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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**

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**In the Matter of:**

**James Bruce Simmons, Jr.,  
a/k/a Jimmy Simmons,  
d/b/a Simmons & Sons Painting LLC, and  
d/b/a S&S General Contractor, LLC,  
Respondent.**

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**CRLB No. C-2023-235**

**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on September 13, 2023 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to James Bruce Simmons, Jr., a/k/a Jimmy Simmons, d/b/a Simmons & Sons Painting LLC, and d/b/a S&S General Contractor, LLC (“Respondent”). The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* 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 certified mail.<sup>1</sup> Since the Respondent was adequately noticed

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<sup>1</sup> The Notice was sent to two (2) addresses that are the Respondent’s last known addresses. Department’s Exhibit One (1) (Notice). One certified Notice sent to one address was returned as “attempted – not known” and “unable to forward.” The other certified Notice sent to the other address was returned as unclaimed. Department’s Exhibits Two (2) and Three (3) respectively. The Notice was also sent to the Respondent at three (3) different email addresses for

of hearing, a hearing was held before the undersigned on October 19, 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(a), and if so, what should be the sanction(s).

## IV. MATERIAL FACTS

Based on the pleadings and exhibits entered at hearing, it is undisputed as follows: The Respondent entered into an agreement on February 25, 2023 with a homeowner in Johnston to build a new deck, repair an old deck, and dry wall interior walls of the homeowner's house. Said homeowner paid a total of \$28,062 for the work to be performed. The Respondent did not start

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the Respondent. Department's Exhibits One (Notice), and Five (Board's inspection report). On September 13, 2023, the Respondent telephoned the Department regarding the Notice and left a message. Department's Exhibit Four (4) (transcript of voicemail from the Respondent regarding the Notice). The Board's attorney represented that he called the Respondent back and left a message for him stating that he should appear at this hearing if he wanted to try to resolve this matter.

<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.

and did not perform any of the work for which he was contracted to perform. The Respondent told the homeowner that he was having problems obtaining a building permit and then suggested how they could circumvent the permitting process. The Respondent suggested to the homeowner that they could terminate his contract, and the Respondent would do the work, but if anyone came by that the homeowner could say he did the work and thus, only pay for a permit. Finally, the project was cancelled, and the Respondent provided a refund check to the homeowner in the amount of \$27,000. However, the refund check bounced. Department's Exhibits One (1) (Notice);<sup>4</sup> Five (5) (inspection report); Seven (7) (contract); Eight (8) through (11) (payments by homeowner to Respondent via Zelle transfer and cashier's check totaling \$28,062); 12 (copy of \$27,000 check from Respondent to homeowner with bank records showing it was returned for insufficient funds); 16 (April, 2023 texts between homeowner and Respondent where Respondent suggested lying in order to circumvent permitting process); and 17 (judicial records showing criminal case against Respondent for the bounced 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.*

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<sup>4</sup> Due to an apparent copying error, the Notice entered as Department's Exhibit One (1) was missing some pages. The undersigned has substituted in a copy of the complete Notice for Department's Exhibit One (1).

*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.

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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.

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(k) When upon investigation a complaint reveals: serious code infractions; unsatisfied mechanic's liens; abandonment of a job for a substantial period of time without apparent cause; or any other conduct detrimental to the public, the board can double the fines.

**D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a)(14)**

Based on the testimony and the exhibits entered at hearing, it was undisputed that the Respondent entered into a contract with the homeowner and accepted a deposit in the amount of \$28,062 for work that he never performed. The Respondent never started the project. The Respondent suggested to the homeowner that they lie in order to circumvent the permitting process. The Respondent issued a \$27,000 check to the homeowner ostensibly for a refund of almost all of the deposit. That check bounced. The Respondent violated R.I. Gen. Laws § 5-65-10(a)(14) by failing to complete said project.

**E. Sanctions**

R.I. Gen. Laws § 5-65-10(a) provides that a registration may be suspended for violations of R.I. Gen. Laws § 5-65-10. The Board requested that the Respondent's registration be suspended for these violations, and an administrative penalty be imposed on the Respondent. R.I. Gen. Laws § 5-65-10(c) provides for penalties up to \$5,000 for first offences. R.I. Gen. Laws § 5-65-10(k) provides that penalties may be doubled for conduct detrimental to the public. The Board requested that a penalty of \$5,000 be imposed for a first offence and be doubled because of the Respondent conduct in trying to circumvent the permitting process. The Board also requested that the Respondent be ordered to return the deposit to the homeowner.

The Respondent did not start the project so did not complete the project. He did not return the \$28,062 deposit to the homeowner. Instead, he provided the homeowner with a \$27,000 check that bounced. The Respondent suggested to the homeowner that they lie in order to circumvent the permitting process. Such actions merit the suspension of the Respondent's registration.

In light of the Respondent's failure to complete the homeowner's project, failure to even start the project, failure to repay the deposit, providing a bounced refund check to the homeowner, and suggesting circumventing the permitting process by lying, his registration shall be suspended until he complies with the terms of this decision. The Respondent shall repay the homeowner the \$28,062 deposit. Administrative penalties of up to \$5,000 are authorized by statute for first offenses. R.I. Gen. Laws § 5-65-10(k) allow penalties to be doubled for conduct detrimental to the public. The Respondent's suggestion to lie to circumvent the permitting process and giving bounced checks are detrimental to the public. As a registered contractor, the Respondent must follow building codes and should not engage in subterfuge regarding such processes. Thus, the Respondent shall pay an administrative penalty of \$10,000 representing a \$5,000 administrative penalty for a first offense that is doubled pursuant to R.I. Gen. Laws § 5-65-10(k).

## **V. FINDINGS OF FACT**

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

1. The Notice was issued on September 13, 2023 by the Board to the Respondent.
2. The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*
3. 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.

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, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(14) (failure to complete a project).

Pursuant to R.I. Gen. Laws § 5-65-10(a)(c) and (k), an administrative penalty of \$10,000 is imposed on the Respondent for violating R.I. Gen. Laws § 5-65-10(a)(14).


Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the deposit of \$28,062 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), the Respondent's registration is **suspended until he complies with the terms of this decision** (repayment of the deposit; payment of the administrative penalty). The suspension shall **begin 14 days** from the date of this decision.<sup>5</sup>

The administrative penalty is due 20 days from the execution of this decision.<sup>6</sup>

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

Entered: November 1, 2023

  
Catherine R. Warren  
Hearing Officer

<sup>5</sup> If the Respondent complies with the decision within 14 days of the decision, then the registration will not be suspended. He must provide proof of compliance to the Board. The Board may entertain a short term payment plan for a resolution of this decision, but that is at the discretion of the Board.

<sup>6</sup> Payment should be made to Contractors' Registration and Licensing Board at the above address.

## 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.

### CERTIFICATION

I hereby certify on this 1<sup>st</sup> day of November, 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 James B. Simmons, Jr., 6 Ledyard Street, Apt. 2, Newport, R.I. 02840 and 270 Bellevue Avenue, PMB 1115, Newport, R.I. 02840 and by electronic delivery to [JamesSimmons@simmonsandsonspainting.com](mailto:JamesSimmons@simmonsandsonspainting.com), and [jbsimmons662@gmail.com](mailto:jbsimmons662@gmail.com), and [simmonsjames820@gmail.com](mailto:simmonsjames820@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.

  
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