

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:

Timothy Santos,  
TES Construction  
Respondent.

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CRB V. 2023-173

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on July 25, 2023 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to Timothy Santos, TES Construction (“Respondent”). The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* A hearing was scheduled for August 17, 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 and by email.<sup>1</sup> Since the Respondent was adequately noticed of hearing, a hearing was held before the mail undersigned on

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<sup>1</sup> Department’s Exhibits One (1) (Notice sent by first class and certified mail to address on record for the Respondent); and Two (2) (United States Post Office tracking sheet showing that the certified Notice was attempted to be delivered); and Three (3) (certified mail receipts for Notice). The Notice was also sent to the Respondent’s email address. Department’s Exhibit One (1) (Notice); and Four (4) (Board inspection report with last known address for the Respondent used for the Notice and Respondent’s email address).

August 17, 2023.<sup>2</sup> Additionally, § 1.17 of the Regulation<sup>3</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, and if so, what shall be the sanction.

## **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 February 23, 2023 to build a fence for a homeowner in Bristol. The Respondent accepted a deposit of \$3,000 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); Four (4) (Board inspection report dated May 25, 2023 finding work not performed); Five (5) (copy of check dated February 23, 2023 for \$3,000 from homeowner to Respondent); Six (6) (texts between homeowner and Respondent

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

<sup>3</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.

in February, 2023 about entering in agreement to build fence and then homeowner requests in March and April, 2023 to actually perform the work); and Seven (7) (letter dated March 19, 2023 texted from homeowner to Respondent on March 24, 2023 requesting the work be performed).

## 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. R.I. 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.

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(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**

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 failed to start or complete the project. Therefore, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(10) (failed to return deposit); and (14) (failed to complete project).

**E. Sanctions**

R.I. Gen. Laws § 5-65-10(c) provides for penalties up to \$5,000 for first offences. The Board requested an administrative penalty be imposed for Respondent's statutory violation. The evidence before the undersigned is that this was the Respondent's first offense. Thus, the

Respondent is ordered to pay an administrative penalty of \$1,500.00 for failing to complete the project.

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the homeowner's deposit of \$3,000.

## **VI. FINDINGS OF FACT**

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

1. The Notice was issued by the Department on July 25, 2023 to the Respondent.
2. A hearing was scheduled for August 17, 2023 at which time the Respondent did not appear. As the Respondent was adequately notified of the hearing, the hearing was held with the Department resting on the record.
3. The Respondent entered into an agreement on or about February 23, 2023 with said homeowner to perform work and took a deposit of \$3,000 and did not perform the work and has not returned the deposit to said homeowner.
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, pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the deposit of \$3,000 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(a)(c), an administrative penalty of \$1,500.00 is imposed on the Respondent for violating R.I. Gen. Laws § 5-65-10(a)(14).


The administrative penalty is due 20 days from the execution of this decision.<sup>4</sup>

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<sup>4</sup> Payment should be made to Contractors' Registration and Licensing Board at the above address.

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

Entered: August 28, 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 28<sup>th</sup> day of August, 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 Mr. Timothy Santos, TES Construction, 45 Platt Street, Bristol, R.I. 02809 and by electronic delivery to tsantos95@icloud.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, and Pamela Toro, Esquire, and Joshua Nault, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

