

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: :
: :
Joseph Morin/J. Morin & Sons, Inc., : **CRLB No. C-11045**
: :
Respondent. : :
:

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on September 29, 2022 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to Joseph Morin/J. Morin & Sons, Inc. (“Respondent”). The Respondent was previously registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.* but was not registered as a contractor at the time of the incident discussed below.¹ While the Respondent was not registered as a contractor at the time of this incident, the Board still has jurisdiction in disciplinary proceedings over the Respondent pursuant to R.I. Gen. Laws § 5-65-10(a)(10).² A hearing was scheduled for October 24, 2022 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

¹ The Department’s Exhibit Seven (7) indicated that the Respondent’s registration expired May 1, 2022. The events in this matter occurred from May 9, 2022 onwards. However, the undersigned also takes administrative notice of *Joseph Morin/J. Morin & Sons, Inc.*, CRLB No. V-6398 (9/28/22) which noted that the Respondent’s registration as a contractor was suspended on March 30, 2022.

² 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.”

complete upon mailing when sent to the last known address of the party. In this matter, the Notice was sent by first class mail and certified mail, return receipt requested to the Respondent.³ Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on October 24, 2022.⁴ Additionally, § 1.17 of the Regulation⁵ provides that a default judgment may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party. The Board was represented by counsel who 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*.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-65-10.

IV. MATERIAL FACTS

Based on the pleadings and exhibits entered at hearing, it is undisputed as follows: The Respondent entered in an agreement on May 9, 2022 with a homeowner in West Warwick to install a pool. The Respondent accepted a deposit in the amount of \$30,000 from the homeowner. The

³ Department's Exhibits One (1) and Two (2) (notice of hearing sent to a Woonsocket and a Providence address respectively); Three (3) (United States Post Office Tracking Sheet for Providence address showing delivery); and Four (4) (United States Post Office Tracking Sheet for Woonsocket address showing delivery). The Department noted that the Woonsocket address was the last known address on record with the Department, but the Notice was also sent to the Providence address, and the Woonsocket Notice was forwarded to the Providence address.

⁴ The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12.

⁵ 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.

Respondent failed to perform any of the work contracted for despite the homeowner contacting him. The homeowner filed a complaint with the Board on September 6, 2022 regarding the Respondent. The Board investigated the complaint and issued a report on or about September 7, 2022. The Board found various statutory violations by the Respondent including that he failed to return the deposit to the homeowner. Department's Exhibits One (1) and Two (2) (Notice); Five (5) (deposit check); Six (6) (May 9, 2022 contract between Respondent and homeowner); and Seven (7) (Board investigator's report).

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:

(3) That the registrant, licensee, or applicant has engaged in conduct as a contractor that is dishonest or fraudulent that the board finds injurious to the welfare of the public.

(10) The board may take disciplinary action against a contractor who performed work, or arranged to perform work, while the registration was suspended, invalidated, or revoked. Deposits received by a contractor and ordered returned are not considered a monetary award when no services or supplies have been received.

(19) That the registrant has violated any of the provisions of chapter 3 of title 25; 3, 12, 14, 36, or 50 of title 28; or 13 of title 37. A finding that the registrant has violated any of those chapters shall not be grounds for imposition of a monetary penalty under subsection (c) below.

(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.

D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a)(10)

It was undisputed that the Respondent did not perform the work for which he entered into a contract with said homeowner and did not return the homeowner's deposit. Therefore, pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the homeowner's deposit of \$30,000. At hearing, it was noted by the Board that the Respondent's other statutory violations in this matter were addressed separately by the Board with the Respondent.

However, the Board requested an administrative penalty be imposed on the Respondent for his failure to return the deposit since the Respondent has had prior violations and sanctions from the Board. As noted in the Notice, the Respondent has a history with the Board with seven (7) complaints filed against him and two (2) matters against him that resulted in administrative sanctions.⁶ The Respondent's failure to return the \$30,000 deposit is conduct as a contractor that is dishonest and fraudulent and injurious to the welfare of the public. As a result, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(3) by failing to return the deposit.

This violation is not the Respondent's first violation nor his first sanction. See *Joseph Morin/J. Morin & Sons, Inc.*, CRLB No. V-6398 (9/28/22). 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. As this violation is at least a third offense (two (2) prior administrative sanctions), a higher penalty as allowed by statute is merited. The Respondent took \$30,000 from a homeowner

⁶ As noted in *Joseph Morin/J. Morin & Sons, Inc.*, CRLB No. V-6398 (9/28/22), six (6) complaints against the Respondent were mediated.

and did no work. He refused to return the deposit. As this is his third offense, a penalty of \$10,000 as allowed by R.I. Gen. Laws § 5-65-10(c) is imposed for his violation of R.I. Gen. Laws § 5-65-10(a)(3) (dishonest, fraudulent, injurious conduct by failing to return to deposit).

IV. FINDINGS OF FACT

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

1. A homeowner filed a complaint on or about September 6, 2022 with the Board regarding the Respondent failing to return a deposit given for work which was then not performed.

2. A hearing was scheduled for October 24, 2022 at which time the Respondent did not appear. As the Respondent was adequately notified, the hearing was held with the Board resting on the record.

3. The Respondent entered into an agreement on May 9, 2022 with said homeowner to perform work and took a deposit of \$30,000 and did not perform the work and has not returned the deposit to said homeowner.

4. The Respondent's failure to return the deposit to the homeowner is conduct as a contractor that is dishonest and fraudulent and injurious to the welfare of the public.

5. Pursuant to § 1.17 of the Regulation, the Respondent is declared to be in default for failing to appear at the hearing.

6. The facts contained in Sections I, IV, and V are incorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the foregoing, pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the deposit of \$30,000 to said homeowner and confirm the same with the Board within 20 days of the date of this decision. Pursuant to R.I. Gen. Laws § 5-65-10(c), an

administrative penalty of \$10,000 is imposed on the Respondent for his violation of R.I. Gen. Laws § 5-65-10(a)(3) (dishonest, fraudulent, injurious conduct by failing to return to deposit).

Administrative penalties are due 20 days from the execution of this decision.⁷

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

Entered: November 9, 2022


Catherine R. Warren
Hearing Officer

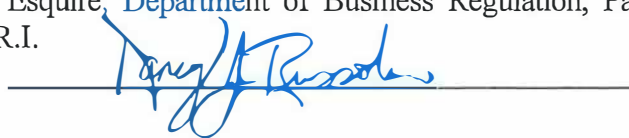
NOTICE OF APPELLATE RIGHTS

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 9th day of November, 2022 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail to Mr. Joseph Morin, J. Morin & Sons, Inc., 21 Homestead Road, Woonsocket, R.I. 02895 and Mr. Joseph Morin, J. Morin & Sons, Inc., 1537 Chalkstone Avenue, Providence, R.I. 02909 and by electronic delivery to jmorinandson@yahoo.com and by electronic delivery to James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, Matthew Lambert, Principal State Building Code Officer, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886 and Ania Zielinski, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.



⁷ Payment should be made to Contractors' Registration and Licensing Board at the above address.