

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:

John Gonzalez,
JG Home Remodeling,
Respondent.

CRLB No. #6310

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on May 2, 2022 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to John Gonzalez/JG Home Remodeling (“Respondent”). The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* A hearing was scheduled for May 23, 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 remote hearing was held before the undersigned on May 23, 2022.² Additionally, § 1.17 of the Regulation³ provides

¹ Department’s Exhibits Two (2) (Notice); Three (3) (United States Post Office online tracking showing certified mail sent to business address was unclaimed); Four (4) (first class mail was returned to sender); and Five (5) (Notice of Intent to Assess Civil Penalty sent to Respondent’s business address).

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

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

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 the Regulation.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-65-10.

IV. MATERIAL FACTS

Based on the pleadings and exhibits entered at hearing, it is undisputed as follows: A Board inspector conducted an enforcement stop on December 28, 2021 and found what he concluded was an unregistered subcontractor installing shingles at a house in Narragansett on behalf of the Respondent. In his request for hearing, the Respondent indicated that he never hired any subcontractors, but had two (2) employees and did not realize that he was to inform the Board of any names of employees, and he had rectified that omission. He also indicated that he never worked at the address cited by the Board but had performed work at the house across the street. Department's Exhibits One (1) (request for hearing); Two (2); and Five (5).

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

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.

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 § 5-65-3 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.

(j) A contractor including, but not limited to, a general contractor, shall not hire any subcontractor or other contractor to work on a structure unless the contractor is registered under this chapter or exempt from registration under the provisions of § 5-65-2.

Section 1.12.2 of the Regulation provides in part as follows:

Procedure for Investigating and Processing Violations

A. Notices of Violation shall be issued for, but are not limited to, the following conduct:

14. Failure to list employee(s);

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:

(4) Has violated a rule or order of the board.

(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.

D. Whether the Respondent violated the Contractor Licensing Statute

The Respondent did not appear at hearing, but in his written request for hearing, he indicated that he had not subcontracted out the work but had employees of which he had not informed the Board. He indicated that he did not know he had to inform the Board. Section 1.12.2(14) of the Regulation requires that all employees be listed. It is a violation of R.I. Gen. Laws § 5-65-10(4) not to comply with a rule of the Board. After conducting the inspection, the Board inspector checked

the Respondent's application and did not find any employees listed so logically concluded that the Respondent's workers were subcontractors. The Respondent represented that it had rectified the failure to list employees. No evidence was shown that these employees had not been listed by the Respondent after the notice to assess penalty was sent to the Respondent. In its notice of intent to assess penalty, the Board indicated that it would impose a penalty of \$1,000 for the hiring of unregistered contractors. The hiring of unregistered contractors is a violation of R.I. Gen. Laws § 5-65-3(j). Department's Exhibit One (1); Two (2) (Notice); and Five (5).

Administrative penalties are authorized by R.I. Gen. Laws § 5-65-10(c). There was no evidence the Respondent had any prior sanctions from the Board, so this is a first offense. The Board did not dispute that the failure to list employees had been rectified by the Respondent. Therefore, an administrative penalty of \$500 shall be imposed for the violation of § 1.12.2 of the Regulation.

VI. FINDINGS OF FACT

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

1. The Board inspected ongoing work on December 28, 2021 and found workers employed by the Respondent. They were not listed on the Respondent's application. They were not registered contractors.
2. A hearing was scheduled for May 23, 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.
3. Pursuant to § 1.17 of the Regulation, the Respondent is declared to be in default for failing to appear at the hearing.
4. The facts contained in Sections I, IV, and V are incorporated by reference herein.


VII. CONCLUSIONS OF LAW

The Respondent violated § 1.12.2 of the Regulation. Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$500 is imposed on the Respondent.

Administrative penalties are due 20 days from the execution of this decision.⁴

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

Entered: June 7, 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 Contractors' Registration and Licensing 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 7th day of June, 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. John Gonzalez/JG Home Remodeling, 633 Grove Street, Unit 1, Woonsocket, R.I. 02895 and to Mr. John Gonzalez, 31 Theresa Street, Riverside, R.I. 02915, 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.


Brian S. Quinn

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