

**STATE OF RHODE ISLAND  
DEPARTMENT OF BUSINESS REGULATION  
CONTRACTORS' REGISTRATION AND LICENSING BOARD  
560 JEFFERSON BOULEVARD, SUITE 200  
WARWICK, R.I. 02886**

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**In the Matter of:**

**David Baxter, Jr.  
Home Pro Services, Inc.,**

**Respondent.**

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**CRLB No. C-10981**

**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on October 31, 2022 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to David Baxter, Jr. and Home Pro Services, Inc. (“Respondent”). The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* A hearing was scheduled for November 29, 2022 at which time the Respondent appeared, and the parties reached a settlement. A consent order (“Consent Order”) dated December 15, 2022 was entered into by the Board and the Respondent. Board’s Exhibit One (1). On January 25, 2023, the Board requested a hearing on the Respondent’s alleged failure to comply with the Consent Order. *Id.*

A hearing was scheduled for February 17, 2023 on the Board’s request for a hearing. Board’s Exhibit Two (2) (notice of hearing). The Respondent appeared at that time and requested a two (2) week continuance in order to be able to make the required payments under the Consent Order. The Department objected to granting the continuance. The undersigned granted the continuance and scheduled the hearing for March 1, 2023. The new date was conveyed orally to the parties at the February 17, 2023 hearing conference and by an emailed Zoom invitation. On

March 1, 2023, there was an internet outage at the undersigned's office so that the Zoom call was unable to be accessed to approximately 13 minutes after the start of the hearing. The Board tried to contact the Respondent by email and telephone at the time of the March 1, 2023 hearing.<sup>1</sup> The Respondent did not appear at the March 1, 2023 hearing. Due to the internet outage, the undersigned rescheduled the hearing until March 3, 2023 and notified the Respondent by email.<sup>2</sup>

The Respondent did not appear at the remote March 3, 2023 hearing. 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, notice was sent to the Respondent's address by first class and certified mail for the November 29, 2022 and February 17, 2023 hearings. The Respondent was notified of the date and time of the March 1, 2023 hearing in person over the Zoom call on February 17, 2023. The Respondent was notified of the March 3, 2023 hearing by telephone and email.<sup>3</sup> Since the Respondent was adequately noticed of hearing,<sup>4</sup> a hearing was held before the undersigned on March 3, 2023.<sup>5</sup> Additionally, § 1.17 of the Regulation<sup>6</sup> 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.

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<sup>1</sup> See undersigned's email of March 1, 2023.

<sup>2</sup> *Id.*

<sup>3</sup> See testimony of Matthew Lambert, below.

<sup>4</sup> *Id.*

<sup>5</sup> The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12.

<sup>6</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.

## 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)(4) and (10), and if so, what should be the sanction(s).

## IV. MATERIAL FACTS

Matthew Lambert, Principal State Building Code Officer, testified on behalf of the Board. He testified that he was at the conference on November 29, 2022 when the agreement with the Respondent was reached that he would repay a homeowner's deposit of \$8,000 by January 4, 2023. He testified that he received the signed Consent Order from the Respondent by email and the email address used by the Respondent was the one used by the Board to notify the Respondent of the March dates of hearing. He testified he called the Respondent on the afternoon of March 1, 2023 to inform him of the new date for the hearing. He testified that on March 3, 2023, he telephoned the Respondent at 9:00 a.m. and at 2:00 p.m. before the hearing to tell the Respondent about the new date for hearing. He testified that he used the Respondent's telephone number with which he had previously communicated with the Respondent and left voice mails each time and as of the time of the March 3, 2023 hearing, he had not heard back from the Respondent. He testified that at the February 17, 2023 hearing, the Respondent appeared and admitted to not reimbursing the homeowner for the deposit due to issues with his business partner and banking issues. He testified that the Respondent requested a continuance for more time which was granted over the Department's objection.

Joshua Parent (“Parent”) testified on behalf of the Board. He testified that he is the homeowner in this matter who entered into a contract with the Respondent for him to replace a deck and build a new deck. He testified that he gave the Respondent an \$8,000 deposit but that the Respondent never even started the work. He testified that he filed a complaint with the Board about the Respondent and was at the November 29, 2022 hearing when the agreement was made that the Respondent would pay him back the \$8,000 deposit. He testified that he did not receive the payments by January 4, 2023 as provided for in the Consent Order and has not received any payments from the Respondent as of March 3, 2023. He testified that he was present at the February 17, 2023 hearing when the Respondent admitted he had not repaid him the deposit and asked for more time because of issues with his partner and 401(k) account.

## 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:

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(4) Has violated a rule or order of the board.

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(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.

(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.

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**D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a)(4) and (10)**

Based on the testimony and the exhibits entered at hearing, it was undisputed that the Respondent entered into the Consent Order on December 15, 2022 and agreed to repay Parent his \$8,000 deposit by January 4, 2023. The \$8,000 represents the deposit that Parent gave Respondent for the work that the Respondent did not do. The Respondent admitted on February 17, 2023 that he had not made the payments under the Consent Order and requested more time. The Respondent was given more time and a date set for hearing on March 1, 2023. While there was an internet outage on March 1, 2023, the Respondent never contacted the undersigned or the Board on that date, March 1, 2023, about his inability to access the scheduled March 1, 2023 Zoom hearing of which he had notice of in person (over Zoom). The hearing was rescheduled to March 3, 2023 using the Respondent's known email address. The Board contacted the Respondent by telephone several times to inform him of the new date of hearing.

The Respondent failed to pay Parent \$8,000 by January 4, 2023 so he has failed to comply with the Consent Order. That failure is a violation of R.I. Gen. Laws § 5-65-10(a)(4) (violated order of the Board). The Respondent violated R.I. Gen. Laws § 5-65-10(a)(10) by failing to return a deposit.

**E. Sanctions**

R.I. Gen. Laws § 5-65-10(a) provides that a registration may be suspended for violations of R.I. Gen. Laws § 5-65-10. R.I. Gen. Laws § 5-65-10(c) provides for penalties up to \$5,000 for first offences. The Board indicated that this would be the Respondent's first offense. The Board requested that the Respondent's registration be suspended for these violations and an administrative penalty be imposed on the Respondent.

The Respondent failed to return the \$8,000 deposit to Parent. The Respondent failed to comply with the Consent Order. A hearing date was set for February 17, 2023. At that time, the Respondent had not made any payments as required by the Consent Order and requested more time. More time was given to the Respondent by continuing the matter to March 1 and 3, 2023. The Respondent still did not make the required payment. Instead, he failed to appear at hearing. Such actions merit the suspension of the Respondent's registration.

In light of the Respondent's failure to comply with an order of the Board and failure to return the deposit to Parent, the Respondent's registration shall be suspended until he complies with the terms of this decision. The Respondent shall repay Parent the \$8,000 deposit. Administrative penalties of up to \$5,000 are authorized by statute for first offenses. The Respondent failed to comply with the Consent Order and failed to repay the deposit despite being given more time for compliance. The Respondent shall pay an administrative penalty of \$2,500.

## **VI. FINDINGS OF FACT**

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

1. The Notice was issued on October 31, 2022 by the Board to the Respondent.
2. The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*
3. A hearing was scheduled for March 3, 2023 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 R.I. Gen. Laws § 5-65-10(a)(4) (failure to comply with order of the Board) and R.I. Gen. Laws § 5-65-10(a)(10) (failure to return the deposit).

Pursuant to R.I. Gen. Laws § 5-65-10(a)(c), an administrative penalty of \$2,500 is imposed on the Respondent for violating R.I. Gen. Laws § 5-65-10(a)(4) and (10).


Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the deposit of \$8,000 to said homeowner, Parent, 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(a), the Respondent's registration is **suspended until he complies with the terms of this decision** (repayment of the deposit; payment of the administrative penalty). The suspension shall **begin 14 days** from the date of this decision.<sup>7</sup>

The administrative penalty is due 20 days from the execution of this decision.<sup>8</sup>

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

Entered: March 9, 2023

  
Catherine R. Warren  
Hearing Officer

<sup>7</sup> If the Respondent complies with the decision within 14 days of the decision, then the registration will not be suspended. He must provide proof of compliance to the Board.

<sup>8</sup> Payment should be made to Contractors' Registration and Licensing Board at the above address.



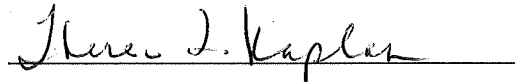
**NOTICE OF APPELLATE RIGHTS**

**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 9<sup>th</sup> day of March, 2023 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail to David Baxter, Jr., Home Pro Services, Inc., 10 Woody Hill Road, Exeter, R.I. 02822 and by electronic delivery to davidbax04@gmail.com and by electronic delivery to James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, Matthew Lambert, Principal State Building Code Officer, and Megan Mihara, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886, Ania Zielinski, Esquire, and Pamela Toro, Esquire, and Joshua Nault, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

  
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