

**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:

Troy Hewes
Ace Wood Flooring, Inc.
Respondent

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Intent to Assess Civil Penalty and Opportunity for Hearing (“Notice”) as amended on July 24, 2020¹ and issued by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Board”) to Troy Hewes (“Respondent”). As the Respondent requested a hearing, a notice of hearing was issued on June 18, 2020. The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* After a pre-hearing conference and a status conference, a hearing was held November 19, 2020 at which James Cambio appeared on behalf of the Board and the Respondent represented himself.² The parties 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.*

¹ The initial Notice was issued on February 13, 2020. A copy of the Amended Notice is Board’s Exhibit Four (4).

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.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a)(9) and/or (12) when performing work for a homeowner.

IV. MATERIAL FACTS AND TESTIMONY

The parties stipulated that the Respondent had two (2) prior violations. In 2014, the Respondent hired an unregistered subcontractor and paid a \$750 administrative penalty. In 2016, several violations came out of one (1) claim in 2015, claim 8685, and the Respondent paid a \$750 administrative penalty. These violations were a fraudulent statement on application, failure to put in information about a mechanic's lien in a contract, failure to display a registration number, failure to notify change in change in partnership or corporate officers, and failure to maintain agent of service. Board's Exhibit 1A (list of complaints filed against Respondent and disposition)

James Cambio ("Cambio"), Building Code Commissioner, testified on behalf of the Board. He testified that a complaint was received from Laretta Converse ("Complainant") that she entered into a contract with the Respondent and Ace Flooring to do her floors at her house in Exeter. Board's Exhibits One (1) (complaint); Two (2) (Complainant's contract with Respondent); and Three (3) (check for work performed). He testified that he inspected the Complainant's house and the floors on January 9, 2020. He testified that he took photographs of the floors which clearly had negligent and improper sanding of the hardwood floors. He testified that on the floors one can see sanding marks across the grain and there was debris in the polyurethane and there was a photograph where a nail was sanded over and polyurethane went over a nail. Board's Exhibit Five (5) (photographs). He testified that the marks on the floor went across the living room floor. He testified that the Respondent made a cash offer to the Complainant which he testified the

Complainant rejected, and she withdrew her claim because she did not want the Respondent to come back to her house.

Cambio testified that there have been several claims against the Respondent for negligent work. He testified that when looking at the record of complaints – Board’s Exhibit 1A – the code “H” and “T” on the printouts reference negligent work. He testified that some of the claims indicated that one claim was better suited for court, one matter was resolved by return of the deposit, and one claim was withdrawn.

On cross-examination, Cambio testified the Respondent was not there for his inspection, and the Complainant did not want to pursue her claim and did not want the Respondent back in her home, so under R.I. Gen. Laws § 5-65-12(b)(2), the claim was dropped and the Board chose to bring an enforcement action. He testified that the contract was for \$2,825, and the cancelled check was for \$2,800. He testified in terms of the previous claims against the Respondent, he did not know the outcome of the court case and did not know if it was for negligent work.

The Respondent testified on his behalf. He testified that he has been registered for 17 years and employs dozens of people and does about 2,000 jobs a year, so since 2004, he probably has done 30,000 jobs with a total of six (6) claims filed against him with the Board. He testified that the Complainant paid for her floors, and then there was an issue with the floors, and they came back read to fix the floor, but she apparently stopped payment on the check. He testified that he called the State police over the stopped payment on the check and she did pay him again but \$25 less than the contract. He testified that he feels the Complainant filed this claim against him in January, 2020 in retaliation after he called the State police and they came to her house in December, 2019. He testified that he felt that since she did not pay the full amount of the contract, the contract was void. He testified that there was a rock in the floor and he was ready to fix it but

she stopped the project. He testified that in terms of the other complaints, they do not show repeated acts since there were two (2) fines in 17 years and neither were for negligent work.

On cross-examination, the Respondent testified there was a rock or pebble in the finish, and he agreed to fix that, and the Complainant did not want him back so they offered to pay another company to fix the problem. He testified that he did not know how the rock got there.

On redirect examination, the Respondent testified that he does not know how the pebble got there and Cambio's inspection took place three (3) months after his company performed the work. He testified that the living room was 1,400 square feet and he is not implying the Complainant did any damage to the floor. He testified that he had photographs³ of the floor that showed there was no problem with the floor and the only problem was a rock. These photographs were not produced by the Respondent to the Board prior to the hearing. The Respondent was allowed an opportunity to submit these photographs at hearing but chose not to. He testified that there was an imperfection, not negligence, in the floor, and he was not given a chance to fix it.

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.*

³ It should be noted that at the hearing, in discussing the exhibits prior to taking of testimony, the Respondent indicated he had never been to said house. Apparently, the work was performed by one of his employees, and he never saw it.

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:

(9) That a registrant has engaged in repeated acts in violation of this chapter and the board's rules and regulations inclusive of substandard workmanship and any misuse of registration.

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

(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. ***

D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a)(9) and/or (12)

Cambio testified that during his inspection, he saw sander marks across the grain of the wood. He testified that the work was negligent and improper. The sander marks are under the polyurethane which is applied after sanding. Those types of marks are not something that could appear due to the homeowner or other contractors working in the house. At hearing, the Respondent testified the work was an imperfection and not negligence and he had photographs to prove this. The employee who apparently performed the work did not testify. The Respondent did not produce these photographs prior to hearing nor at hearing. The Respondent was provided with an opportunity to submit the photographs but chose not to.

Cambio actually saw the floor. He took photographs of the floor. He testified to what he saw. The Respondent had no personal knowledge of the floor. The Respondent implied that the Complainant only filed the complaint since he called the State police after the Complainant stopped payment on the check. The reason for the filing of the complaint is not relevant. Cambio's testimony was that the work was negligent and improper. Apparently, the Complainant did not want to pay for negligent work. Cambio's testimony is more credible than the Respondent's since he saw the floor. In contrast, the Respondent had not seen the floor and claimed at hearing he had photographs of the floor that showed no problems but did not produce them prior to or at hearing.

The Respondent has two (2) prior violations. While he has been registered for 17 years, he had a violation in 2014 and again in 2016. R.I. Gen. Laws § 5-65-10(a)(9) speaks of repeated acts in violation of the relevant statute and regulation. The statute does not limit the violations to

substandard or negligent work but references those kinds of violations as those that are included in violations of the statute or regulation.

The Respondent performed negligent and improper work in violation of R.I. Gen. Laws § 5-65-10(a)(12). That would be his third violation in six (6) years. The Respondent has repeated violations of the registration statute which is a violation of R.I. Gen. Laws § 5-65-10(a)(9).

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. This is not the Respondent's first offence under this statute; though, it is his first negligent and improper work violation (as opposed to negligent claims filed). As the Respondent has been registered for 17 years without a finding of negligence, the undersigned will not impose the maximum penalty. However, the only task that the Respondent was hired for was to do was the floors and they were done negligently and improperly. An administrative penalty of \$1,000 is appropriate for such negligent and improper work. In addition, the Respondent has engaged in repeated acts of violation. While those prior violations were not negligent work, the Respondent has prior violations in the last six (6) years. An administrative penalty of \$1,000 for the repeated violations is appropriate.

VI. FINDINGS OF FACT

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

1. The Notice as amended on July 24, 2020 was issued by the Board to the Respondent. As the Respondent requested a hearing, a notice of hearing was issued on June 18, 2020.
2. The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*

3. A hearing was held on November 19, 2020 where the parties rested on the record.
4. 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 R.I. Gen. Laws § 5-65-10(a)(9) (repeated acts of violation) and R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work).

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$2,000 is imposed on the Respondent. This represents as follows: 1) a penalty of \$1,000 for the violation of R.I. Gen. Laws § 5-65-10(a)(9); and 2) a penalty of \$1,000 for the violation of R.I. Gen. Laws § 5-65-10(a)(12).

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

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

/s/ Catherine R. Warren

Entered: December 23, 2020

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.

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

CERTIFICATION

I hereby certify on this __23rd__ 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 Mr. Troy Hewes, Ace Wood Flooring, Inc., 365 Putnam Pike, #38, Smithfield, R.I. 02917 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_____