

**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.,

Respondent.

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CRLB No. V-6398

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing issued on June 23, 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.* and was registered as a contractor at the time of the events discussed below.¹ A hearing was scheduled for September 15, 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 complete upon mailing when sent to the last known address of the party. In this matter, the initial notice of hearing was sent by first class mail and certified mail, return receipt requested to the Respondent.² Since the Respondent was

¹ The Respondent's registration as a contractor was suspended on March 30, 2022. Department's Exhibit Six (6) (print out of Board's records showing suspension). It is noted that Department's Exhibit Six (6) was forwarded by the Board to the undersigned as a proposed exhibit; however, it was not admitted during hearing. It is now admitted as Department's Exhibit Six (6).

² This matter was initially scheduled for hearing on July 14, 2022 for which a notice was sent by first class mail, and certified mail, return receipt requested. On July 14, 2022, the Respondent requested a continuance. The hearing was rescheduled to August 10, 2022, and a new notice was sent by first class mail and certified mail, return receipt

adequately noticed of hearing, a hearing was held before the undersigned on September 15, 2022.³ Additionally, § 1.17 of the Regulation⁴ 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(a)(11); (12) and (14); and R.I. Gen. Laws § 5-65-18, and if so, what is the appropriate sanction.

IV. MATERIAL FACTS

Based on the pleadings and exhibits entered at hearing, it is undisputed as follows: The Respondent was hired by a homeowner in August, 2020 to install a pool. Said homeowner filed a complaint on January 26, 2022 with the Board about the Respondent's work. The Board's investigation into the Respondent's pool installation found as follows: 1) there was an underground

requested to the Respondent. Department's Exhibit One (1) (notice of hearing for August 10, 2022). On August 10, 2022, the Respondent contacted the Board by telephone to request a continuance. On that day, the undersigned spoke via Zoom with the Respondent and informed him that a continuance was granted. The parties were informed by email of the new date of hearing, and a Zoom invitation was sent to the parties. Department's Exhibit Five (5) (email).

³ The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12.

⁴ 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.

pool return leak as well as several leaks on the filter system; 2) pool filter line leaked under the new stamped concrete pool apron; 3) Respondent repeatedly failed to fix the leaks despite the homeowner's request; and 4) in November, 2021, Respondent failed to winterize the pool. The inspection revealed that the Respondent failed to provide a written contract for the work so failed to include in the contract a mechanic's lien. The Board found that the Respondent breached the contract, failed to provide a mechanic's lien, failed to complete the project, and his work was negligent and improper. See Department's Exhibits One (1) (notice); Three (3) (Notice of Intent to Assess Civil Penalty and Opportunity for Hearing issued to Respondent dated March 9, 2022); and Four (4) (Respondent's request for hearing).

Matthew Lambert, Principal Investigator, testified on behalf of the Board. He testified there were seven (7) prior complaints against the Respondent. He testified that six (6) complaints were mediated without administrative penalties, and the other resulted in a violation in 2019.

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:

(11) That the registrant breached a contract.

(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.

(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.

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.

(o) All work performed, including labor and materials, in excess of one thousand dollars (\$1,000) shall be accompanied by a contract in writing. Contracts required pursuant to this subsection shall include a location on or near the signature-line location on or in which the parties to the contract shall initial to evidence the receipt of certain consumer education materials or information approved and provided by the board to the contractor. The educational materials and/or information shall include, but not be limited to, the following notice and shall be provided by the contractor to the homeowner:

NOTICE OF POSSIBLE MECHANIC'S LIEN

To: Insert name of owner, lessee, or tenant, or owner of less than the simple fee.

The undersigned is about to perform work and/or furnish materials for the construction, erection, alterations, or repair upon the land at (INSERT ADDRESS) under contract with you. This is a notice that the undersigned and any other persons who provide labor and materials for the improvement under contract with the undersigned may file a mechanic's lien upon the land in the event of nonpayment to them. It is your responsibility to assure yourself that those other persons under contract with the undersigned receive payment for their work performed and materials furnished for the construction, erection, alteration, or repair upon the land.

R.I. Gen. Laws § 5-65-18 provides 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. In the event that mechanics' liens are filed and there is no serious dispute, but merely a failure to pay, then the board may impose a suspension of the registration until such time as the liens are satisfied, either by payment, deposit of the funds in the registry of the court, or with the board.

D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a); R.I. Gen. Laws § 5-65-18; and/or R.I. Gen. Laws § 5-65-3

Based on the testimony and the exhibits entered at hearing, it was undisputed that the Respondent entered into an agreement with said homeowner to install a pool. It was undisputed that the Respondent performed negligent and improper work. It was undisputed that the Respondent did not complete a project of construction. It was undisputed that the Respondent breached a contract. It was undisputed that the Respondent failed to provide a contract and thus failed to include a mechanic's lien. *Supra.*

The Board's inspection found the following violations by the Respondent: 1) R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract); 2) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 3) R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction); and 4) R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien). 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 Respondent has a long history with the Board even though only one complaint resulted in a violation (administrative penalties). *Supra.* As these four (4) violations are at least second offenses, higher penalties are merited. Thus, rather

than an \$1,000 administrative penalty for each violation, a \$2,500 administrative penalty for each violation shall be imposed.

Pursuant to R.I. Gen. Laws § 5-65-10(c), a total administrative penalty of \$10,000 is imposed on the Respondent. This represents as follows: 1) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract); 2) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 3) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction); and 4) \$2,500 for violation of R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien).

VI. FINDINGS OF FACT

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

1. The notice of hearing was issued on June 23, 2022 by the Board to the Respondent.
2. The Respondent was registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*; however, that registration was suspended in 2022. He was registered at the time of events described herein.
3. A hearing was scheduled for September 15, 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.
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 incorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the foregoing, the Respondent violated 1) R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract); 2) R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work);


3) R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction); and 4) R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien).

Pursuant to R.I. Gen. Laws § 5-65-10(c), a total administrative penalty of \$10,000 is imposed on the Respondent. This represents as follows: 1) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract); 2) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(12) (performed negligent and improper work); 2) \$2,500 for violation of R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction); and 4) \$2,500 for violation of R.I. Gen. Laws § 5-65-3(o) and R.I. Gen. Laws § 5-65-18 (failed to provide mechanic's lien).

Administrative penalties are due 20 days from the execution of this decision.⁵

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

Entered: September 28, 2012


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.

⁵ Payment should be made to Contractors' Registration and Licensing Board at the above address.

CERTIFICATION

I hereby certify on this 28th day of September, 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.

Brian S. Quinn