



adequately noticed of hearing, a hearing was held before the undersigned on January 28, 2021.<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. At the time of this incidence, the Respondent was not registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.*<sup>4</sup> While the Respondent was not registered at the time the work was performed, the Board still has jurisdiction in disciplinary proceedings over the Respondent pursuant to R.I. Gen. Laws § 5-65-10(a)(10) and (e) and § 1.9.1 of the Regulation. The Complainant appeared at the hearing and 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 and/or R.I. Gen. Laws § 5-65-3 and/or R.I. Gen. Laws § 5-65-18 when performing work for the Complainant.

---

returned to the Board. The certified mail was unclaimed. Complainant's Exhibit One (1) (United States Tracking website for the certified mail for Respondent). Upon receipt of the Notice, the Respondent contacted the Board seeking a continuance of the scheduled November 17, 2020 hearing. The Board had the Respondent's email address. The hearing was continued and scheduled for a remote hearing on December 21, 2020 by zoom. The Respondent did not appear for the December 21, 2020 hearing. The hearing was continued again for a remote hearing on January 28, 2021 and scheduled by zoom. The Respondent did not appear at the January 28, 2021 hearing. He did not contact the Board regarding this matter. See record.

<sup>2</sup> The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12. Due to the Covid19 pandemic, the hearing was held by remote video.

<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.

<sup>4</sup> Testimony of Matthew Lambert, State Building Code Official, at hearing.

#### IV. MATERIAL FACTS AND TESTIMONY

The Complainant's complaint stated he paid \$7,900 to the Respondent out of his contract with the Respondent for \$8,837. Complainant's Exhibit Two (2).

A Board inspector inspected the Complainant's house and found the siding of the house was damaged from power washing and the agreed to job was not completed. *Id.* (inspection report).

The Complainant testified on his behalf. He testified that he hired the Respondent for various tasks, but the Respondent showed up sporadically and did not complete the tasks. He testified that he had to pay another contractor to side his house because of the poor job that the Respondent did on the shingles.

Doreen Kennedy testified on behalf of the Complainant. She testified they hired the Respondent to replace hardwood floors upstairs and downstairs. She testified the flooring was delivered but not installed. She testified that the Respondent was hired to power wash the house, pool house, barn, and walkway. She testified the Respondent did some power washing but the work was sporadic. She testified that they paid him for the flooring, and she took him to the bank to obtain the money. She testified that eventually he had been paid \$7,900, and he asked for money for something called "cedar renew" that was supposed to protect the cedar shingles for 25 years, and she found out that the product did not exist. She testified that one day she was inside asleep, and she heard him leaving, and he told her that they were too difficult to work for and he was not coming back, but then said he would come back for \$1,200 on top of the \$8,000 they had already paid. She testified he did not do the work he was hired to do. She testified that he did not install anything and the red oak flooring that he installed in the living room was adhered to concrete and the depth of the floor would not let the door close. She testified she was a licensed contractor in Georgia, and she advised the Complainant that usually the homeowner will pay a contractor a third before the start of

a job, a third when half-way done, and a third when the job is complete. However, she testified that the Respondent continually asked for more money.

Jeremy Johnson testified on behalf of the Complainant. He testified he is a registered contractor and owns his own business. He testified that when the Respondent power washed the Complainant's house, he blew off shingles and damaged others. He testified the shingles disintegrated from the power washing and could not be stained. He testified there is no stain to put on cedar shingles that would make them last for 25 years. He testified that the Respondent installed pressured lumber directly on the outside concrete stairs which he felt was unsafe.

Amy Jacobs testified for the Complainant. She testified she worked for many years at Home Depot and is familiar with many products, and she was there when the Respondent was talking about the cedar renew product. She testified that she thought he said it would last 50 years, but she knew that product did not exist. She testified that the Respondent claimed to be registered as a contractor. She testified that when he power washed the fire pit and the brick paving around it, he washed away all the sand in between the bricks. She testified that he bought shingles but they were not used.

Matthew Lambert, State Building Code Official, testified that that without seeing the stairs himself, he could not say if they were done to the Building Code. He testified that the parties had a signed contract which did not include the mechanic's lien. He testified that the Respondent was not registered and never had been registered and there have been no other complaints against him.

## 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:

(1) That the registrant or applicant has violated § 5-65-3.

\*\*\*

(11) That the registrant breached a contract.

(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.

(15) That the registrant has misrepresented his or her registration status as valid when the registration was suspended, revoked, invalidated, inactive, or unregistered as required by the board.

\*\*\*

(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. Where the claim is for actual damages, the board shall require proof satisfactory to the board indicating the damages. Where corrective work is completed as ordered by the board, the fine assessed may be reduced as determined by the board. 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<sup>5</sup> 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. (a) A person shall not undertake, offer to undertake, or submit a bid to do work as a contractor on a structure or arrange to have work done unless that person has a current, valid certificate of registration for all construction work issued by the board.

R.I. Gen. Laws § 5-65-18 provides in part 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. \*\*\*

---

<sup>5</sup> This statute was amended effect January 1, 2021 as was R.I. Gen. Laws § 5-65-10. As the activities in this matter took place prior to that date, the references are to the statute in effect at that time; however, there are no substantial differences in the pertinent statutory sections.

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

It was undisputed that the Respondent did not finish the work and did not complete his contract with the Complainant. It was undisputed that the work performed was negligent and improper in that the Respondent damaged the Complainant's shingles and the Complainant had to pay another contactor to side his house. It was undisputed that the Respondent performed contracting work when he was not registered. It was undisputed that the Respondent failed to complete a project.

The inspection report found that the Respondent violated R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract), R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work), and R.I. Gen. Laws § 5-65-18 (failed to have a mechanic's lien in the contract). *Id.* None of those findings were disputed.

**E. Sanctions**

R.I. Gen. Laws § 5-65-10(c) provides for penalties up to \$5,000 for the first offence. The evidence was this was the Respondent's first offense as an unregistered contractor. Registration of contractors is required by R.I. Gen. Laws § 5-65-3. R.I. Gen. Laws § 5-65-10(a)(1) provides that discipline may be taken for the violation of R.I. Gen. Laws § 5-65-3 (requires registration and it is a violation to bid on work when not registered). R.I. Gen. Laws 5-65-10(a)(15) provides that it is a violation to misrepresent one's status as a registered contractor when one is not and to work as a contractor when one is not registered. Since this is the Respondent's first offense working as an unregistered contractor, an administrative penalty of \$5,000 is appropriate for the Respondent's violations of R.I. Gen. Laws §5-65-10(a)(15) and R.I. Gen. Laws § 5-65-3. The Respondent represented himself as a registered contractor when he was not, worked as an unregistered contractor, and was unable to perform the work for which he was hired.

The inspector recommended a penalty of \$250 for failing to have a mechanic's lien. No reason was given at hearing that would merit diverging from the inspector's recommended administrative penalty for that statutory violations. The inspector recommended a \$250 administrative penalty for 1) breaching the contract; and 2) negligent and improper work. However, the Respondent damaged the house so much that his damage caused the Complainant to have the house sided by Mr. Johnson. The Respondent was not registered for the work he was hired to do and what he did was poor and shoddy and negligent and damaged the Complainant's house and property (bricks). The Respondent also lied about what product he would use. An administrative penalty of \$1,000 each is appropriate for his 1) negligent and improper work; 2) failure to complete a project; and 3) breach of contract.

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$8,250 is imposed on the Respondent. This represents as follows: 1) \$5,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(1), R.I. Gen. Laws § 5-65-3, and R.I. Gen. Laws § 5-65-10(a)(15) (bidding on work and working while unregistered and misrepresenting himself as registered); 2) \$250 penalty for violating R.I. Gen. Laws § 5-65-18 (mechanic's lien); 3) \$1,000 penalty violating R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract); 4) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(12) (negligent and improper work); and 5) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(14) (failure to complete project).

## **VI. FINDINGS OF FACT**

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

1. The Complainant filed a complaint on June 19, 2020 with the Board regarding the work performed by Respondent pursuant to a contract between the Complainant and the Respondent.



2. A hearing was scheduled for November 17, 2020 but the Respondent requested a continuance.

3. The November 17, 2020 hearing was continued and scheduled for January 28, 2021 at which time the Respondent did not appear. As the Respondent was adequately notified, the hearing was held with the Complainant resting on the record.

4. Pursuant to Section 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 reincorporated by reference herein.

## **VII. CONCLUSIONS OF LAW**

Based on the foregoing, the Respondent violated the following: 1) R.I. Gen. Laws § 5-65-10(a)(1); R.I. Gen. Laws § 5-65-3; and R.I. Gen. Laws § 5-65-10(a)(15) (bidding on work and working while unregistered and misrepresenting himself as registered); 2) R.I. Gen. Laws § 5-65-18 (mechanic's lien); 3) R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract); 4) R.I. Gen. Laws § 5-65-10(a)(12) (performing negligent and improper work); and 5) R.I. Gen. Laws § 5-65-10(a)(14) (failing to complete construction project).

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$8,250 is imposed on the Respondent. This represents as follows: 1) \$5,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(1), R.I. Gen. Laws § 5-65-3, and R.I. Gen. Laws § 5-65-10(a)(15); 2) \$250 penalty for violating R.I. Gen. Laws § 5-65-18; 3) \$1,000 penalty violating R.I. Gen. Laws § 5-65-10(a)(11); 4) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(12); and 5) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(14).

Administrative penalties are due 20 days from the execution of this decision.<sup>6</sup>

---

<sup>6</sup> Payment should be made to Contractors' Registration and Licensing Board at the above address.

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

Entered: February 17, 2021

*/s/ Catherine R. Warren*

---

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 17th day of February, 2021 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. Jason Washburn, 36 Spring Drive, Johnston, R.I. 02919 and Mr. Jay Hopkins, 3 Paul Drive, Blackstone, MA 01504 and by electronic delivery to James Cambio, Building Code Commissioner, and Donna Costantino, Associate Director, and Matthew Lambert, State Building Code Official, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886.

*/s/ Jenny Shaw*