bowers went into conference regarding the matter.

Back in session, Ms. Bell stated that she was prepared to go forward. There was an initial Consent Agreement between the Board and the Respondent. This Hearing is being held because there was a violation of that Consent Agreement. If it would not offend the Board, she asked for a modification to the Recommendation as a joint motion. Ms. Bell thought the public interest would be served to consider this joint modification as follows:

1. Modify the Recommendation sanction to suspend the license for one year, immediately stayed upon putting a specific dollar amount of money into an escrow account for the boat lift and electrical hookup and completing the work within thirty (30) days;
2. The Respondent would be placed on probation for one year, and not have any credible complaints or violations of the practice act against him or the license will be suspended.

Mr. Bowers suggested that a Consent Agreement be drawn up putting a monetary amount on the two items to be completed for the reasonable cost of the electrical work not to exceed \$1,000.00, in addition to the amount stated in the contract for the boat lift. He also suggested stating in the Consent Agreement what matters had been resolved so there wouldn't be any confusion.

Ms. Robinson stated that the modification would not be a Consent Agreement, but a Final Order of the Board. She further reiterated that the Findings of Fact and Conclusions of Law would be accepted, and that just the sanction of the Hearing Officer's Report and Recommendation would be modified, if the Board approved.

Motion: Mr. Greer moved to go into Executive Session to seek legal counsel. The motion was seconded by Mr. Lehman and passed.

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

Motion: Mr. Greer moved to accept the Findings of Fact and Conclusions of Law and restated the modified sanction to the Hearing Officer's Recommendation as follows:

1. Modify the Recommendation sanction to suspend the license for one year, immediately stayed upon putting a specific dollar amount of money into an escrow account for the boat lift and electrical hookup and completing the work within thirty (30) days. The reasonable cost of the electrical work should not exceed \$1,000.00, in addition to the amount stated in the contract for the boat lift;

2. The Respondent would be placed on probation for one year, and not have any credible complaints or violations of the practice act against him or the license would be suspended.

The motion was seconded by Mr. Plyler and passed.

The hearing was adjourned.

The Board Meeting was adjourned by motion of Mr. Greer, seconded by Mr. Lehman and passed.

The next regularly scheduled meeting of the Contractors' Licensing Board will be held on October 18, 2007, at the Kingstree Building in Room 201-03 at 10:00 A.M., Synergy Business Park, 110 Centerview Drive, Columbia, South Carolina 29210.

Respectively submitted,

Michael Anderson, Administrator