



State of Rhode Island
DEPARTMENT OF BUSINESS REGULATION
Division of Building, Design and Fire Professionals
Contractors' Registration & Licensing Board
560 Jefferson Blvd, Suite 100
Warwick, Rhode Island 02886
Tel: (401) 921-1590, Fax: (401) 889-5535

<p>IN THE MATTER OF:</p> <p>RONALD TARI RST ENTERPRISES, INC.</p> <p>APPELLANT.</p>	<p>CRLB CLAIM #10633</p>
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CRLB DECISION AND ORDER

INTRODUCTION

The Contractors' Registration and Licensing Board ("CRLB") of the Department of Business Regulation ("DBR") considered the appeal in the above-captioned matter on Wednesday, March 9, 2022, at approximately 1:45 p.m. during an open meeting of the CRLB held virtually via Zoom Webinar pursuant to Governor Daniel J. McKee's Executive Order 22-20. There was a quorum of the CRLB and the following members of the CRLB were present and participating: Tom Furey (Chair), Carol O'Donnell (Vice Chair), Paul Brunetti, Ronald Caniglia, Elise Geddes, David Grudzinski, Katherine Kohm, James Koloski, Jhonny Leyva, Jacqueline Pagel and Tony Raposo.

Amy C. Stewart, Esq., was present as legal counsel to the CRLB for this appeal.

Mr. Tari appeared on behalf of himself and RTS Enterprises, Inc.

Ania Zielinski, Esq., appeared on behalf of DBR.

JURISDICTION

The Appellant filed a timely appeal of the Hearing Officer's Decision and Order pursuant to R.I. Gen. Laws § 5-65-20 and 440-RICR-10-00-1, § 1.13.2. The Hearing Officer's Decision and Order in this matter was issued on January 18, 2022, and is attached hereto as Exhibit A.

ISSUE

Whether the Hearing Officer's Decision and Order should be affirmed, dismissed, modified and/or the matter remanded for further proceedings.

SUMMARY OF THE ARGUMENTS

Starting with the Appellant, the parties were each given fifteen (15) minutes to present their arguments to the CRLB.

Mr. Tari stated that he cannot pay the money back to the Complainant and that COVID-19 destroyed his business. He stated that the Complainant approached him about the project. Mr. Tari argued that it is in the Complainant's best interest for him to have a company complete the project as soon as possible. He stated that the Hearing Officer put the Complainant in a bad position with having an open insurance claim and not allowing Mr. Tari to complete the work. Mr. Tari stated that he is not in business anymore, but he found another company who could complete the work.¹

Mr. Tari stated that he does not dispute the factual findings in the Hearing Officer's Decision and Order.

Attorney Zielinski noted that Mr. Tari is not challenging anything in the Hearing Officer's

¹ The Hearing Officer's Decision and Order states in Section IV on page 2: "The Complainant testified that he has lost faith and has no trust in the Respondent [the Appellant] performing the work. The Complainant testified that he has received a roofing referral from the insurance company and wishes to go forward with this new company to perform the work. The Complainant testified that he just wants his \$18,212.35 returned from the Respondent [Appellant]."

Decision and Order in his oral argument except that he would rather have a company perform the work than return the money to the Complainant. She drew the Board's attention to the Conclusions of Law section on page 4 of the Hearing Officer's Decision and Order. She went through each paragraph and argued that all but paragraph 2 was supported by the evidence in the record. She informed the CRLB that Conclusions of Law paragraph 2 is not supported by evidence in the record because Mr. Tari was a registered contractor during the time relative to the complaint. Attorney Zielinski also argued that the associated fine with paragraph 2 should be waived.

Attorney Zielinski reiterated that Mr. Tari took the deposit money and insurance payment from the Complainant and did not perform any work on the contract. She stated that the money should be returned to the Complainant.

In response to Member Koloski, Mr. Tari stated that he put the money in the bank, and it dried up during his struggles resulting from COVID-19. Mr. Tari reiterated that he wants to put the roof on.

STANDARD OF REVIEW

Consistent with R.I. Gen. Laws § 5-65-20, 440-RICR-10-00-1.13.2 and the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, the CRLB will affirm the hearing officer's decision if it is supported by substantial evidence in the record. The CRLB will not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact. Alternatively, the CRLB may dismiss or modify the hearing officer's decision if it was arbitrary or capricious, or affected by other error of law. The CRLB may remand the case for further proceedings, if applicable.

FINDINGS OF FACT

The entirety of the Hearing Officer's Decision and Order (Exhibit A) is hereby adopted and incorporated herein by reference.

CONCLUSION AND ORDER

After reviewing the record and considering the arguments presented in this matter, the CRLB determined that the following Conclusions of Law, 1, 3, 4, and 5, are supported by substantial evidence in the record:

1. The Complainant and Respondent entered into a valid and binding contract on March 4, 2021.
3. The Respondent's contract failed to provide notice of right of recession as stipulated in all pertinent Rhode Island consumer protection laws and/or R.I. Gen. Laws § 5-65-27, if applicable. (Age 60 or older), in violation of R.I. Gen. Laws § 5-65-3(p).
4. The Respondent is in breach of the contract with Complainant, in violation of R.I. Gen. Laws § 5-65-10(a)(11).
5. The Respondent failed to complete a project for construction, in violation of R.I. Gen. Laws § 5-65-10(a)(14).

The CRLB further determined that the Conclusion of Law 2 is not supported by substantial evidence in the record because the Appellant did not violate R.I. Gen. Laws § 5-65-10(a)(10) as he was a registered contractor during all times relevant to this complaint. Therefore, the facts do not support a violation of this statutory section. Additionally, the penalty associated with this violation should also be waived.

Accordingly, upon motion made by Tom Furey and duly seconded by Carol O'Donnell, it was unanimously

VOTED: To modify the Hearing Officer's Decision and Order as follows.

To Affirm the Hearing Officer's Decision and Order as to:

1. Section VIII, Conclusions of Law, paragraphs 1, 3, 4 and 5; and
2. Section IX, Decision and Final Order, paragraphs 2, 3, 4, and 5.

To Reject the Hearing Officer's Decision and Order as to:

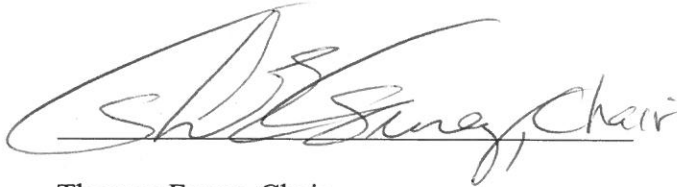
1. Section VIII, Conclusions of Law, paragraph 2; and
2. Section IX, Decision and Final Order, paragraph 1.

ROLL CALL VOTE:

AYES: James Koloski, Jhonny Leyva, Tony Raposo, Ronald Caniglia, Paul Brunetti, Katherine Kohm, Jacqueline Pagel, Elise Geddes, David Grudzinski, Carol O'Donnell and Tom Furey (Chair)

NAYS: None

Accordingly, the Hearing Officer's Decision and Order is hereby MODIFIED.



Thomas Furey, Chair
Contractors' Registration & Licensing Board
Department of Business Regulation

3/10/2022
Date

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES A FINAL ORDER OF THE CONTRACTORS' REGISTRATION AND LICENSING BOARD OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS 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.

CERTIFICATION

I hereby certify on this 10th day of March 2022, that a copy of the within CRLB Decision and Order was sent by email and first class mail, postage prepaid to the following:

1. Ronald Tari, RST Enterprises, Inc., 1291 Plainfield Street, Johnston, RI 02919

AND BY EMAIL TO:

1. Ronald Tari, rtari8777@gmail.com
2. Ania Zielinski, ania.zielinski@dbr.ri.gov
3. James Cambio, james.cambio@dbr.ri.gov
4. Donna Costantino, donna.costantino@dbr.ri.gov
5. Julietta Georgakis, Julietta.georgakis@dbr.ri.gov

Diane L. Paravisini

III. ISSUE

Whether the Respondent has abandoned the project, breached the contract, and is subject to the assessment of return of deposit, fines, and/or penalties, pursuant to R.I. Gen. Laws Chapter 5-65.

IV. MATERIAL FACTS AND TESTIMONY

The Complainant appeared for the hearing.

After having been sworn, the Complainant testified that he entered into a contract with the Respondent, RST Enterprises, Inc. on March 4, 2021 to remove and replace the entire roof, including materials and labor for a total cost of \$18,212.35. The Complainant testified that he provided the Respondent with a check in the amount of \$1,000.00 on March 4, 2021 for the insurance deductible. The Complainant testified that Foremost Insurance Company provided him with a check in the amount of \$17,212.35 dated May 20, 2021 which he then signed over to the Respondent. The Complainant testified that both checks were deposited. The Complainant testified that the Respondent never had any materials delivered, nor did the Respondent commence the project of construction. The Complainant testified that the Respondent was giving him one excuse after another as to why he was unable to start the job. The Complainant testified that he has lost faith and has no trust in the Respondent performing the work. The Complainant testified that he has received a roofing referral from the insurance company and wishes to go forward with this new company to perform the work. The Complainant testified that he just wants his \$18,212.35 returned from the Respondent.

Investigator Lambert testified and it was determined that the Complainant's entire testimony has been substantiated. It was also determined that the Respondent is in violation of R.I. Gen. Law §5-65-10(a) (10) deposits received by a contractor and ordered returned are not considered a monetary award when no services or supplies have been received. Additionally, the Respondent's contract failed to provide notice of right of recession as stipulated in all pertinent Rhode Island consumer protection laws in violation of R.I. Gen. Law § 5-65-3(p), and the Respondent failed to complete a project for construction, violating R.I. Gen. Law §5-65-10(a)(14).

The Respondent appeared for the hearing.

After having been sworn, the Respondent testified that everything the Complainant testified to is true. The Respondent testified that he is totally responsible for what has occurred and that he had never ran with anyone's money, and that this COVID situation "knocked him out of it". The Respondent testified that all he wants to do is complete the roof job. The Respondent testified that he is scheduled to go there on or before February 4, 2022 to begin the roof job, weather dependent. The Respondent testified that the responsibility falls on him, and that he has received a total amount of \$18,212.35 from the Complainant. The Respondent testified that he has lived up to every obligation he has had with the CRLB, and he fully intends on going forward with this job, and that all he wants is for this debacle to end.

V. EXHIBITS

The Complainant presented the following evidence;

- 1.) Copy of check #2186 made payable to “Ron Tari” totaling \$1,000.00 dated March 4, 2021.
- 2.) Copy of check #1629938996 made payable to “Daniel Fernandez” totaling \$17,212.35 dated May 5, 2021.

The Respondent presented the following evidence;

- 1.) N/A

VI. STANDARD OF REVIEW

For formal or informal administrative adjudications, the initial burdens of production and persuasion rest with the moving party. Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probable than false. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence.

VII. FINDINGS OF FACT

After hearing the testimony offered at hearing, and in due consideration of the evidence presented the undersigned Hearing Officer makes the following findings of fact:

1. The Complainant is the owner of property located at 16 Osborn Street, Providence, RI 02908.
2. The Respondent is a Contractor who is registered, or required to be registered, with the CRLB pursuant to R.I. Gen. Law §5-65-3.
3. The PARTIES entered into a written contract on March 4, 2021, for a roofing renovation to the Complainant’s home located at 16 Osborn Street, Providence, RI 02908.
4. Pursuant to the terms of the contract, work never commenced, nor did the Respondent have any materials delivered to the property.
5. The Respondent deposited one check totaling \$1,000.00 made payable to “Ron Tari” dated March 4, 2021 and deposited a second check totaling \$17,212.35 made payable to “Daniel Fernandez” dated May 5, 2021.
6. The Respondent failed to commence a project of construction.
7. The Respondent’s contract failed to provide notice of right of recession as stipulated in all pertinent Rhode Island consumer protection laws.

8. The Respondent breached the contract with Complainant and failed to complete a project for construction.
9. On October 22, 2021 Complainant timely filed a Statement of Claim with the CRLB.
10. A CRLB Investigator investigated the matter on November 19, 2021 and was unable to informally resolve the matter.
11. A hearing was scheduled January 18, 2022, with notice sent on December 17, 2021.
12. The hearing was held on January 18, 2022.

VIII. CONCLUSIONS OF LAW

Based on the foregoing finding of fact, the relevant statutes, and applicable regulations, the Hearing Officer makes the following Conclusions of Law.

1. The Complainant and Respondent entered into a valid and binding contract on March 4, 2021.
2. The Respondent has violated R.I. Gen. Law §5-65-10(a) (10) deposits received by a contractor and ordered returned are not considered a monetary award when no services or supplies have been received.
3. The Respondent’s contract failed to provide notice of right of recession as stipulated in all pertinent Rhode Island consumer protection laws and/or § 5-65-27, if applicable. (Age 60 or older), in violation of R.I. Gen. Law § 5-65-3(p).
4. The Respondent is in breach of the contract with Complainant, in violation of R.I. Gen. Law §5-65-10(a)(11).
5. The Respondent failed to complete a project for construction, in violation of R.I. Gen. Law §5-65-10(a)(14).

IX. DECISION AND FINAL ORDER

Based on the foregoing finding of fact and conclusions of law, the Hearing Officer issues the following Decision and Final Order for fines and action on the Respondent’s Registration #44730.

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|---------------------|------------------------|
| 1. §5-65-10(a) (10) | \$1,000.00 fine |
| 2. § 5-65-3(p) | \$1,000.00 fine |
| 3. §5-65-10(a)(14) | \$1,000.00 fine |

Total Fine Amount: \$3,000.00

4. The Respondent is ordered to reimburse the Complainant the entire deposit in the amount of \$18,212.35.

5. Additionally, the Respondent's Registration #44730 is Suspended effectively immediately and shall remain Suspended until all outstanding Claims and Violations have been complied with and re-instatement is provided by the Board.

Date: January 18, 2022

Joseph Lewis

This Decision and Final Order may be appealed, in writing, to the Full Board within twenty (20) days from the date of the mailing of this Final Order. Failure to comply with a Final Order may result in the imposition of additional fines, action on registration/licensure, and possible criminal charges pursuant to RIGL §5-65-19.

Payment is due with twenty (20) days, unless otherwise agreed to by the Parties and the Board.

CERTIFICATION

In accordance with R.I. Gen. Laws §5-65-6, I Joseph Lewis hereby certify on January 18, 2022 that a copy of the within Decision and Final Order was deposited in the USPS and sent Certified to the last known address of record of the parties.

Daniel Fernandez 16 Osborn Street Providence, RI 02908	Ronald Tari RTS Enterprises, Inc. 1291 Plainfield Street Johnston, RI 02919	
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Joseph Lewis