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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:

Chancellor Lataille
Lataille's Landscape,

Respondent.

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C-10877

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on June 30, 2022 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to Chancellor Lataille and Lataille’s Landscape (“Respondent”). The Respondent is not registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.*; however, the Board still has jurisdiction in disciplinary proceedings over the Respondent pursuant to R.I. Gen. Laws § 5-65-10(a)(10).¹ A hearing was scheduled for July 28, 2022 at which time the Respondent appeared, and the parties reached a settlement. A consent order (“Consent Order”) dated November 6, 2022 was entered into by the Board and the Respondent. Department’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 Exhibits Three (3) and Four (4) (notice of hearing and United States Post Office tracking

¹ 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.”

sheet showing certified mail delivered). The Respondent appeared on February 17, 2023 and requested a continuance in order to be able to make the required payments under the Consent Order to which the Department did not object. The undersigned granted the continuance and scheduled the hearing for March 17, 2023. The new date was conveyed orally to the parties at the February 17, 2023 hearing conference and by an emailed Zoom invitation.

The Respondent did not appear at the remote March 17, 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 July 28, 2022 and February 17, 2023 hearings. The Respondent was notified of the date and time of the March 17, 2023 hearing in person over the Zoom call on February 17, 2023 and by an emailed Zoom invitation. Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on March 17, 2023.² Additionally, § 1.17 of the Regulation³ 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.

² The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12.

³ 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.

IV. MATERIAL FACTS

Matthew Lambert, Principal State Building Code Officer, testified on behalf of the Board. He testified that the Respondent was not registered as a contractor. He testified that the Respondent has not complied with the Consent Order. He testified that the Respondent agreed to repay a homeowner's deposit of \$900.00 that he took for work that he did not perform, but the Respondent has not repaid the homeowner as provided for in the Consent Order. He testified that he was at the conference on February 17, 2023 at which time the Respondent requested more time to repay the deposit to the homeowner as provided for in the Consent Order. He testified that the Respondent indicated that he was due a tax refund that he would use to repay the homeowner. He testified that the Respondent has still not repaid the deposit.

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:

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

(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.

(b) Subject to providing notice and an opportunity for a hearing, in addition to all other remedies, when the board or office has reason to believe that a person has engaged in, or is engaging in, any act, practice, or transaction that violates the provisions of this chapter or the regulations promulgated thereunder, the board or office may order such person to cease and desist from the violation or request the attorney general to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction shall not be issued for failure to maintain the list provided for in § 5-65-3(h) unless the court determines that the failure is intentional.

(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.

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 November 6, 2022 and agreed to repay the homeowner's \$900 deposit by August 28, 2022. The \$900 represents the deposit that the homeowner 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 was set for hearing on March 17, 2023 at which time the Respondent did not appear despite having notice of it in person (over Zoom).

The Respondent failed to pay the homeowner the \$900 by August 28, 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 also violated R.I. Gen. Laws § 5-65-10(a)(10) by failing to return a deposit. Also under the Consent Order, the Respondent was to pay an

administrative penalty to the Board in the amount of \$500 by October 14, 2022 for violating R.I. Gen. Laws § 5-65-10(a)(10) and R.I. Gen. Laws § 5-65-3⁴ by arranging to perform work as a contractor when not registered as a contractor.

E. Sanctions

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 17, 2023. The Respondent still did not make the required payments. Instead, he failed to appear at hearing.

In light of the Respondent's failure to return the deposit to the homeowner, the Respondent shall repay the homeowner the \$900 deposit. R.I. Gen. Laws § 5-65-10(c) provides for administrative penalties up to \$5,000 for first offences. The Board requested that any administrative penalty imposed on the Respondent be left to the undersigned's discretion. The Respondent failed to comply with the Consent Order despite being given more time for

⁴ R.I. Gen. Laws § 5-65-3 provides in part:

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 (a) A person shall not undertake, offer to undertake, or submit a bid to do work as a contractor on a structure unless that person has a current, valid certificate of registration for all construction work issued by the board. A partnership, corporation, limited liability company, or joint venture may do the work; offer to undertake the work; or submit a bid to do the work only if that partnership, corporation, limited liability company, or joint venture is registered for the work and in the case of registration by a corporation, limited liability company, joint venture, or partnership, an individual shall be designated to be responsible for the corporation's, company's, joint venture's, or partnership's work. The corporation, limited liability company, joint venture, or partnership and its individual designee shall be jointly and severally liable and responsible for the payment of the registration fee, as required in this chapter, and for compliance with all requirements and violations of any provisions of this chapter and the regulations promulgated thereunder. Disciplinary action taken on a registration held by a corporation, partnership, limited liability company, joint venture, individual, or sole proprietor may affect other registrations held by the same corporation, partnership, limited liability company, joint venture, individual, or sole proprietorship, and shall also be grounds for the board or office to deny and preclude future registration by any corporation, partnership, limited liability company, joint venture, individual, or sole proprietorship where the disciplined registrant and the applicant for registration have an individual principal and/or responsible designee in common.

compliance. The Respondent failed to pay the administrative penalty of \$500 provided for in the Consent Order in relation to his acting as an unregistered contractor. Thus, the Respondent shall pay an administrative penalty of \$1,000.00 for his failure to comply with the Consent Order and his failure to return the deposit. Finally, pursuant to R.I. Gen. Laws § 5-65-10(b), the Respondent is ordered to cease and desist from violating R.I. Gen. Laws § 5-65-1 *et seq.* so that he shall not engage in work that requires registration under said statute.

VI. FINDINGS OF FACT

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

1. The Notice was issued on June 30, 2022 by the Board to the Respondent.
2. The Respondent is not registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*
3. The Respondent did not make the required payments pursuant to said Consent Order.
4. A hearing was scheduled for March 17, 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.
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, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(4) and R.I. Gen. Laws § 5-65-10(a)(10).

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the deposit of \$900 to said homeowner 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), the Respondent shall pay an administrative penalty of \$1,000.00 for his violations of R.I. Gen. Laws § 5-65-10(a)(4) and (10).

Pursuant to R.I. Gen. Laws § 5-65-10(b), the Respondent is ordered to cease and desist from violating R.I. Gen. Laws § 5-65-1 *et seq.* so that he shall not engage in work that requires registration under said statute.

The administrative penalty is due 20 days from the execution of this decision.⁵

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

Entered: April 6, 2023


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 6th day of April, 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 Chancellor Lataille, PO Box 6859, Providence, R.I. 02940 and 137 Garfield Street #5, Central Falls, R.I. 02863 by electronic delivery to latailleslandscape@gmail.com and alternatively (family member) leticia3714@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.


