



appeared on December 1, 2020 but 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 Second Notice was sent to the Respondent’s last known address by first class and certified mail.<sup>2</sup> Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on December 1, 2020.<sup>3</sup> Additionally, § 1.17 of the Regulation<sup>4</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 was *pro se* 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 Claimant.

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<sup>2</sup> James Cambio, Building Code Commissioner, testified for the Board. He testified that the address used for the Second Notice was the Respondent’s last known address on record with the Board. The first class mail for the Second Notice was not returned to the Board. The certified mail for the Second Notice was unclaimed and returned to sender. Claimant’s Exhibit One (1) (United States Tracking website for the Second Notice’s certified mail to Respondent).

<sup>3</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>4</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.

#### IV. MATERIAL FACTS AND TESTIMONY

The Claimant's complaint stated he entered into a written contract with the Respondent on December 7, 2019 for \$19,200 of which he paid \$16,400 to perform renovations. The complaint stated the Respondent started work on January 14, 2020 and ceased work on July 20, 2020. The complaint stated that there were various issues with the work performed including that the Respondent improperly installed the windows, tiles, vinyl floors, stairs, and the vanity plumbing. Claimant's Exhibits Two (2) (Board records).

On August 5, 2020, a Board inspector inspected the Claimant's house and found that the work performed was deficient. The inspector found that the windows were improperly installed (placed in rotted sills), the tile floors were improperly installed (floor not leveled, tiles shifting), and the second floor vinyl floors were improperly installed (not finished along guard rail). The inspector found that the sliding door and stairs were not installed pursuant to the Building Code (stair risers and treads not installed pursuant to Code). The inspector found that the plumbing was improperly installed and was being repaired by a plumber. The inspector found that no permits were issued for the work. *Id.*

The Claimant testified on his behalf. He testified that he hired the Respondent in December, 2019 to start work in January, 2020, and that there were various projects for him to complete such as to remodel the bathroom, replace a floor, replace windows, replace stairs, and to do work in the kitchen. He testified the Respondent was rarely there and his employees seemed not to really know what the jobs were that were to be performed. He testified that the Respondent performed about 10% of the work, and he terminated him on July 26, 2020. He testified there were problems with the upstairs' bathroom tiling, the bathtub was not level, the plumbing was not installed properly, and the tile floor was improperly installed.

## 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.

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(7) That the registrant has substantially violated state or local building codes.

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(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.

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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. \*\*\* 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. § 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 material persons may file a lien in accordance with the Rhode Island mechanics' lien law, chapter 28 of title 34. \*\*\*

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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(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.

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(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.

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(m) The contractor must see that permits required by the state building code are secured on behalf of the owner prior to commencing the work involved. \*\*\*

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(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.

**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 entered into a written contract with the Claimant to perform work. It was undisputed that the Respondent had employees working at the Claimant's house. It was undisputed that the work performed was negligent and improper in that the tiles, windows, stairs, and plumbing were all installed improperly. It was undisputed that the Respondent failed to complete a project. It was undisputed that the work on the stairs and sliding door was not performed pursuant to the Building Code.

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 § 5-65-10(3)(j) (hiring a nonregistered subcontractor); 4) R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3 (failure to display registration); 5) R.I. Gen. Laws § 5-65-3(p) (failure to provide right-of-recession); and

6) R.I. Gen. Laws § § 5-65-3(m) (failure to secure permits). Claimant's 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) \$500 for violating R.I. Gen. Laws § 5-65-10(3)(j); 3) \$100 for violating R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3(l); 4) \$250 for violating R.I. Gen. Laws § 5-65-3(p); and 5) \$2,420 for violating R.I. Gen. Laws § 5-65-3(m). *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 work that the Respondent performed merits an administrative penalty of more than \$250. The tiles, windows, and floors were all negligently and improperly installed. An administrative penalty of \$1,000 is appropriate for that statutory violation. In addition, the Respondent performed work that was not to the Building Code which can be dangerous. For that violation of R.I. Gen. Laws § 5-65-10(7), an administrative penalty of \$1,000 is merited. The Respondent violated R.I. Gen. Laws § 5-65-10(a)(14) since the Respondent failed to complete the entire project and what work he did was incomplete as it was shoddy, negligent, and improper, some of which was not to Code. That statutory violation merits an administrative penalty of \$1,000.

Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$6,520 is imposed on the Respondent. This represents as follows: 1) \$250 penalty for violating R.I. Gen. Laws § 5-65-

18; 2) \$500 penalty for violating R.I. Gen. Laws § 5-65-10(3)(j); 3) \$100 penalty for violating R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3(l);<sup>5</sup> 4) \$250 for violating R.I. Gen. Laws § 5-65-3(p);<sup>6</sup> 5) \$2,420 for violating R.I. Gen. Laws § 5-65-3(m);<sup>7</sup> 6) \$1,000 penalty violating R.I. Gen. Laws § 5-65-10(a)(12); 7) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(7); and 8) \$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 Claimant filed a complaint on July 19, 2020 with the Board regarding the work performed by Respondent pursuant to a contract between the Claimant and the Respondent.
2. The Second Notice was forwarded to the Respondent on November 18, 2020 scheduling the hearing for December 1, 2020.
3. A hearing was scheduled for December 1, 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.
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 § 5-65-18 (failure to provide mechanic's lien notice in the contract); 2) R.I. Gen. Laws § 5-65-10(3)(j) (hiring a nonregistered subcontractor); 3) R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3(l)

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

(failure to display registration); 4) R.I. Gen. Laws § 5-65-3(p) (failure to provide right-of-recession); 5) R.I. Gen. Laws § § 5-65-3(m) (failure to secure permits); 6) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 7) R.I. Gen. Laws § 5-65-10(a)(7) (work not to Code); and 8) 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 \$6,520 is imposed on the Respondent. This represents as follows: 1) \$250 penalty for violating R.I. Gen. Laws § 5-65-18; 2) \$500 penalty for violating R.I. Gen. Laws § 5-65-10(3)(j); 3) \$100 penalty for violating R.I. Gen. Laws § 5-65-22 and R.I. Gen. Laws § 5-65-3(l); 4) \$250 for violating R.I. Gen. Laws § 5-65-3(p); 5) \$2,420 for violating R.I. Gen. Laws § 5-65-3(m); 6) \$1,000 penalty violating R.I. Gen. Laws § 5-65-10(a)(12); 7) \$1,000 penalty for violating R.I. Gen. Laws § 5-65-10(a)(7); and 8) \$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>8</sup>

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

/s/ *Catherine R. Warren*

Entered: December 23, 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 \_\_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. Nicholas DeMartino, 200 Cannon Street, Unit 158, Cranston, R.I. 02920 and to Mr. Brian J. Haughey, 853 Tiogue Avenue, Coventry, R.I. 02816 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\_\_\_\_\_