

**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:

CLAIMANTS
Richard and Linda Pina

RESPONDENT
Donato Aceto
D&E Construction

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Complaint Hearing (“Notice”) issued on or about December 1, 2020 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Board”) to Richard and Linda Pina (“Claimants”) and Donato Aceto (“Respondent”). This matter arose out of a complaint filed pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* by the Claimants on or about September 10, 2020 with the Board regarding work performed by the Respondent. The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.* A hearing was scheduled for December 21, 2020 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

¹ James Cambio, Building Code Commissioner, testified that the address used for the Notice was the Respondent’s last known address on record with the Board. The first class mail was not returned to the Board. The certified mail was delivered on December 8, 2020 to the Respondent. Claimants’ Exhibits One (1) (United States Post Office online tracking showing delivery of certified mail to the Respondent) and Two (2) (Board’s records).

December 21, 2020.² Additionally, § 1.17 of the Regulation³ provides that a default judgment may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party. Ms. Pina appeared on behalf of the Claimants 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, 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 the Claimants.

IV. MATERIAL FACTS AND TESTIMONY

The Claimants' complaint stated that they had entered into a contract with the Respondent on July 9, 2019 to perform work on their home. The complaint stated that they had paid \$4,785 of the \$5,260 contract. The complaint stated that the cement floor and the cement walls poured by the Respondent were all uneven. Claimant's Exhibit Two (2) (Board records including complaint).

On October 7, 2020, a Board inspector inspected the Claimants' house and found deficiencies. The inspector found that the floor and wall were not level. The inspector found that the wall bulged out. The inspector found that the floor needed to be leveled so it could be tiled. Claimants' Exhibit Two (2) (Board records including inspection report).

² 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.

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.

Ms. Pina testified on behalf of the Claimants. She testified that she entered into a contract with the Respondent and they discussed the project in detail. She testified that she had a professional dig out the foundation and the Respondent was to pour the cement. She testified that that he was to pour the concrete floor and frame the walls up eight (8) inches (though he initially only did four (4) inches). She testified that the concrete floor that he poured was uneven so it cannot be tiled. She testified that his three (3) walls were uneven and cannot be tiled. She testified the wall is crooked and the floor needs to be leveled so that it can be tiled.

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.

(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.

(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. *** 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.

(l) The registration number of each contractor shall appear in any advertising by that contractor. *** The violations may result in a penalty being assessed by the board per administrative procedures established.

(p) Contracts entered into must contain notice of right of rescission as stipulated in all pertinent Rhode Island consumer protection laws and/or § 5-65-27, if applicable.

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.

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

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. ***

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

It was undisputed that the Respondent did not finish the work as the floor and walls were uneven and could not be tiled. It was undisputed that the work performed was negligent and improper since the poured concrete wall and floors were uneven and not leveled and could not be tiled. It was undisputed that the Respondent failed to complete a project.

The inspection report found that the following violations by the Respondent: 1) R.I. Gen. Laws § 5-65-18 (failure to provide mechanic's lien notice in the contract); 2) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 3) R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3(l) (failure to display registration); and 4) R.I. Gen. Laws § 5-65-3(p) (failure to provide right-of-recession). Claimants' Exhibit Two (2). 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 inspector recommended administrative penalties as follows: 1) \$250 for violating R.I. Gen. Laws § 5-65-18; 2) \$100 for violating R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3(l); and 3) \$250 for violating R.I. Gen. Laws § 5-65-

3(p). *Id.* No reason was given at hearing that would merit diverging from the inspector's recommended administrative penalties for these statutory violations.

The inspector recommended an administrative penalty of \$250 for the Respondent's violation of R.I. Gen. Laws § 5-65-10(a)(12) by performing negligent and improper work. Administrative penalties of up to \$5,000 are allowed for first offenses. The shoddy and improper work that the Respondent performed merits an administrative penalty of more than \$250. He was hired to pour a concrete floor and walls and did neither properly. An administrative penalty of \$1,000 is appropriate for that statutory violation. The Respondent also violated R.I. Gen. Laws § 5-65-10(a)(14) since the Respondent failed to complete the project since what work he performed was incomplete as it was shoddy and negligent, and the floor and wall tiles could not be laid. That statutory violation merits an administrative penalty of \$1,000.

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$2,600 is imposed on the Respondent. This represents as follows: 1) \$250 penalty for violating R.I. Gen. Laws § 5-65-18; 2) \$100 penalty for violating R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3(1);⁴ 3) \$250 for violating R.I. Gen. Laws § 5-65-3(p);⁵ 4) \$1,000 penalty 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).

VI. FINDINGS OF FACT

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

1. The Claimants filed a complaint on or about September 10, 2020 with the Board regarding the work performed by Respondent pursuant to a contract between the Claimants and the Respondent.

2. The Notice was forwarded to both parties on or about December 1, 2020.

⁴ A violation of R.I. Gen. Laws § 5-65-3 is a violation of R.I. Gen. Laws § 5-65-10(a)(1).

⁵ *Id.*

3. A hearing was scheduled for December 21, 2020 at which time the Respondent did not appear. As the Respondent was adequately notified, the hearing was held with the Claimants 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 reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the foregoing, the Respondent violated the following: 1) R.I. Gen. Laws § 5-65-18 (failure to provide mechanic's lien notice in the contract); 2) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 3) R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3(l) (failure to display registration); 4) R.I. Gen. Laws § 5-65-3(p) (failure to provide right-of-recession); and 5) R.I. Gen. Laws § 5-65-10(14) (failure to complete a project).

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$2,600 is imposed on the Respondent. This represents as follows: 1) \$250 penalty for violating R.I. Gen. Laws § 5-65-18; 2) \$100 penalty for violating R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3(l); 3) \$250 penalty for violating R.I. Gen. Laws § 5-65-3(p); 4) \$1,000 penalty 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.⁶

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

/s/ Catherine R. Warren

Entered: December 30, 2020

Catherine R. Warren
Hearing Officer

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

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 30th day of December, 2020 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 Linda and Richard Pina, 55 Toner Street, East Providence, R.I. 02916 and by first class mail, and certified mail, return receipt requested to Donato Aceto, D&E Construction, Inc., 9 Cowell Street, Cranston, R.I. 02920 and by electronic delivery to James Cambio, Building Code Commissioner, and Donna Costantino, Associate Director, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886.

_____/s/Jenny Shaw_____