

Providence

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:**

**Melvin R. Noriega Arevalo,  
Melvin Power Wash,**

**Respondent.**

---

:  
:  
:  
:  
:  
:  
:  
:

**CRLB No. V-6148**

**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on March 31, 2022 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to Melvin R. Noriega Arevalo and Melvin Power Wash (“Respondent”). The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.* A hearing was scheduled for May 2, 2022 at which time the Respondent did not appear. Pursuant to R.I. Gen. Law § 5-65-6 and § 1.15.1 of 440-RICR-10-00-1 *General Rules and Regulations for Applications, Registration, Licensing, Claims, Violations, and Administrative Hearings* (“Regulation”), service may be made by first-class mail or certified mail and service is complete upon mailing when sent to the last known address of the party. In this matter, the Notice was sent to the Respondent’s last known address by first class and certified mail.<sup>1</sup> Since the

---

<sup>1</sup> Donna Costantino, Associate Director, testified on behalf of the Board. She testified that the Notice was sent by first class and certified mail to the Respondent’s home address and business address on record with the Department. She testified that the certified Notice sent to the Woonsocket (company) address was not claimed and the Notice sent by first class mail to the company address was returned. Department’s Exhibit Four (4) (United States Post Office tracking sheet showing the company address Notice was unclaimed) and Five (5) (returned to sender from company address); and Six (6) (Respondent’s addresses on record with Department). She testified that the Notices sent to the Respondent’s home address were not returned to the Department. She testified that the Notice was also sent to the email address that was used by the Respondent to correspond with the Board inspector.

Respondent was adequately noticed of hearing, a hearing was held before the undersigned on May 2, 2022.<sup>2</sup> Additionally, § 1.17 of the Regulation<sup>3</sup> provides that a default judgment may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party. The Board was represented by counsel who rested on the record.

## **II. JURISDICTION**

The administrative hearing was held pursuant to 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*.

## **III. ISSUE**

Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a)(12) and (14); R.I. Gen. Laws § 5-65-18; R.I. Gen. Laws § 5-65-27; and/or R.I. Gen. Laws § 5-65-3 when performing work for a homeowner.

## **IV. MATERIAL FACTS**

Based on the pleadings and exhibits entered at hearing, it is undisputed as follows: The Respondent entered in a written contract with a homeowner in North Providence to remove a concrete wall, install a vinyl fence, repair steps, and remove an island. Upon the filing of a complaint by the homeowner with the Board regarding the Respondent's work, the Board conducted an inspection of the Respondent's work. The inspection revealed that the Respondent

---

<sup>2</sup> The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12.

<sup>3</sup> Section 1.17 of the Regulation provides as follows:

If any Party to a proceeding fails to answer a complaint, plead, appear at a prehearing conference or hearing or otherwise fails to prosecute or defend an action as provided by these Rules, the Hearing Officer or Board may enter a default judgment against the defaulting Party or take such action based on the pleadings and/or other evidence submitted by the non-defaulting Party as the forum deems appropriate. Challenge to such an order shall be made as a motion for reconsideration per § 1.15.6 of this Part.

failed to include in the contract a mechanic's lien and the right of rescission for an elderly person. The Respondent failed to complete the project, and his work was negligent and improper. The negligent work included posts set improperly, 15 missing post caps, exposed rebar, and fence caps not installed. See Department's Exhibits One (1) (Notice); Two (2) (September 30, 2021 Board inspection of said homeowner's property); and Three (3) (Notice of Intent to Assess Civil Penalty and Opportunity for Hearing issued to Respondent dated October 4, 2021).

## V. DISCUSSION

### A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998).

### B. **Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required to prevail. *Id.* See *Lyons v. Rhode*



*Island Pub. Employees Council 94*, 559 A.2d 130 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

### C. Relevant Statutes

R.I. Gen. Laws § 5-65-10 provides in part as follows:

(a) The board or office may revoke, suspend, or refuse to issue, reinstate, or reissue a certificate of registration if the board or office determines, after notice and opportunity for a hearing:

\*\*\*

(12) That the registrant performed negligent and/or improper work.

\*\*\*

(14) That the registrant has failed to complete a project(s) for construction or willfully failed to comply with the terms of a contract or written warranty.

\*\*\*

(19) That the registrant has violated any of the provisions of chapter 3 of title 25; 3, 12, 14, 36, or 50 of title 28; or 13 of title 37. A finding that the registrant has violated any of those chapters shall not be grounds for imposition of a monetary penalty under subsection (c) below.

\*\*\*

(c)(1) For each first violation of a particular section of this chapter or any rule or regulation promulgated by the board, a fine not to exceed five thousand dollars (\$5,000) may be imposed after a hearing by the board. Provided, further, that the board, at its discretion, may, after a hearing, impose an additional fine up to but not to exceed the face value of the contract or the actual damages caused by the contractor, whichever shall be greater. \*\*\* Fines and decisions on claims or violations, inclusive of monetary awards, can be imposed against registered, as well as contractors required to be registered, by the board.

(2) For each subsequent violation of a particular subsection of this chapter or of a rule or regulation promulgated by the board, a fine not to exceed ten thousand dollars (\$10,000) may be imposed after a hearing by the board. \*\*\*

(3) For the first violation of § 5-65-3, only for nonregistered contractors, a fine of up to five thousand dollars (\$5,000) for a first offense and up to ten thousand dollars (\$10,000) for each subsequent offense shall be imposed.

R.I. Gen. Laws § 5-65-3 provides in part as follows:

Registration for work on a structure required of contractor – Issuance of building permits to unregistered or unlicensed contractors prohibited – Evidence of activity as a contractor – Duties of contractors.

\*\*\*

(o) All work performed, including labor and materials, in excess of one thousand dollars (\$1,000) shall be accompanied by a contract in writing. Contracts required pursuant to this subsection shall include a location on or near the signature-line location on or in which the parties to the contract shall initial to evidence the receipt of certain consumer education materials or information approved and provided by the board to the contractor. The educational materials and/or information shall include, but not be limited to, the following notice and shall be provided by the contractor to the homeowner:

NOTICE OF POSSIBLE MECHANIC'S LIEN

To: Insert name of owner, lessee, or tenant, or owner of less than the simple fee.

The undersigned is about to perform work and/or furnish materials for the construction, erection, alterations, or repair upon the land at (INSERT ADDRESS) under contract with you. This is a notice that the undersigned and any other persons who provide labor and materials for the improvement under contract with the undersigned may file a mechanic's lien upon the land in the event of nonpayment to them. It is your responsibility to assure yourself that those other persons under contract with the undersigned receive payment for their work performed and materials furnished for the construction, erection, alteration, or repair upon the land.

\*\*\*

(p) Contracts entered into must contain notice of right of rescission as stipulated in all pertinent Rhode Island consumer protection laws and/or § 5-65-27, if applicable.

R.I. Gen. Laws § 5-65-18 provides as follows:

Mechanics' lien notice. As applicable to and in accordance with § 5-65-1 et seq., all written contracts entered into between a contractor under this chapter and a property owner must contain a statement that the contractor, subcontractors, or materialpersons may file a lien in accordance with the Rhode Island mechanics' lien law, chapter 28 of title 34. In the event that mechanics' liens are filed and there is no serious dispute, but merely a failure to pay, then the board may impose a suspension of the registration until such time as the liens are satisfied, either by payment, deposit of the funds in the registry of the court, or with the board.

R.I. Gen. Laws § 5-65-27 provides in part as follows:

Elderly person in-home solicitation — Right to cancel.  
\*\*\*

(b) In addition to all other methods of consumer protection provided by federal or state law, any contract that originates from an in-home solicitation of an elderly person for the purposes of performing work as a contractor pursuant to this chapter, as well as other disciplines governed by the board pursuant to statutory law, shall provide that any consumer who is an elderly person shall, in the absence of an emergency as defined herein, have three (3) days within which to cancel the in-home solicitation contract for contractor services.

\*\*\*

**D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a); R.I. Gen. Laws § 5-65-18; R.I. Gen. Laws § 5-65-27; and/or R.I. Gen. Laws § 5-65-3**

Based on the testimony and the exhibits entered at hearing, it was undisputed that the Respondent entered into a written contract with said homeowner to remove a concrete wall, install a vinyl fence, repair steps, and remove an island. It was undisputed that the Respondent performed negligent and improper work. It was undisputed that the Respondent did not complete a project of construction. It was undisputed that the Respondent failed to include in the contract a mechanic's lien and the right of rescission for an elderly person. *Supra*.

The Board's inspection found the following violations by the Respondent: 1) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 2) R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction); 3) R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien); and 4) R.I. Gen. Laws § 5-65-3(p) and R.I. Gen. Laws § 5-65-27 (failed to include right of rescission for elderly person). None of those findings were disputed.

**E. Sanctions**

R.I. Gen. Laws § 5-65-10(c) provides for penalties up to \$5,000 for first offences and for penalties up to \$10,000 for subsequent violations. The Board recommended administrative



penalties as follows: 1) \$1,00 for violation of R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 2) \$1,000 for violation of R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction); 3) \$1,000 for violation of R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien); and 4) \$1,000 for violations of R.I. Gen. Laws § 5-65-3(p) and R.I. Gen. Laws § 5-65-27 (failed to include right of rescission for elderly person).

Administrative penalties of up to \$5,000 are allowed for first offenses.<sup>4</sup> No reason was given at hearing that would merit diverging from the recommended administrative penalties for these statutory violations.

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$4,000 is imposed on the Respondent. This represents as follows: 1) \$1,00 for violation of R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 2) \$1,000 for violation of R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction); 3) \$1,000 for violation of R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien); and 4) \$1,000 for violations of R.I. Gen. Laws § 5-65-3(p) and R.I. Gen. Laws § 5-65-27 (failed to include right of rescission for elderly person).

## **VI. FINDINGS OF FACT**

Based on the foregoing, the undersigned makes the following findings of fact:

1. The Notice was issued on March 31, 2022 by the Board to the Respondent.
2. The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1

*et seq.*

---

<sup>4</sup> No evidence was entered to show that this was not the Respondent's first offense.

3. A hearing was scheduled for May 2, 2022 at which time the Respondent did not appear. As the Respondent was adequately notified, the hearing was held with the Board resting on the record.

4. Pursuant to § 1.17 of the Regulation, the Respondent is declared to be in default for failing to appear at the hearing.

5. The facts contained in Sections I, IV, and V are incorporated by reference herein.

## **VII. CONCLUSIONS OF LAW**

Based on the foregoing, the Respondent violated 1) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 2) R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction); 3) R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien); and 4) R.I. Gen. Laws § 5-65-3(p) and R.I. Gen. Laws § 5-65-27 (failed to include right of rescission for elderly person).

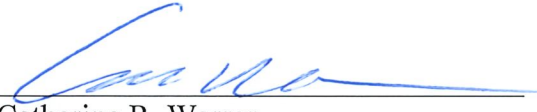
Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$4,000 is imposed on the Respondent. This represents as follows: 1) \$1,000 for violation of R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 2) \$1,000 for violation of R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction); 3) \$1,000 for violation of R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien); and 4) \$1,000 for violations of R.I. Gen. Laws § 5-65-3(p) and R.I. Gen. Laws § 5-65-27 (failed to include right of rescission for elderly person).



Administrative penalties are due 20 days from the execution of this decision.<sup>5</sup>

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

Entered: May 19, 2022

  
Catherine R. Warren  
Hearing Officer

**NOTICE OF APPELLATE RIGHTS**

**Pursuant to R.I. Gen. Laws § 5-65-20 and § 1.13.2 of the Regulation, this decision may be 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 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. If no appeal is filed, payment of the administrative penalties is due within 20 days as stated above.

**CERTIFICATION**

I hereby certify on this 19<sup>th</sup> day of May, 2022 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail to Mr. Melvin R. Noriega Arevalo, Melvin Power Wash, PO Box 3323, Providence, R.I. 02909 and 144 Mason Street, Woonsocket, R.I. 02895 and by electronic delivery to melvinrnoriega@gmail.com and by electronic delivery to James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, Matthew Lambert, Principal State Building Code Officer, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886 and Ania Zielinski, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.



---

<sup>5</sup> Payment should be made to Contractors' Registration and Licensing Board at the above address.