

STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
CONTRACTORS' REGISTRATION AND LICENSING BOARD
560 JEFFERSON BOULEVARD, SUITE 200
WARWICK, R.I. 02886

In the Matter of:

Ham, Inc. d/b/a 911 Restoration of
Rhode Island, BTTR, LLC, and
Michael Bresette,

Respondents.

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DBR No. 21CRLB001

ORDER RE: EMERGENCY SUSPENSION

I. INTRODUCTION

This matter concerns the above-captioned respondents: Ham, Inc. d/b/a Restoration of Rhode Island (“Ham”); BTTR, LLC (“BTTR”); and Michael Bresette (“Bresette”) (collectively, “Respondents”). BTTR holds a registration as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* Prior to the initiation of this action, Ham had been registered as a contractor, but that registration had expired. Bresette is the owner and operator of both Ham and BTTR and was the applicant for BTTR’s registration.

On February 22, 2021, the director of the Department of Business Regulation (“Department”) issued an emergency order (“Emergency Order”) summarily suspending the contractor registration of BTTR as well as an order to show cause why BTTR’s registration should not be revoked.¹ Pursuant to R.I. Gen. Laws 42-6-8, the director in the Emergency Order appointed the undersigned as hearing officer for the purpose of conducting the hearing and rendering decision in this matter. The Emergency Order suspended the contractor registration of

¹ This order also served as an order to show cause to deny any application by Ham for renewal or reinstatement as a contractor.

BTTR for 30 days and prohibited it from entering into new written and/or verbal agreements with consumers to provide services. As Ham's registration was already expired, the Emergency Order provided that no work could be done on its behalf.

As a result of the Emergency Order, a prehearing hearing conference was held, and the parties entered into a Consent Decree ("Consent Decree") dated March 24, 2021. The Consent Decree lifted the Emergency Order and provided for BTTR's conditional registration as a contractor. The Consent Decree provided as follows:

Should the [p]arties be unable to resolve any alleged violations of statute/regulations, or the terms of this Consent Decree, upon notice to the Respondents, the SBO² may unilaterally withdraw from this Consent Decree and initiate further enforcement proceedings, including, but not limited to the reinstatement of a summary suspension.

Further, the Consent Decree provided that "the provisions of this Consent Decree shall be applicable for one year from the date it is executed by the Hearing Officer, or until such time as this Consent Decree is superseded by a subsequent Order."

The director of the Department suspended the BTTR's registration pursuant to R.I. Gen Laws 5-65-10(f). This provides as follows:

(f) In emergency situations, when a registrant is acting to the detriment of the health, welfare, and safety of the general public, the director of the department of business regulation, or the director's designee, may revoke or suspend a registration without a hearing for just cause for a period of thirty (30) days.

On February 17, 2022, the Department filed its withdrawal from the Consent Decree and filed a motion for the immediate suspension of registration and motion to consolidate this case with five (5) new notices of violations issued in January, 2022. A status conference had already

² This refers to the State Building Office of which the Contractor Registration and Licensing Board is part. The State Building Office is in the Division of Building, Design and Fire Professionals within the Department. R.I. Gen. Laws § 5-84-1 *et seq.*

been scheduled for February 18, 2022. The Respondents requested a continuance in order to have time to respond to the Department's motion.

On February 18, 2022, it was agreed and ordered by the undersigned that the matter would be continued for two (2) weeks. However, it was agreed by the parties and so ordered by the undersigned that during these two (2) weeks, the Respondents would not solicit any customers during this period. A hearing was scheduled for March 4, 2022. Email of February 18, 2022. On request of the Department, the undersigned clarified that no new business meant no new business no matter how it originated. In other words, the Respondents could not seek new business nor accept new business. Email of February 23, 2022.

On March 3, 2022, the Department filed a supplemental memorandum supporting its motion for an emergency suspension. The Department provided three (3) new reports for inspections conducted after February 18, 2022, and the Department argued that these were of new jobs commenced by BTTR after the February 18, 2022 order.

On March 4, 2022, the parties agreed to continue this matter to March 8, 2022 for the purpose of seeing if a resolution could be reached. The Respondents agreed to provide the Department with customer list by March 7, 2022. It was again ordered that the Respondents could not engage in any new business. Email dated March 4, 2022.

On March 8, 2022, a hearing was held on the Department's motion for an emergency suspension. The Department presented testimony. Both parties were represented by counsel and filed post-hearing briefs.

II. JURISDICTION

Pursuant to R.I. Gen Laws 5-65-10(f), the director suspended the registrations of the Respondents in the Emergency Order. The undersigned was delegated the authority to hear this matter pursuant to R.I. Gen. Laws § 42-6-8.³

At the March 8, 2022 hearing, the Respondents argued that the undersigned did not have jurisdiction to hear and rule on the motion for an emergency suspension as that is a Department matter. The Department argued that the undersigned has jurisdiction pursuant to the director's delegated authority to the undersigned.

The director clearly has authority under the Contractor Registration Board statute and the Administrative Procedures Act to issue a new emergency suspension of the Respondents' registrations. However, in this matter, the undersigned also has been delegated to hear this matter as a designee of the director. The initial suspensions as well as the administrative hearing (seeking to revoke registration) were delegated to the undersigned so that the undersigned has been authorized to hear and rule on this matter by the director. R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-65-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 440-RICR-10-00-1 *General Rules and Regulations for Applications, Registration, Licensing, Claims, Violations, and Administrative Hearings* ("Regulation").

III. MATERIAL FACTS AND TESTIMONY

At the March 8, 2022 hearing, Julietta Georgakis, Deputy Director, Building, Design and Fire Professionals, testified on behalf of the Department. She testified she oversees a division which includes the Board and oversees the enforcement and monitoring of contractors. She

³ See also R.I. Gen. Laws 5-6-1(7) which provides that "'[h]earing officer' means a person designated by the director of the department of business regulation or the director's designee to hear contested claims or cases, contested enforcement proceedings, and contested administrative fines, in accordance with the 'administrative procedures act,' chapter 35 of title 42."

testified the Board has about 10,000 registered contractors and issues about 80 to 100 violations a month and about 10 suspensions a month. On cross-examination, she testified that she had no first-hand knowledge of these cases.

Matthew Lambert (“Lambert”), Principal State Building Code Official, testified on behalf of the Department. He testified that he conducted all the homeowner inspections in person for the January, 2022 notices of violations. See Department’s Exhibits One (1) to Ten (10) (five (5) inspection reports and the five (5) resulting notice of violations). He testified some inspections were as a result of checking the Respondents’ customer list provided as part of the Consent Decree and some were in response to complaints. He testified these jobs were either for mitigation or mitigation and construction. He testified that for example, Exhibit Two (2) related to a leak in the basement and standing water and when he went out three (3) weeks after BTTR’s contract, there was still standing water in the basement. He testified that for Exhibit Four (4), he found that BTTR did not pull permits, failed to complete work, breached the contract, and performed negligent and/or improper work.

Lambert testified that Exhibits 11, 12, and 13 were inspections conducted of work commenced by BTTR after February 18, 2022. He testified that as the supervisor of the Board investigators, he sent his staff to conduct inspections. He testified that for Exhibit 11, he and another inspector conducted inspections of that job. He testified that he spoke to the workers there and found that BTTR was performing the work. He testified that for Exhibit 12, the investigator went to the job site where the homeowner stated he contacted BTTR because his garage had been hit by a car. For Exhibit 13, he testified that BTTR was demolishing a bathroom.

On cross-examination, Lambert testified that of the five (5) January violations, two (2) arose from complaints and three (3) were checkups from the Respondents’ customer list. He testified

that mitigation is the removal of water. He testified that pretty much everything else is construction so if one removes sheet rock, that is construction. He testified that making the garage safe after being hit by a car is construction. He testified mitigation will bleed into construction. He testified that his understanding would be that emergency work would need to be done right away.⁴

IV. DISCUSSION

The issue before the undersigned is not whether the Respondents committed specific statutory violations but whether a new summary suspension should issue with the withdrawal by the Department from the Consent Decree. Thus, the issue is whether the Department has the evidence to support a finding that the Respondents are acting to the detriment of the health, welfare, and safety of the general public.

A review of the Emergency Order shows that the Department cited to 13 different jobs that the Respondents had been retained for and worked on and for which the Department alleged numerous and various violations by the Respondents of R.I. Gen. Laws § 5-65-10. These violations included, but are not limited to 1) not providing written contracts which is statutorily required for over \$1,000; 2) not completing work; 3) work performed was negligent and incompetent; 4) dishonesty (e.g. billed insurance company and/or homeowner for work not performed); 5) not pulling permits; 6) violating State building code; 7) breaching contracts; and 8) repeated bad acts. The same types of allegations are being made by the Department in the January, 2022 notices of violations. See Emergency Order and Exhibits One (1) to Ten (10).

⁴ The Respondents had a continuing hearsay objection to Lambert's testimony especially in relation to what he was told by homeowners and the Respondents' employees. Lambert personally inspected the five (5) January, 2022 notices of violations matters. He personally inspected one of the post February 18, 2022 matters and introduced the reports made by his staff. The Respondents argued that the homeowners could have testified. However, the January, 2022 violations relate to the statutory violations of the jobs being performed by the Respondents and those are predicated on the Department's inspections. The reports by the other inspectors for the post February 18, 2022 jobs were admitted into evidence. Pursuant to R.I. Gen. Laws § 42-35-10, the undersigned allowed the testimony. *Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review*, 854 A.2d 1008, 1018-19 (R.I. 2004).

On February 18, 2022, it was ordered and agreed that the Respondents would not solicit new business. The undersigned clarified that order on February 23, 2022 that no new work was to be performed by the Respondents regardless of how it could be obtained.

The Department presented evidence that the Respondents continued to engage in work after February 18, 2022 that required a contractor registration pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*⁵ Exhibits 11, 12, 13 (reports and photographs). The Respondents referred to these as mitigation contracts in their brief but presented no testimony at hearing as to this belief. The Respondents also argued that one contract was signed on February 18, 2022, the day of the hearing.

Exhibit 11 indicated that contact was made by the homeowner with BTTR on February 28, 2022, after noticing a leak over February 26-27, 2022. The report indicated that this was a plumbing issue for which BTTR is apparently not licensed. The photographs attached to the inspector's report showed parts of a cut out ceiling. Exhibit 12 included a police report which showed that the homeowner's garage was hit by a vehicle on February 24, 2022. The photographs showed and the report indicated that the garage was being shored up by four-by-four posts and bracing. Exhibit 13 indicated that the homeowner said the pipe burst on February 18, 2022, and work commenced on demolition in the bathroom on February 21, 2022. A copy of this contract was not produced but the Department hearing was held on the morning of February 18, 2022. The

⁵ R.I. Gen. Laws § 5-65-1 provides as follows:

Definitions.

(3) (i) "Contractor" means a person who, in the pursuit of an independent business, undertakes or offers to undertake or submits a bid, or for compensation and with or without the intent to sell the structure arranges to construct, alter, repair, improve, move over public highways, roads, or streets or demolish a structure or to perform any work in connection with the construction, alteration, repair, improvement, moving over public highways, roads, or streets or demolition of a structure, and the appurtenances thereto. For the purposes of this chapter, "appurtenances" includes the installation, alteration, or repair of wells connected to a structure consistent with chapter 13.2 of title 46. "Contractor" includes, but is not limited to, any person who purchases or owns property and constructs, or for compensation arranges for the construction of, one or more structures.

report indicated that the homeowner stated that work not related to the bathroom and the pipe was commenced on February 25, 2022. While it is unclear whether this contract was entered into prior to the Department's hearing, the report indicated that after the pipe burst, the homeowner reached out to an online service and then was matched to BTTR and then the homeowner reached out to BTTR. It is highly unlikely that was all completed prior to the morning of February 18, 2022. The work being performed for Exhibit 13 is clearly contractor work.

The Respondents did not deny that they were engaged in the work reflected in Exhibits 11, 12, and 13. Instead, BTTR argued that its conduct does not equate to the type of substantive harm to the public requiring an emergency shut down of an entire business. BTTR argued that it is trying to sell the business and it would harm its current customers – the public – to shut it down.

The Department argued that the Respondents engaged in numerous violations as detailed in the Emergency Order. The Department argued that while under the Consent Decree, the Respondents continued to violate R.I. Gen. Laws § 5-65-1 *et seq.* and then violated the February 18, 2022 order.

The Respondents were subject to the Emergency Order and then the Consent Decree. The Department withdrew from the Consent Decree and sought a new emergency suspension. Despite the Department withdrawing from the Consent Decree and the Respondents agreeing and the Respondents being ordered not to engage in any new business after February 18, 2022, the Respondents chose to continue to take on new business. Exhibits 11, 12, and 13.

The Respondents' choice to violate a Department order, at least two (2) times but more likely three (3) times by engaging in new work is extremely troubling.⁶ The Respondents are facing numerous serious allegations relating to alleged substandard work and dishonest practices

⁶ As indicated in the Respondents' briefs, the parties had been discussing a resolution to this matter of either BTTR winding up its business or selling its business.

including that such violations were committed after entering into the Consent Decree. Nonetheless, on February 18, 2022, they were allowed to continue to work on their current customers pending a resolution of the matter or a hearing on the Department's new motion for emergency order. The Respondents' choice to ignore a Department order in such a fashion raises issues regarding their competency, honesty, reliability, and ability. Thus, separate and apart from the new post Consent Decree January allegations, the choice by the Respondents to violate the Department order supports a finding that the Respondents are acting to the detriment of the health, welfare, and safety of the general public.

V. CONCLUSION

Therefore, this order is a subsequent order to the Department's withdrawal from the Consent Decree.

Pursuant to R.I. Gen Laws 5-65-10(f), the Respondents' registrations – in particular BTTR's - are immediately suspended for a period of 30 days.⁷

This means effective of the date of this order the Respondents are not to engage in any work that requires registration under R.I. Gen Laws 5-65-1 *et seq.*

Effective immediately, the Respondents shall provide an updated list to the Department of their current case list.

The Respondents shall make provisions to transfer their jobs to other registered contractors and shall notify and inform the Department of the new contractors who will be taking over the jobs.⁸

⁷ It is noted that the Administrative Procedure Act's authority to suspend licenses is not limited to 30 days. However, this action is being taken under the Board's statutory authority which limits suspension to up to 30 days.

⁸ It is noted that this emergency order is for 30 days so that the Respondents could try to shut down their jobs and wait for the suspension to be lifted; however, it is not clear whether the suspension would be lifted after 30 days. Regardless, the customers need to have their jobs completed in a timely manner and not be delayed by 30 days. See R.I. Gen Laws 5-65-10(f) and R.I. Gen. Laws § 42-35-14. .

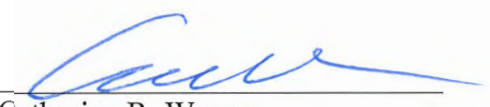
In the Department's discretion, it may agree to conditionally register BTTR for a short period of time per job for the completion of certain jobs on its outstanding case list.

The Department may take any steps it deems necessary to ensure the implementation of this emergency suspension of registration.

The January, 2022 notice of violations are consolidated with this matter. A full hearing on this matter shall be scheduled on the Department's order to show cause seeking to revoke and deny reinstatement of the Respondents' registrations. If the parties need to conduct any discovery for the January, 2022 violations, a discovery schedule shall be set; otherwise, a full hearing will be held.⁹

Issued by R.I. Contractors' Registration and Licensing Board.

Entered: March 16, 2022


Catherine R. Warren
Hearing Officer

⁹ A hearing will not need to be held if this matter is resolved.

NOTICE OF APPELLATE RIGHTS

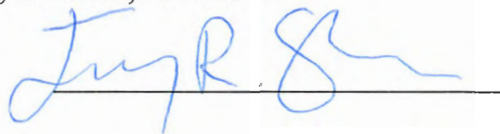
Pursuant to R.I. Gen. Laws § 5-65-20 and § 1.13.2 of the Regulation, decisions by a hearing officer are appealed to the full Board by requesting an appeal in writing to the Board within twenty (20) days of the date of mailing or issuance of this decision.

Any appeal to the Board shall give the specific reasons why a party believes that the findings of the hearing officer are incorrect, based on testimony or evidence received at the hearing. No new testimony or evidence will be accepted. The Board does not rehear any issues but can only accept argument as to why a wrong decision may have been reached in this case. If an appeal is filed, the parties will be notified of the date, time, and location of the Board's meeting. Either party may appear before the Board to give oral argument. Failure of either party to appear before the Board may result in an adverse decision against the party.

However, this order may be considered an interlocutory order of the Department of Business Regulation pursuant to R.I. Gen. Laws § 42-35-15. Pursuant to R.I. Gen. Laws § 42-35-15, an interlocutory order may be appealed to the superior court sitting in and for the county of providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in superior court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.¹⁰

CERTIFICATION

I hereby certify on this 11th day of March, 2022 that a copy of the within Order and Notice of Appellate Rights were sent by electronic delivery to and by first class mail, postage prepaid to William Devereaux, Esquire, and William O'Gara, Esquire, Pannone Lopes Devereaux & O'Gara, 1301 Atwood Avenue, Johnston, R.I. 02919 and by electronic delivery to Thomas Fay, Esquire, and by electronic delivery to Matthew Gendron, Esquire, and Ania Zielinski, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. and to Julietta Georgakis, Deputy Director, James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, and Matthew Lambert, State Building Code Official, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886.



¹⁰ The undersigned cannot grant appeal rights where none exist so that such determination over any appeal rights lies with the Superior Court, if appealed.