

noticed of hearing, a remote hearing was held before the undersigned on July 10, 2023.³ 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 § 5-65-3 and 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 into a contract on or about February 1, 2023 with a homeowner in North Providence to repair a chimney at the homeowner's property. The work arranged to be performed required registration as a contractor. On April 14, 2023, the homeowner filed a complaint with the Board regarding the Respondent in that the homeowner complained that the chimney leaked. The Board conducted an inspection and determined that the Respondent was not registered as a

Office tracking sheet showing Warwick address certified notice was returned). The Notice was also sent to the Respondent's email addresses. Department's Exhibit One (1). The Respondent's addresses were obtained from the complaining homeowner, and the Respondent's records. Department's Exhibit Four (4) (inspection report).

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.

contractor when he arranged to perform the work, and he was paid \$1,800 for the work performed. The inspection report indicated that the Respondent previously had come to the attention of the Board because of prior nonregistered work and several filed complaints against the Respondent. The inspection indicated that the Respondent had applied to be registered as a contractor in 2020 but was refused due to his prior nonregistered work and an insufficient application. Department's Exhibits One (1) (Notice); and (Four) (inspection report including copies of the homeowner's checks to Respondent).

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 § 5-65-3 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. (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. ***

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:

(1) That the registrant or applicant has violated § 5-65-3 or any other provision of this chapter or the regulations promulgated thereunder

(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) Subject to providing notice and an opportunity for a hearing:

(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. Where corrective work is completed and/or if restitution is made to the person for whom the work was to be performed, the fine assessed may be reduced as determined by the board. Fines for violations may be imposed against registered contractors, as well as those persons required to be registered, by the board.

D. Whether the Respondent violated R.I. Gen. Laws § 5-65-3 and R.I. Gen. Laws § 5-65-10

It is undisputed that the Respondent is not registered as a contractor in Rhode Island. It is undisputed that the Respondent arranged to perform work that required registration as a contractor while not registered as a contractor. It is undisputed that the Respondent repaired said chimney while not registered as a contractor. R.I. Gen. Laws § 5-65-10(c) provides for administrative penalties up to \$5,000 for first offences.

The Respondent violated R.I. Gen. Laws § 5-65-3 and R.I. Gen. Laws § 5-65-10(a)(1) and (10) by arranging to perform work and performing work that required registration as a contractor when not registered as a contractor. The Board requested the imposition of an administrative penalty of \$5,000.00 for the Respondent's statutory violation. The Respondent has previously engaged in unregistered work as a contractor and been rejected by the Board to be registered a contractor. Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$5,000.00 is imposed for Respondent's violation of R.I. Gen. Laws § 5-65-3 and R.I. Gen. Laws § 5-65-10(a)(1) 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.

VI. FINDINGS OF FACT

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

1. The homeowner filed a complaint on or about April 14, 2023 with the Board regarding the Respondent for making poor repairs to a chimney.
2. A hearing was scheduled for July 10, 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 a contract on or about February 1, 2023 with said homeowner to perform work on a chimney. The work arranged to be performed required registration as a contractor.
4. At the time that the Respondent entered into said contract, the Respondent was not registered as a contractor and is still not registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* He performed the work while not registered as a contractor.
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

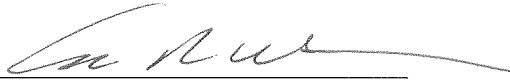
Based on the foregoing, pursuant to R.I. Gen. Laws § 5-65-10(a)(10), an administrative penalty of \$5,000.00 is imposed for Respondent's violation of R.I. Gen. Laws § 5-65-3 and R.I. Gen. Laws § 5-65-10(a)(1) and (10).

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: July 25, 2023


Catherine R. Warren
Hearing Officer

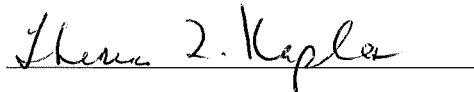
NOTICE OF APPELLATE RIGHTS

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 25th day of July, 2023 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail and to Mr. Shawn Perry, 115 Main Avenue, Warwick, RI 02886 and 1 Greco Lane, Providence, RI 02909 and by electronic delivery to the Respondent at shawnperry0905@gmail.com, and shawnperry984@gmail.com, and by electronic delivery to James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, Matthew Lambert, Principal State Building Code Officer, Christina Santos, and Megan Mihara, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886, and Ania Zielinski, Esquire, Pamela Toro, Esquire, and Joshua Nault, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.



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