

**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 Claim:**

CLAIMANT  
Kathleen Ciampanelli

RESPONDENT  
Humberto Mare  
Mare Masonry

**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to a Notice of Complaint Hearing (“Notice”) issued on October 22, 2020 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Board”) to Kathleen Ciampanelli (“Claimant”) and Humberto Mare (“Respondent”). This matter arose out of a complaint filed pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* by the Claimant on July 6, 2020 with the Board regarding work performed by the Respondent. The Respondent previously was registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.* but his registration was suspended (and expired) when he performed said work.<sup>1</sup> While the Respondent’s registration was suspended at the time the was work performed, the Board still has jurisdiction in disciplinary proceedings over the Respondent pursuant to R.I. Gen. Laws § 5-65-10(a)(10).<sup>2</sup> A hearing was scheduled for November 13, 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

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<sup>1</sup> Testimony of James Cambio, Building Code Commissioner, at hearing.

<sup>2</sup> R.I. Gen. Laws § 5-65-10(a)(10) provides in part, “[t]he board may take disciplinary action against a contractor who performed work, or arranged to perform work, while the registration was suspended, invalidated, or revoked.”

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>3</sup> Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on November 13, 2020.<sup>4</sup> Additionally, § 1.17 of the Regulation<sup>5</sup> provides that a default judgment may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party. The Claimant's son 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, R.I. Gen. Laws § 5-65-7, and/or R.I. Gen. Laws § 5-65-3 when performing work for the Claimant.

## **IV. MATERIAL FACTS AND TESTIMONY**

The Claimant's complaint stated she paid \$6,800 for work to be performed by Respondent which included labor and materials, and her son, an architect, drafted the plans for the walls, columns, and stairs which were approved by the City of Cranston. The complaint stated the Respondent had laborers working on the project. The complaint stated that the wall was backfilled incorrectly with dirt, debris, and crushed stone which caused the basement to be flooded. The

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<sup>3</sup> Mr. Cambio testified for the Board. He testified that the address used for the Notice was the Respondent's address on record with the Board. The first class mail was not returned to the Board. The certified mail was unclaimed. See the United State Tracking website for the certified mail for Respondent.

<sup>4</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>5</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.

complaint stated she had to pay \$1,800 to another contractor to remove the fill and install drainage pipes to fix it. In addition, the complaint stated that the stairs were never completed so she (who is elderly) has to leave her house by the basement, and the columns are not level so the roof construction cannot begin. Claimant's Exhibits One (1) (Board records) and Two (2) (complaint).

On July 21, 2020, a Board inspector inspected the Claimant's house and found the mortar joints did not have enough mortar, one wall had a weep hole drain and the wall failed and forced water into the basement, and the blocks were not filled with concrete. The inspector spoke to the Respondent who said he did not have a written contract. The inspection found that the Respondent worked with a suspended registration. Claimant's Exhibit One (1) (inspection report).

Jonathan Ricci testified on the Claimant's behalf. He testified that he is the Claimant's son and is an architect and drafted the plans for the work to be done on his mother's house. He testified that the Respondent was hired to do the masonry work before a deck was built, and there was an issue with the quality of the work and the work requested was not fulfilled. He testified that the columns were uneven so that the roof could not be put on, and they were supposed to be filled with mortar but were not. He testified that the front stairs have not been finished, so his mother has to exit her house by the basement. He testified that the Respondent did not seal the wall or put in a drain so the basement flooded, and his mother spent \$1,800 to hire another contractor to fix the wall and put in a drain pipe. He testified that the Respondent did not follow the plans. He testified that he paid the Respondent in four (4) installments and he never finished the work.

## 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.
- (2) That the insurance required by § 5-65-7 is not currently in effect.

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- (11) That the registrant breached a contract.
- (12) That the registrant performed negligent and/or improper work.

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(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.

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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. 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 § 5-65-7 provides in part as follows:

\*\*\* (b) In addition, all contractors shall have in effect workers' compensation insurance as required under chapter 29 of title 28. Failure to maintain required insurance shall not preclude claims from being filed against a contractor.

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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(o) All work performed, including labor and materials, in excess of one thousand dollars (\$1,000) shall be accompanied by a contract in writing. \*\*\*

**D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10, R.I. Gen. Laws § 5-65-3, and/or R.I. Gen. Laws § 5-65-7**

It was undisputed that the Respondent did not have a written contract for work performed for the Claimant that was in an amount over \$1,000. It was undisputed that the Respondent had laborers working at the Claimant's house. It was undisputed that the Respondent did not finish the work and

did not complete his contract with the Claimant. It was undisputed that the work performed was negligent and improper in that the Claimant's basement flooded and she had to pay another contractor to complete the wall properly. It was undisputed that the Respondent used improper materials. It was undisputed that the Respondent performed contracting work while his registration was suspended/expired. It was undisputed that the Respondent failed to complete a project.

The inspection report found that the Respondent violated R.I. Gen. Laws 5-65-3(o) (failure to have a written contract when amount is in excess of \$1,000), R.I. Gen. Laws 5-65-7 (failure to maintain worker compensation insurance), and R.I. Gen. Laws 5-65-10(a)(15) (working with suspended registration). Claimant's Exhibit One (1) (Board records including inspection report). None of those findings were disputed.

#### **E. Sanctions**

The inspector recommended a penalty of \$10,000 for the violation of working with a suspended registration. Claimant's Exhibit One (1). 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 Respondent's registration had been suspended. Presumably that suspension was due to a prior statutory or regulatory violation(s) (e.g. a first offence) which would be why the inspector recommended a penalty of \$10,000. However, the undersigned did not have evidence (testimony or documentary) regarding that assumed "first" offence. Therefore, the undersigned will impose an administrative penalty of \$5,000 (for a first offense rather than subsequent offence) for the statutory violation of working with a suspended registration.

The inspector recommended a penalty of \$1,000 for failure to have a written contract for an amount in excess of \$1,000. The inspector recommended a penalty of \$1,000 for failure to have workers compensation insurance. No reason was given at hearing that would merit diverging from

the inspector's recommended administrative penalties for these two (2) statutory violations. The Respondent also performed negligent and improper work, breached a contract, and failed to complete a project. For those statutory violations an administrative penalty of \$1,000 for each violation shall be imposed. In addition, an administrative penalty amounting to actual damages may be imposed. It was undisputed that the Claimant spent \$1,800 for another contractor to fix the Respondent's poor work on the wall.

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$11,800 is imposed on the Respondent. This represents as follows: 1) \$5,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(15); 2) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-3(o);<sup>6</sup> 3) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-7(b);<sup>7</sup> 4) \$1,000 penalty violating R.I. Gen. Laws § 5-65-10(a)(11); 5) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(12); 6) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(14); and 7) \$1,800 penalty in the amount of damages pursuant to R.I. Gen. Laws § 5-65-10(c)(1).

## **VI. FINDINGS OF FACT**

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

1. The Claimant filed a complaint on July 6, 2020 with the Board regarding the work performed by Respondent pursuant to an agreement/contract between the Claimant and the Respondent.
2. The Notice was forwarded to both parties on October 22, 2020.
3. A hearing was scheduled for November 13, 2020 at which time the Respondent did not appear. As the Respondent was adequately notified, the hearing was held with the Claimant resting on the record.

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<sup>6</sup> Also a violation of R.I. Gen. Laws § 5-65-10(a)(1).

<sup>7</sup> Also a violation of R.I. Gen. Laws § 5-65-10(a)(2).

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)(15) (working with a suspended registration); 2) R.I. Gen. Laws § 5-65-3(o) (failing to have a written contract when amount is excess of \$1,000); 3) R.I. Gen. Laws § 5-65-7(b) (failing to have worker compensation insurance); 4) R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract); 5) R.I. Gen. Laws § 5-65-10(a)(12) (performing negligent and improper work); and 6) 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 \$11,800 is imposed on the Respondent. This represents as follows: 1) \$5,000 for violation of R.I. Gen. Laws § 5-65-10(a)(15); 2) \$1,000 penalty for violation of R.I. Gen. Laws § 5-65-3(o); 3) \$1,000 penalty for violation of R.I. Gen. Laws § 5-65-7(b); 4) \$1,000 penalty for violation of R.I. Gen. Laws § 5-65-10(a)(11); 5) \$1,000 penalty for violation of R.I. Gen. Laws § 5-65-10(a)(12); 6) \$1,000 penalty for violation of R.I. Gen. Laws § 5-65-10(a)(14); and 7) \$1,800 penalty in the amount of damages pursuant to R.I. Gen. Laws § 5-65-10(c)(1).

Administrative penalties are due 20 days from the execution of this decision.<sup>8</sup>

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

*/s/ Catherine R. Warren*

Entered: December 16, 2020

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Catherine R. Warren  
Hearing Officer

<sup>8</sup> 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 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 \_\_16th\_\_ 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. Humberto Mare, 64 Carolina Avenue, #2, Providence, R.I. 02915 and 59 Purchase Street, East Providence, 02914 and by first class mail, and certified mail, return receipt requested to Ms. Kathleen Ciampanelli, 8 Roslyn Avenue, Cranston, R.I. 02910 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 R. Shaw\_\_\_\_\_