

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:

Lesli Llano/LTG Construction,

Respondent.

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CRLB File. V- 6282

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on July 21, 2022 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Board”) to Lesli Llano/LTG Construction (“Respondent”). The Respondent holds a registration as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.*¹ A hearing was scheduled for August 11, 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.² Since the Respondent was adequately noticed of hearing, a remote hearing was held before the undersigned on August 11, 2022.³ Additionally, § 1.17 of

¹ The Respondent’s registration apparently is currently suspended.

² The Notice was sent to the Respondent’s address on record with the Board by first class and certified mail. Board’s Exhibits One (1) (Notice); Two (2) (United States Post Office online tracking showing that notice of the certified mail had been left at address); Three (3) and Five (5) (Board’s records with Respondent’s address); and Six (6) (Respondent’s request for appeal).

³ The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12.

the Regulation⁴ 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 § 5-65-7(b).

IV. MATERIAL FACTS AND TESTIMONY

Based on the pleadings and exhibits, on November 10, 2021, Board investigators observed two (2) workers installing a rubber roof on a residential part of a building in Providence, R.I. The investigators determined that the two (2) workers were employed by the Respondent who is required by R.I. Gen. Laws § 28-29-1 *et seq.* to maintain workers' compensation insurance for employees. The investigators determined that the Respondent did not have and was not maintaining workers' compensation insurance coverage. The investigators determined that this was the Respondent's third offense, and that the Respondent's two (2) prior offenses were in 2021 and both were for failing to maintain workers' compensation insurance as required by R.I. Gen.

⁴ 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.

Laws § 28-29-1 *et seq.* In the Respondent's request for a hearing, the Respondent wrote, "did not have experience and [i]nsurance is way too expensive and I decided to close the company." Board's Exhibits Six (6) (appeal request). See also Board's Exhibits One (1) (Notice); Three (3) (Notice of Intent to Assess Civil Penalty); and Four (4) (photographs).

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 § 5-65-7(b) provides as follows:

Insurance required of contractors

(b) In addition, all contractors shall have in effect workers' compensation insurance as required under chapter 29 of title 28. Failure to maintain required insurance shall not preclude claims from being filed against a contractor.

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

(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. ***

D. Whether the Respondent violated R.I. Gen. Laws § 5-65-7(b)

Based on the pleadings and the exhibits entered at hearing, it was undisputed that the Respondent failed to maintain workers' compensation insurance as required by R.I. Gen. Laws § 28-29-1 *et seq.* in violation of R.I. Gen. Laws § 5-65-7(b). *Supra.*

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 a penalty of \$5,000

for the Respondent's failure to maintain the statutorily required workers' compensation insurance in violation of R.I. Gen. Laws § 5-65-7(b). This was the Respondent's third offense so it merited a higher penalty than could be imposed for a first offense. No reason was given at hearing that would merit diverging from the Board's recommended administrative penalty for this statutory violation.

VI. FINDINGS OF FACT

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

1. The Notice was issued on July 21, 2022 by the Board to the Respondent.
2. The Respondent was registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* at the time of above-referenced violation.
3. A hearing was scheduled for August 11, 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 R.I. Gen. Laws § 5-65-7(b) by failing to maintain workers' compensation insurance as required by R.I. Gen. Laws § 28-29-1 *et seq.* This was the Respondent's third offense.

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$5,000 is imposed on the Respondent for this statutory violation.

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

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

Entered: August 23, 2022


Catherine R. Warren
Hearing Officer

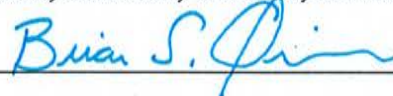
NOTICE OF APPELLATE RIGHTS

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 23rd day of August, 2022 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to Lesli Llano/LTG Construction, 440 Park Avenue, Cranston, R.I. 02910 and by electronic delivery to James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, Jessica Murphy, Administrative Officer, and Ania Zielinski, Esquire, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886.


Brian S. Quinn