

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: :
: :
Shaun Almeida : :
Precision Hardscaping, : **CRLB No. V-6116**
: :
Respondent. : :
:

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 (“Board” or “Department”) to Shaun Almeida and Precision Hardscaping (“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.¹ Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on May 2, 2022.² Additionally, § 1.17 of the

¹ Board’s Exhibits One (1) (United States Post Office online tracking showing delivery of the Notice by certified mail to the Respondent’s last known address) and Two (2) (inspector’s report with Respondent’s address on record with the Board).

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

Regulation³ 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); R.I. Gen. Laws § 5-65-18; R.I. Gen. Laws § 5-65-22; 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 contract with a homeowner in West Warwick to construct a stone wall on said homeowner's property. Upon the filing of a complaint by the homeowner with the Board about the Respondent's work, the Board conducted an inspection of the Respondent's work. The inspection revealed that the Respondent failed to enter into a written contract for work in an amount in excess of \$1,000. The Respondent failed to include a mechanic's lien and his registration number in any contract. The Respondent failed to secure the required permits. The Respondent's

³ 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.

work was negligent. The negligent work included inadequate and improper fill, damage to the property, and failure to remove debris. See Notice and Board's Exhibits Two (2) (September 24, 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 September 21, 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.

(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.

(m) The contractor must see that permits required by the state building code are secured on behalf of the owner prior to commencing the work involved. ***

(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.

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

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 § 5-65-22 provides as follows:

Display of certificate of registration. All contractors subject to the provisions of this chapter must include their certificate of registration number on all advertising proposals, contracts, and invoices displayed in a conspicuous manner.

D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a); R.I. Gen. Laws § 5-65-18; R.I. Gen. Laws § 5-65-22; and/or R.I. Gen. Laws § 5-65-3

Based on the testimony and the exhibits, it was undisputed that the Respondent performed negligent and improper work. It was undisputed that the Respondent did not secure the required

building permits. It was undisputed that the Respondent did not enter into a written contract with said homeowner and did not provide notice of a mechanic's lien and did not provide his registration number.

The Board's inspector found that the following violations by the Respondent: 1) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 2) Gen. Laws § 5-65-3(m) (failed to secure permits prior to commencing work); 3) R.I. Gen. Laws § 5-65-3(o) (failed to have written contract for amount in excess of \$1,000); 4) R.I. Gen. Laws § 5-65-18 and R.I. Gen. Laws § 5-65-3(o) (failed to provide mechanic's lien); and 5) R.I. Gen. Laws § 5-65-22 (failed to provide registration number). 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) \$1,000 for violation of R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 2) \$1,000 for violation of Gen. Laws § 5-65-3(o) (failed to have written contract); 3) \$1,300 for violation of R.I. Gen. Laws § § 5-65-3(m) (failure to secure permits); 4) \$500 for violation of R.I. Gen. Laws § 5-65-22 (failed to provide registration number); and 5) \$1,000 for violations of R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien).

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

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

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$4,800 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 Gen. Laws § 5-65-3(o) (failed to have written contract); 3) \$1,300 for violation of R.I. Gen. Laws § § 5-65-3(m) (failure to secure permits); 4) \$500 for violation of R.I. Gen. Laws § 5-65-22 (failed to provide registration number); and 5) \$1,000 for violations of R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien).

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.*
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) Gen. Laws § 5-65-3(m) (failed to secure permits prior to commencing work); 3) R.I. Gen. Laws § 5-65-3(o) (failed to have written contract for amount in excess of \$1,000); 4) R.I. Gen. Laws § 5-65-18 and R.I. Gen. Laws § 5-65-3(o) (failed

to provide mechanic's lien); and 5) R.I. Gen. Laws § 5-65-22 (failed to provide registration number).

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$4,800 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 Gen. Laws § 5-65-3(o) (failed to have written contract); 3) \$1,300 for violation of R.I. Gen. Laws § § 5-65-3(m) (failure to secure permits); 4) \$500 for violation of R.I. Gen. Laws § 5-65-22 (failed to provide registration number); and 5) \$1,000 for violations of R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien).

Administrative penalties are due 20 days from the execution of this decision.⁵

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.

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

CERTIFICATION

I hereby certify on this 19th 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. Shaun Almeida, 70 Mary Avenue, East Providence, R.I. 02914 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.


