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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: :
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 :
 Daniel Brito, : CRB V- 6521
 :
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 Respondent. :
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DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on April 12, 2024 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to Daniel Brito (“Respondent”). The Respondent was registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.* at the time of the allegations in this matter. While the Respondent’s registration has now expired, the Board still has jurisdiction in disciplinary proceedings over him pursuant to R.I. Gen. Laws § 5-65-10(e).¹ A prehearing conference was scheduled for May 3, 2024, and a hearing was scheduled for May 17, 2024. The Respondent did not appear for either the prehearing conference or the hearing. 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

¹ R.I. Gen. Laws § 5-65-10(e) provides as follows:

(e) The expiration of a registration by operation of law or by order or decision of the board, the office, or a court, or the voluntary surrender of registration by the registrant, does not deprive the board or office of jurisdiction of an action or disciplinary proceeding against the registrant, or to render a decision suspending or revoking a registration.

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.² Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on May 17, 2024.³ 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 the Regulation.

III. ISSUE

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

IV. MATERIAL FACTS

Anthony Whitfield ("Whitfield"), chief board inspector, testified on behalf of the Department. He testified that an inspection by the Board of the Respondent's workplace on May

² The Notice scheduling the prehearing conference was sent by first class and certified mail and by email to the Respondent's mailing addresses and email address on record with the Department. Department's Exhibit Ten (10). After the prehearing conference, the Department sent the Respondent a notice dated May 3, 2024 informing the Respondent that a hearing has been scheduled for May 17, 2024. This notice was sent to the Respondent by first class mail to the same mailing addresses on record with the Department. Department's Exhibit Four (4) (letter sent to the Respondent informing him that as he failed to appear at the prehearing conference, a hearing had been scheduled for May 17, 2024). This notice was also sent by email to the Respondent's email address on record with the Department. The Respondent replied by email to the Department in response to his receipt May 3, 2024 notice of hearing scheduling the hearing for May 17, 2024. Department's Exhibit Five (5) (email from the Respondent from the email address used by the Department to send the initial notice and the follow up notice).

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.

17, 2022 ascertained that the Respondent did not have workers compensation for his employees. He testified that inspection was tracked as Board violation # 6521. He testified that the Respondent uploaded a new certificate of liability to the Board's portal showing that he obtained workers compensation after the Department's inspection. Department's Exhibits One (1) (Notice of Intent to Assess Civil Penalty dated May 18, 2022 issued to Respondent for Board violation # 6521); Six (6) (certificate of insurance dated July 21, 2021 on file with Board); and Seven (7) (updated certificate of insurance filed with Board by the Respondent showing workers compensation insurance effective May 17, 2022).

Whitfield testified that along with the workers compensation violation, the Respondent received another violation, # 6667. Department's Exhibit Nine (9) (Final Order and Suspension of Registration dated September 28, 2022 issued to Respondent for Board violation # 6667). He testified the Respondent paid the administrative penalty for the # 6667 violation. He testified that when the Respondent received the notice of hearing for this matter, the Respondent believed he had already paid a penalty for the workers compensation violation. However, he testified that the Respondent had paid a penalty for the other violation (# 6667) and not for the workers compensation violation (# 6521). Department's Exhibits Two (2) (record showing Respondent paid penalty for violation # 6667); Five (5) (Department's email dated May 6, 2024 to the Respondent explaining that his payment had been for violation # 6667 and that this matter related to a different violation, # 6521, and offering a settlement); and Eight (8) (Respondent's appeal of violation # 6521 dated May 18, 2022).

The Notice detailed that the Respondent failed to have workers compensation insurance for two (2) employees as statutorily required and failed to list employees as regulatory required. Department's Exhibit Ten (10).

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 and Regulation

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.

(2) That the insurance required by § 5-65-7 is not currently in effect.

(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.

R.I. Gen. Laws § 5-65-7 provide as follows:

Insurance required of contractors. (a) Throughout the period of registration, the contractor shall have in effect public liability and property damage insurance covering the work of that contractor that shall be subject to this chapter in not less than the following amount: five hundred thousand dollars (\$500,000) combined single limit, bodily injury and property damage.

(b) In addition, all contractors shall have in effect workers' compensation insurance as required under chapter 29 of title 28. Failure to maintain required insurance shall not preclude claims from being filed against a contractor.

(c) The contractor shall provide satisfactory evidence to the board at the time of registration and renewal that the insurance required by subsections (a) and (b) of this section has been procured and is in effect. Failure to maintain insurance shall invalidate registration and may result in a fine to the registrant and/or suspension or revocation of the registration.

Section 1.1.12 of the Regulation provides in part as follows:

Procedure for Investigating and Processing Violations

A. Notices of Violation shall be issued for, but are not limited to, the following conduct:

5. Lack of workers' compensation coverage;

14. Failure to list employee(s).

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

Based on the testimony, exhibits, and pleadings, it was undisputed the Respondent failed to have workers compensation for two (2) employees as required by statute and failed to list the employees with the Board as required by the Regulation. Therefore, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(1) (violated Regulation); (2) (failed to have workers compensation); and § 1.1.12 of the Regulation (list employees).

E. Sanctions

The Board requested that penalties be imposed for the Respondent's violations. R.I. Gen. Laws § 5-65-10(c) provides for penalties up to \$5,000 for first offences.⁵ A penalty of \$1,000 for each employee for which the Respondent did not have workers compensation insurance shall be imposed. As there were two (2) employees, that penalty shall be \$2,000. Furthermore, a penalty of \$1,000 shall be imposed for failing to list the employees and violating the Regulation. Thus, the Respondent is ordered to pay an administrative penalty of \$3,000.00 for failing to have workers compensation for employees, failing to list employees, and violating the Regulation.

VI. FINDINGS OF FACT

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

1. The Notice was issued on April 12, 2024 by the Board to the Respondent. A further notice was issued on May 3, 2024 by the Board to the Respondent.
2. A hearing was scheduled for May 17, 2024 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.

⁵ The Respondent's other violation took place after these violations.

3. The Respondent hired employees that he failed to list with the Board and for which he did not have workers compensation coverage. The Respondent was registered as a contractor at that time.

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.

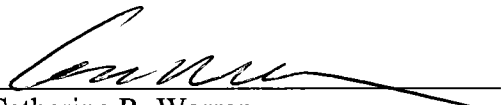
VII. CONCLUSIONS OF LAW

Based on the foregoing, pursuant to R.I. Gen. Laws § 5-65-10(c), an administrative penalty of \$3,000.00 is imposed on the Respondent for his violations of R.I. Gen. Laws § 5-65-10(a)(1) and (2) and § 1.1.12 of the Regulation.

The administrative penalty is due 20 days from the execution of this decision.⁶

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

Entered: May 30, 2024


Catherine R. Warren
Hearing Officer

⁶ 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 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 May, 2024 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to Mr. Daniel Brito, 11 South Angel St. #187, Providence, R.I. 02906 and 175 Oakhill Avenue, Pawtucket, R.I. 02860 and by electronic delivery to dbrito8007@gmail.com and by electronic delivery to James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, Anthony Whitfield, Chief Investigator, Christina Santos, Administrator Management Information Systems, and Megan Mihara, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886, and Sara Tindall-Woodman, Esquire, and Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

Therese 2. Kaplan