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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:

Richard McDermott,

Respondent.

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23CRLB001

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on February 28, 2023 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to Richard McDermott (“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).<sup>1</sup> A hearing was scheduled for March 22, 2023 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 Notice was sent to the Respondent’s last known address by first class and certified mail.<sup>2</sup> Since the

<sup>1</sup> 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.”

<sup>2</sup> Initially this hearing was noticed by a notice sent on January 24, 2023 to the Respondent at an address in Warren, Rhode Island. Department’s Exhibit One (1) and Two (2) (United States Post Office tracking sheet showing certified mail was being returned to sender). A prehearing conference was held on February 27, 2023 at which time the Respondent did not appear. The Department had obtained another address from the Respondent so a new notice scheduling the hearing for March 22, 2023 was forwarded to the Department using the initial Warren address (obtained

Respondent was adequately noticed of hearing, a hearing was held before the mail undersigned on March 22, 2023.<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 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 or about October 5, 2022 with a homeowner in Bristol to add a bathroom and shed dormer at said homeowner's property. The Respondent is not registered as a contractor and misled the homeowner as to his registration status by claiming he was working under someone else's registration. The Respondent accepted a deposit in the amount of \$3,500

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from police report) and the other address. Department's Exhibits Three (3) and Four (4) (Notice sent to East Providence, Rhode Island address and the United States Post Office tracking sheet showing certified mail was unclaimed and was being returned to sender). Departments Five (5) and Six (6) (Notice sent to Warren, Rhode Island address and United States Post Office tracking sheet showing certified mail was being returned to sender).

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

<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.

from the homeowner. The Respondent accepted the deposit but failed to perform any work on the project for which he contracted to perform. Department's Exhibits One (1) (notice); Seven (7) (Bristol police report detailing Respondent taking the deposit money from said homeowner and failing to perform work and criminal charges filed in relation to that matter); and Eight (8) (bank record showing Respondent cashed said homeowner's check).

## 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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(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.

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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.

(15) That the registrant has misrepresented his or her registration status as valid when the registration was suspended, revoked, invalidated, inactive, or unregistered as required by the board.

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(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.

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

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. It is undisputed that the Respondent is not registered as a contractor in Rhode Island. It is undisputed that the Respondent failed to start or complete the project and misrepresented his registration status to the homeowner by claiming he was working under someone else's registration. Therefore, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(10) (failed to return deposit); (14) (failed to complete project); and (15) (misrepresented registration status).

**E. Sanctions**

The Board requested that a cease and desist order be entered against the Respondent and that he be ordered to return the homeowner's deposit. R.I. Gen. Laws § 5-65-10(c) provides for 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.

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the homeowner's deposit of \$3,500. 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 record indicated that this might not have been the Respondent's only time acting as unregistered contractor who did not complete a project. However, the evidence before the undersigned is only for this matter and this is the Respondent's first offense. Thus, the Respondent is ordered to pay an administrative penalty of \$750.00 for failing to complete the project and misrepresenting his registration status.

## **VI. FINDINGS OF FACT**

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

1. The Respondent was arrested by the Bristol police due to his having taken a deposit from said homeowner for work that he never started or completed, and he never returned the deposit for this work which was not performed.

2. A hearing was scheduled for March 22, 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.

3. The Respondent entered into an agreement on October 5, 2022 with said homeowner to perform work and took a deposit of \$3,500 and did not perform the work and has not returned the deposit to said homeowner.

4. The Respondent is not registered as a contractor and misled the homeowner as to his registration status.

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 \$3,500 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(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.

Pursuant to R.I. Gen. Laws § 5-65-10(a)(c), an administrative penalty of \$750.00 is imposed on the Respondent for violating R.I. Gen. Laws § 5-65-10(a)(14) and (15).

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

Entered: April 13, 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 Contractors' Registration and Licensing 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 13<sup>th</sup> 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 Richard McDermott, 300 Main Street, Warren, R.I. 02885 and 22 Walnut Street, East Providence, R.I. 02914 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, and Ania Zielinski, Esquire, and Pamela Toro, Esquire, and Joshua Nault, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

