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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:

William Munson d/b/a Munson's Painting,

C2023-229

Respondent.

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing ("Notice") issued on September 12, 2023 by the Department of Business Regulation Contractors' Registration and Licensing Board ("Department" or "Board") to William Munson d/b/a Munson's Painting ("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 October 19, 2023 at which time the Respondent did not appear. Pursuant to R.I. Gen. Laws § 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 addresses by first class and

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."

certified mail.² Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on October 19, 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 § 5-65-10 and R.I. Gen. Laws § 5-65-3.

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 January 6, 2023 with a homeowner in Barrington to perform interior painting at said homeowner's property. The Respondent is not registered as a contractor. The Respondent accepted a deposit in the amount of \$1,850 from the homeowner. The Respondent accepted the deposit but failed to perform any work for which he contracted to perform. Department's Exhibits One (1) (Notice); Three (3) (inspection report); Four (4)

² The Notice was sent to two (2) addresses that are the Respondent's last known addresses. Department's Exhibits One (1) (Notice); Two (2) (copies of receipt for certified mail); Three (3) (Department's inspector's report); and Eight (8) (one of the Notices sent certified mail that was returned unclaimed).

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.

(contract); Five (5) (copy of deposit check); Six (6) (bank record); and Seven (7) (text messages from homeowner in April, May, and June, 2023 to Respondent requesting return of 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. 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 § 5-65-3 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:

(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 and if so, what Should be the Sanction

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. For those violations, 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. The Board requested the imposition of an administrative penalty for the Respondent's statutory violation.

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)(10) by arranging to perform work that required registration as a contractor when not registered as a contractor. Pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$1,000.00 is imposed for Respondent's first offense which is his violation of R.I. Gen. Laws § 5-65-3 and R.I. Gen. Laws § 5-65-10(a)(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.

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the homeowner's deposit of \$1,850.

VI. FINDINGS OF FACT

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

1. The Notice was issued on September 12, 2023 to the Respondent.

2. A hearing was scheduled for October 19, 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 January 6, 2023 with said homeowner to perform work and took a deposit of \$1,850 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 the work for which he contracted to perform required registration 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), the Respondent is ordered to return the deposit of \$1,850 to said homeowner and confirm the same with the Board within 20 days of the date of this decision.

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

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

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

Entered: October 30, 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 30th day of October, 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 William Munson, 164 Arlington Avenue, Warwick, R.I. 02889 and to 40 Junction Street, Warwick, R.I. 02889 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.


Sheri Kaplan