

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

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**In the Matter of:**

**Julio Goncalves,  
J&G Construction,**

**Respondent.**

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CRLB File. V-6249

**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 Julio Goncalves/J&G Construction (“Respondent”). The Respondent held a registration as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.* at the time of the matter at issue. 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.<sup>1</sup> Since the Respondent was adequately noticed of hearing, a remote hearing was held before the undersigned on August

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<sup>1</sup> 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 certified mail was available for pick up); and Three (3) and Five (5) (Board’s records with Respondent’s address).

11, 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)(10), (11), (12) and/or R.I. Gen. Laws § 5-65-3 and/or R.I. Gen. Laws § 5-65-18 and/or R.I. Gen. Laws § 5-65-22 when performing work for a property owner.

## IV. MATERIAL FACTS AND TESTIMONY

Based on the pleadings and exhibits, on March 28, 2019, the Respondent entered into a written contract with the owner (“Owner”) of a commercial property for the Respondent to replace the rubber roof on said property. The Respondent replaced the rubber roof, but on October 6, 2021, the Owner filed a complaint with the Board regarding the Respondent’s workmanship. A Board investigator investigated the complaint and determined as follows: 1) the Respondent’s work was negligent and improper as the installed roof leaked; 2) the Respondent failed to honor

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<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.



the roof warranty; 3) the written contract did not include the statutorily required mechanic's lien notice and registration number; 4) the Respondent did not pull the appropriate permits for work with the local town; 5) Respondent did not hold the proper license to install or repair commercial rubber roofs; and 6) the Respondent had similar violations in 2020. Board's Exhibits One (1) (Notice); Three (3) (inspection report dated December 15, 2021); Four (4) (written contract dated March 29, 2019); and Five (5) (Notice of Intent to Assess Civil Penalty).

## 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:

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(10) The board may take disciplinary action against a contractor who performed work, or arranged to perform work, while the registration was suspended, invalidated, or revoked. Deposits received by a contractor and ordered returned are not considered a monetary award when no services or supplies have been received.

(11) That the registrant breached a contract.

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

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(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.

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(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. \*\*\*

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

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:

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(m)**

Based on the pleadings and the exhibits entered at hearing, it was undisputed that the Respondent entered into a written contract with the Owner to replace the rubber roof. It was undisputed that the Respondent breached the contract by failing to complete the project on said property. It was undisputed that the Respondent performed negligent and improper work when replacing the rubber roof. It was undisputed that the Respondent was not properly licensed to perform commercial work. It was undisputed that the Respondent did not pull the required building permit for the work being performed. It was undisputed that the Respondent did not include his registration number on the contract and did not provide the Owner with a notice of the mechanic's lien.

The Board's inspector found that the following violations by the Respondent: 1) R.I. Gen. Laws § 5-65-10(a)(10) (performed work without a valid license); 2) Gen. Laws § 5-65-10(a)(11) (breached a contract); 3) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 4) R.I. Gen. Laws § § 5-65-3(m) (failed to secure permits); 5) R.I. Gen. Laws § § 5-65-18 (failed to provide mechanic's lien notice); and 6) R.I. Gen. Laws § § 5-65-22 (failed to provide registration number). These were all second offenses. None of those findings were disputed. Board's Exhibits Three (3) and Five (5).

#### **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. Factoring in that all violations were second offenses, the inspector recommended administrative penalties as follows: 1) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(10) (performed work without a valid registration); 2) \$2,500 for violation of Gen. Laws § 5-65-10(a)(11) (breached a contract); 3) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 4) \$5,000 for violation of R.I. Gen. Laws § § 5-65-3(m) (failed to secure permits); 5) \$2,500 for violation of R.I. Gen. Laws § § 5-65-18 (failed to provide mechanic's lien notice); and 6) \$1,000 for violation of R.I. Gen. Laws § § 5-65-22 (failed to provide registration number).

No reason was given at hearing that would merit diverging from the Board's recommended administrative penalties for these statutory violations.

#### **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 his contract with the Owner, but he was not licensed for commercial work.

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 1) R.I. Gen. Laws § 5-65-10(a)(10) (performed work without a valid license); 2) Gen. Laws § 5-65-10(a)(11) (breached a contract); 3) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 4) R.I. Gen. Laws § § 5-65-3(m) (failed to secure permits); 5) R.I. Gen. Laws § § 5-65-18 (failed to provide mechanic's lien notice); and 6) R.I. Gen. Laws § § 5-65-22 (failed to provide registration number). These were all second offenses.

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$16,000 is imposed on the Respondent. This represents as follows: 1) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(10) (performed work without a valid license); 2) \$2,500 for violation of Gen. Laws § 5-65-10(a)(11) (breached a contract); 3) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 4) \$5,000 for violation of R.I. Gen. Laws § § 5-65-3(m) (failed to secure permits); 5) \$2,500 for violation of R.I. Gen. Laws § § 5-65-18 (failed to provide mechanic's lien notice); and 6) \$1,000 for violation of R.I. Gen. Laws § § 5-65-22 (failed to provide registration number).

Administrative penalties are due 20 days from the execution of this decision.<sup>4</sup>

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

Entered: August 23, 2022

  
Catherine R. Warren  
Hearing Officer

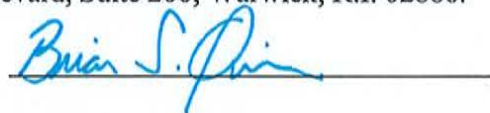
### NOTICE OF APPELLATE RIGHTS

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 23<sup>rd</sup> 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 Mr. Julio Goncalves, J&G Construction, 68 Norton Street, Pawtucket, RI 02860 and to Mr. Julio Goncalves, J&G Construction, 1051 Main Street, Pawtucket, RI 02860 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.



<sup>4</sup> Payment should be made to Contractors' Registration and Licensing Board at the above address.