

**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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<b>In the Matter of:</b>	:	<b>Registration No. GC 43813</b>
	:	<b>Complaints:</b>
<b>David Cotoia, Jr. d/b/a DCJ Landscape Services,</b>	:	<b>C-10995, C-11024, C-11053</b>
<b>LLC and d/b/a Clean Cut Tree Service, LLC,</b>	:	<b>C-11065, C-11068, C-11094,</b>
	:	<b>C-2023-2, C-2023-58, C-2023-92</b>
<b>Respondent.</b>	:	

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**DECISION**

**I. INTRODUCTION**

This matter arose from a Notice of Hearing (“First Notice”) issued on March 23, 2023<sup>1</sup> by the Department of Business Regulation (“Department”) and a Notice of Hearing (“Second Notice”) issued on May 18, 2023<sup>2</sup> by the Department to the above captioned respondent (“Respondent”). The two (2) matters were consolidated. Pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*, the Respondent previously held a registration as a contractor. A hearing was held on February 23 and July 17, 2024. The parties were represented by counsel<sup>3</sup> 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.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

**III. ISSUE**

Whether the Respondent violated R.I. Gen. Laws § 5-65-3, R.I. Gen. Laws § 5-65-10, and R.I. Gen. Laws § 5-65-27, and if so, what sanction(s), if any, should be imposed.

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<sup>1</sup> The First Notice encompassed the following complaints: C-10995, C-11024, C-11053, C-11065, and C-11068.

<sup>2</sup> The Second Notice encompassed the following complaints: C-11094, C-2023-2, C-2023-58, and C-2023-92.

<sup>3</sup> The Respondent was not represented at the first day of hearing but retained an attorney for the second day of hearing.

#### IV. MATERIAL FACTS

Matthew Lambert (“Lambert”), lead investigator, testified on behalf of the Department. He testified that all the complaints against the Respondent were for work for which a contractor registration was needed and were all based on contracts between a homeowner (complainant) and Respondent. He testified that for complaint 10995, the Respondent only completed the tree removal and nothing else was completed and the contract did not have a mechanic’s lien. Department’s Exhibit Four (4) (investigative report, complaint, contract for work, payment for work, notice of complaint to Respondent and his request for appeal). He testified that for complaint 11024, the work was not completed, the contract had no mechanic’s lien, and the complainant was over 60 and the contract did not include the right of rescission for over 60. He testified no permit was pulled and a permit was needed, and the work was unsafe. Department’s Exhibit Five (5) (investigative report, complaint, contract, payment for work, notice of complaint to Respondent and his request for appeal).

Lambert testified that for complaint 11053, the work was not completed and what was done was unsafe and negligent. He testified the contract had no mechanic’s lien, and an unregistered contractor worked on the job. Department’s Exhibit Six (6) (investigative report, complaint, contract for work, payment for work, notice of complaint to Respondent). He testified for complaint 11065, the work was not completed, and what was done was unsafe and negligent. He testified that no permits were pulled, and someone else had to finish the work, and there was no mechanic’s lien in the contract. Department’s Exhibit Seven (7) (investigative report, complaint, contract, payment for work, photographs of unsafe/improper work, notice of complaint to Respondent).

Lambert testified that for complaint 11068, the work was not completed, and what was performed was unsafe and negligent. He testified no permits were pulled, and permits were required, and the complainant was over 60 years old, and the contract did not include the right of rescission for

over 60 or a mechanic's lien. Department's Exhibit 8A (investigative report, complaint, contract for work, payment for work, photographs, notice of complaint to Respondent). He testified for complaint 11094, the Respondent took a deposit and performed no work. He testified the complainant was over 60 and the contract did not include the right of rescission for over 60, and there was no mechanic's lien in the contract. Department's Exhibit Nine (9) (investigative report, complaint, contract, payment for work, notice of complaint to Respondent).

Lambert testified for complaint 23-002, the Respondent took a deposit [\$21,500], performed no work, and there was no mechanic's lien in the contract. Department's Exhibit 10 (investigative report, complaint, contract, payment for work, notice of complaint to Respondent). He testified that for complaint 2023-058, the Respondent was supposed to build a retaining wall, but he did not build it according to the plans. He testified the work was improper, and there was no mechanic's lien in the contract. Department's Exhibit 11 (investigative report, complaint, contract, payment for work, notice of complaint to Respondent). He testified that for complaint 2023-92, the Respondent did not complete the work and left the project in an unsafe condition. He testified there was no mechanic's lien in the contract, and the required permit was not pulled. Department's Exhibit 12 (investigative report, complaint, contract, payment for work, notice of complaint to Respondent).

Carol Murphy testified on behalf of the Department. She testified she met the Respondent at her property for a price for her work. She testified that after her relationship with the Respondent soured (she is complaint 11068), the Respondent's father, David Cotoia, Senior, showed up at her house unannounced and would not give his name but said he was company representative and was there to see what needed to be finished but also told her that if anyone posted derogatory statements on social media about him or his son, "they will be pay for it." She testified that she took that as a threat so she obtained a restraining order against the father and the son. Department's Exhibit 8B.

The Respondent testified on his behalf. He testified the complaints were all due to Leo Agrilli (“Agrilli”) who was with the company for 2 1/2 years but ended up diverting calls and customers. He testified Agrilli wrote the contracts, and checks were made to Agrilli to deposit. He testified Agrilli stole their computer, business cell phone, and Ipad which they reported to the police. He testified that no arrests were made as the police said it was a civil matter. He testified he tried to fix these nine (9) complaints and for the Murphy complaint about 45% of work was completed.

On cross-examination, the Respondent testified that he was the boss and owned the company. He testified that he priced the jobs and handled the 1099 subcontractors but did not run the day-to-day operations. He testified that Agrilli was initially hired to handle advertising and then he started to do other things and at first it was all good but then Agrilli caused the complaints and all the 1099 subcontractors left. He testified that except for Agrilli, all the jobs would have been completed.

David Cotoia, Senior (“Senior”), testified on the Respondent’s behalf. He testified he oversees the Respondent’s company. He testified the Respondent sold jobs and after a job was sold, he would sell the next job. He testified the Respondent would receive money for a job, and 10% would be given to Agrilli. He testified Agrilli was in charge of receivables, payables, insurance, and purchasing materials and Agrilli took calls, wrote contracts, and oversaw jobs and subcontractors, and the Respondent had nothing to do with the jobs. He testified they had an agreement with Tyco for landscaping work, and Agrilli gave jobs to Tyco after Tyco stopped working for them.

Senior testified that Agrilli originally was just handling advertising and then moved on to operations, and the company got too big. He testified that on August 10, 2022, they discovered that Agrilli took the receipts, the ledgers, and the 1099’s. He testified they called the police who were able to get their Ipad back, but they didn’t have access to the monies and receivables and Agrilli had the contracts, the credit card, and bank deposits. He testified they did not have access to their business

phones. He testified that he spent a lot of time and money to move on from Agrilli and to fix the outstanding jobs. He testified there were about 18 complaints, and he was able to fix about 10 complaints. He testified the Respondent is naive and just sold the jobs.

Senior testified that for Department's Exhibit 8A, Carol Murphy, the Respondent sold the job, and the homeowner was able to collect on the insurance. He testified he went to the house to see what was left to do and he explained to Ms. Murphy what happened with Agrilli and said he would be able to complete the work but she obtained a restraining order against him and was posting a lot of negative things about him on Facebook so he could not do the job. He testified that she abandoned the job with the restraining order and her social media postings.

Senior testified that for Exhibit Four (4), the Respondent priced the job and took money for the first phase to remove trees. He testified the homeowner added extra trees to be cleared so they cleared out more trees than had been agreed to, so the homeowner owed money for the extra removal of trees. He testified that for Exhibit Six (6), it was stipulated that they had finished the work so it was a contract issue, and the use of an unregistered subcontractor was Agrilli's fault.

Senior testified that for Exhibit 10, they took a deposit but were not able to perform the work because the homeowner moved. He testified that he offered to return the deposit with a payment plan agreement, but the homeowner would not sign an agreement, so they did not do any work after taking the deposit. Senior testified for Exhibit 12, they started work in June, 2022 and were there in October, November and December but it was too cold to continue the work, and the homeowner filed a complaint with the Board on March 14, 2023. He testified that they had done 60 to 70% of that job. He testified for Exhibit Nine (9), the job was priced by Agrilli, and they got the deposit right before Agrilli left. He testified they never started the job. He testified he was making monthly payments to the homeowner to repay the deposit but then the homeowner called the Attorney General's office

because he, Senior, was not paying the full thousand dollars a month that had been agreed to. He testified the homeowner then sued him. Department's Exhibit 18. He testified that he has paid about \$7,000 of the \$12,000 but he did not pay the full amount because the homeowner sued.

Senior testified that for Exhibit 11, the deposit to build a wall was given by the homeowner after Agrilli left. He testified they were there on December 30 and 31, 2022, and the wall was inspected and passed in January and February. He testified they did some work in February, but it got cold so he told his workers to get their tools, and the homeowner got mad because he thought they were leaving. He testified they left their materials there and are still owed money. He testified they could finish the wall in two (2) days, but the owner abandoned the job. He testified for Exhibit Five (5) the job is about 95% complete but they do not know if the homeowner paid as she said she paid Agrilli \$6,000 and they do not know if she did. He testified for Department's Exhibit Seven (7), Agrilli was running the job, but before Agrilli left, the roof and decking was completed. He testified that Tyco was paid to perform work but did not. He testified that he thought the job was about 60% finished but he thinks the homeowner owner obtained money from their insurance company.

Senior testified the responsibility for many on these jobs fell on Agrilli or Tyco or another subcontractor, and he put a lot of effort in trying to fix the problems. He testified that if a contractor took a deposit from a homeowner and the homeowner then trashed the contractor's car, the contractor would no longer work for the homeowner. He submitted a written response for the Respondent. Respondent's Exhibit One (1). The response detailed the assertions against Agrilli over diverting clients, funds, and taking business records and equipment. It also indicated the Respondent never heard of a mechanic's lien in class (contracting) and thought the homeowner pulled permits. It indicated there were never any claims against the Respondent until 2022 which coincided with Agrilli leaving, and the Respondent's work was never negligent but some work ceased due to customers.

On cross-examination, Senior testified that another person was responsible to pull the permit for Murphy. He testified that if a subcontracting electrician installed bad wiring which caused a fire in the building, the electrician would be responsible and not the general contractor. He testified that he and the Respondent wrote the Respondent's response together.

## 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). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

### 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 in order to prevail. *Id.* See *Lyons*

v. *Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (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:

Grounds for discipline — Injunctions. (a) The board or office may revoke, suspend, or refuse to issue, reinstate, or reissue a 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.

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(7) That the registrant has violated state building codes.

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(9) That a registrant has engaged in repeated acts in violation of this chapter and the board’s rules and regulations inclusive of substandard workmanship and any misuse of registration.

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(11) That the registrant breached a contract.

(12) That the registrant performed negligent and/or improper work.

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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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(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. \*\*\* Fines for violations may be imposed against registered contractors, as well as those persons required to be registered, by the board.

(2) For each subsequent violation of a particular subsection of this chapter or of a rule or regulation promulgated by the board, a fine not to exceed ten thousand dollars (\$10,000) may be imposed. \*\*\*

R.I. Gen. Laws § 5-65-3 provides in part as follows:

\*\*\* Duties of contractors \*\*\*

(j) A contractor including, but not limited to, a general contractor, shall not hire any subcontractor or other contractor to work on a structure unless the contractor is registered under this chapter or exempt from registration under the provisions of § 5-65-2.

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(o) All work performed, including labor and materials, in excess of one thousand dollars (\$1,000) shall be accompanied by a contract in writing. Contracts required pursuant to this subsection shall include consumer disclosures and information required pursuant to regulations promulgated by the board and the following notice by the contractor to the homeowner:

NOTICE OF POSSIBLE MECHANIC'S LIEN  
[the required notice is then set forth in the statute]

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(p) Contracts entered into must contain notice of right of rescission as stipulated in all pertinent Rhode Island consumer protection laws and/or § 5-65-27, if applicable.

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R.I. Gen. Laws § 5-65-27 provides in part as follows:

Elderly person<sup>4</sup> in-home solicitation — Right to cancel.

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(b) In addition to all other methods of consumer protection provided by federal or state law, any contract that originates from an in-home solicitation of an elderly person for the purposes of performing work as a contractor pursuant to this chapter, as well as other disciplines governed by the board pursuant to statutory law, shall provide that any consumer who is an elderly person shall, in the absence of an emergency as defined herein, have three (3) days within which to cancel the in-home solicitation contract for contractor services.

(c) The contractor shall, at the time of the agreement in accordance with § 5-65-3, give notice to the elderly person of all the rights that substantially comply with this section. The notice must:

[statute then sets forth required language]

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<sup>4</sup> R.I. Gen. Laws § 5-65-27(a) refers to the definition of elderly person in R.I. Gen. Laws § 42-66-4.1 which is 60 years of age or older.

**D. Whether the Respondent Committed any Statutory Violations**

The contracts for all the complainants were entered into in 2022. The contract from one lawsuit was entered into in 2021 and the other in 2023. Department's Exhibits Four (4) to 12; 14 and 16. As testified to at hearing and not disputed by the Respondent, all contractual work was for work that required registration as a contractor.

**1. Complaint 10995 Department's Exhibit Four (4)**

For this complaint, the Department's inspection found that only the trees had been removed and no other work was completed, and the amount of work was a fraction of the deposit given. Senior testified the homeowner added extra trees to the contract, so the homeowner owed them for that extra tree removal. No mechanic's lien was included in the contract. The homeowner paid almost half - \$10,800 of \$21,950 - of the contract and did not receive the work for that amount. For \$6,500, the homeowner was to have the trees removed, and the property cleaned up. Trees were removed but there was no property clean up. Phase 2 also cost \$6,500 and was to include leveling the land and seeding which was not done. The Respondent did not complete phase 1 and did not start phase 2 of the contract so did not even perform work totaling the deposit let alone complete the contract. While the Respondent testified more trees were removed than agreed to, he did not provide any documentation of this assertion. Department's Exhibit Four (4).

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(11) (breached contract); 14 (failed to complete project and to comply with contract); and R.I. Gen. Laws § 5-65-3(o) (mechanic's lien).

**2. Complaint 11024 Department's Exhibit Five (5)**

For complaint 11024, the Department's investigation found the work was not completed and was unsafe, there was no mechanic's lien in the contract, the homeowner was over 60 and the contract

did not include the right of rescission for over 60, and a permit was required but not pulled. Senior's explanation was the work was 95% complete but they were not sure if the homeowner had paid because she said she paid Agrilli. Senior's testimony was that Agrilli ran the operations, and the Respondent did not, and the Respondent only sold jobs, and Agrilli wrote the contracts. The Respondent testified that Agrilli took checks. It seems logical the homeowner paid Agrilli as he took the checks and wrote the contracts. Finally, the investigation showed that numerous items were not completed including a sprinkler system that was not installed pursuant to regulation and the pool fence was removed and left that way and the walls were not finished. It can be inferred that the homeowner paid the money, and the contract was not completed. Department's Exhibit Five (5).

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a) (7) (violate building code by failing to pull permit);<sup>5</sup> (11) (breached contract); (12) (negligent or improper work); 14 (failed to complete project and to comply with contract); R.I. Gen. Laws § 5-65-3(o) (mechanic's lien); R.I. Gen. Laws § 5-65-3(p) (right of rescission); and R.I. Gen. Laws § 5-65-27 (right of rescission).

### **3. Complaint 11053 Department's Exhibit Six (6)**

For complaint 11053, the Department found the contract was not completed, the work performed was unsafe and negligent, the contract had no mechanic's lien, an unregistered contractor did the work, and the required permit was not pulled. (See investigatory report on permit). Senior testified that it was stipulated the work was completed so that this was a contract issue, and the use of an unregistered subcontractor was Agrilli's fault. Senior did not provide a stipulation or documentation the work was completed on this contract. The Department did not agree with Senior's assertion the work was completed, and the investigation found that it was incomplete and unsafe and

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<sup>5</sup> See R.I. Gen. Laws § 23-27.3-113.1 (building code requirement to pull permit).

negligent. The Respondent is the owner of the company. He is the one entering into the contracts. He is responsible for the use of unregistered subcontractor. Department's Exhibit Six (6).

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(7) (violate building code by failing to pull permit); (11) (breached contract); (12) (negligent or improper work); 14 (failed to complete project and to comply with contract); R.I. Gen. Laws § 5-65-3(o) (mechanic's lien); and R.I. Gen. Laws § 5-65-3(j) (hired unregistered contractor).

**4. Complaint 11065 Department's Exhibit Seven (7)**

For complaint 11065, the Department found the contract was not completed, and what was done was unsafe and negligent, no permits were pulled, and there was no mechanic's lien in the contract. Senior blamed Agrilli leaving before the job was completed, and Tyco for not doing what it was paid to do, and he estimated 60% of the work was performed. Department's Exhibit Seven (7).

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(7) (violate building code by failing to pull permit); (11) (breached contract); (12) (negligent or improper work); and 14 (failed to complete project and to comply with contract); and R.I. Gen. Laws § 5-65-3(o) (mechanic's lien).

**5. Complaint 11068 Department's Exhibit 8A**

For complaint 11068, the Department found the contract was not completed and what was done was unsafe and negligent, the required permits were not pulled, the complainant was over 60 and the contract did not include the right of rescission for over 60, and there was no mechanic's lien in the contract. Senior's explanation was the homeowner abandoned the job by making derogatory social media posts and obtaining a restraining order against him. However, prior to the issuance of the restraining order, only one-third of the work was performed (investigatory report) and the Respondent had not returned to complete the work. Department's Exhibit 8A.

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a) (7) (violate building code by failing to pull permit); (11) (breached contract); (12) (negligent or improper work); 14 (failed to complete project and to comply with contract). R.I. Gen. Laws § 5-65-3(o) (mechanic's lien); R.I. Gen. Laws § 5-65-3(p) (right of rescission); and R.I. Gen. Laws § 5-65-27 (right of rescission).

**6. Complaint 11094 Department's Exhibit Nine (9)**

For complaint 11094, the Department found the Respondent accepted a deposit and performed no work on the contract and the complainant was over 60 and the contract did not include the right of rescission for over 60 nor a mechanic's lien. Senior did not dispute that no work was performed. He explained that he had been making monthly payments of a \$1,000 dollars but when the homeowner complained that he was not making the full monthly amount of payments, he stopped payment. He testified that \$7,000 of a \$12,500 deposit has been paid back. The court complaint filed by the homeowner against the Respondent for the return of the rest of his deposit indicated that only \$5,500 has been paid and \$7,000 is owed. Department's Exhibit 18 (court complaint). Department's Exhibit Nine (9).

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(10) (failed to return deposit); (11) (breached contract); 14 (failed to complete project and to comply with contract); R.I. Gen. Laws § 5-65-3(o) (mechanic's lien); R.I. Gen. Laws § 5-65-3(p) (right of rescission); and R.I. Gen. Laws § 5-65-27 (right of rescission).

**7. Complaint 2023-2 Department's Exhibit Ten (10)**

For complaint 2023-02, the Department found the Respondent accepted a deposit of \$21,500 and performed no work on the contract, and the contract did not include a mechanic's lien. Senior

did not dispute that no work was performed. He explained that the homeowner would not sign a payment plan for the return of the deposit. Department's Exhibit 10.

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(10) (failed to return deposit); (11) (breached contract); 14 (failed to complete project and to comply with contract); and R.I. Gen. Laws § 5-65-3(o) (mechanic's lien).

**8. Complaint 2023-58 Department's Exhibit 11**

For complaint 2023-058, the Department found the Respondent did not build a retaining wall to plan, the work was improper, and there was no mechanic's lien in the contract. Department's Exhibit 11 (investigative report, complaint filed, contract of work, payment for work, notice of complaint to Respondent). Senior explained that in February, when it got cold, he had his workers leave and take their tools as it was too cold to work, and the homeowner got mad and abandoned the job. The Department's report indicated the contract was to be completed in two (2) weeks and was not completed after ten (10) weeks, and the Respondent did not respond to the Board after it forwarded the complaint to the Respondent. Department's Exhibit Five (5).

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(11) (breached contract); 14 (failed to complete project and to comply with contract); and R.I. Gen. Laws § 5-65-3(o) (mechanic's lien).

**9. Complaint 2023-92 Department's Exhibit 12**

For complaint 2023-92, the Department found the Respondent did not complete the work, left the project in an unsafe condition, there was no mechanic's lien in the contract, and the required permit was not pulled. Senior explained that work was started in October, November, and December 2022 but it was too cold to continue, and the homeowner filed a complaint in March, 2023. Senior estimated that the job was 60 to 70% complete. The Department's report showed the Respondent's

workers only sporadically showed up in the Fall when the work was to start in August, 2022. The only part of the contract that was completed (the deck) was subbed out by the Respondent to another contractor. The retaining walls were not finished and the regrading and draining improvement had not been started. The homeowner paid \$30,100 on a \$32,900 contract. Clearly, the Respondent did not complete the contract in the Fall and did not do any of the work under the contract except for what was subbed out for the deck which was worth \$10,300. Department's Exhibit 12.

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(11) (breached contract); (7) (violate building code by failing to pull permit); 14 (failed to complete project and to comply with contract); and R.I. Gen. Laws § 5-65-3(o) (mechanic's lien).

#### **10. April 12, 2023 Lawsuit**

In this Superior Court action, a final judgment was entered against DCJ Landscape Services, LLC – the Respondent's d/b/a - for breach of contract. The Respondent entered into a contract in 2023 with the plaintiff to perform construction work. Pursuant to the contract, said plaintiff canceled the contract, and the Respondent failed to return the deposit. The court found the Respondent breached the contract and ordered the return of the deposit. Department's Exhibit 14. The Respondent had a chance to defend himself in court and failed to do so. As a result, a final court judgment was entered against the Respondent. The respondent in court is the same Respondent as in this matter, and the final judgment relates to actions the Respondent took as a contractor. Thus, the court's finding against the Respondent falls under the contractor statute.

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(11) (breached contract).

## **11. June 29, 2023 Lawsuit**

In this Superior Court action, a final judgment was entered against DCJ Landscape Services, LLC and the Respondent for breach of contract. The Respondent entered into a contract in 2021 with this plaintiff to perform construction work which he failed to complete when he stopped work in March, 2022. The court found the Respondent breached the contract and ordered damages be paid. Department's Exhibit 16. The Respondent had a chance to defend himself in court and failed to do so. As a result, a final court judgment was entered against the Respondent. The respondents in the court matter are the same Respondent as in this matter, and the final judgment relates to action the Respondent took as a contractor. Thus, the court's finding against the Respondent falls under the contractor statute.

Based on the foregoing, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(11) (breached contract).

## **12. Conclusion**

Based on the foregoing, the Respondent's violations are as follows:

- 1) R.I. Gen. Laws § 5-65-10(a)(7) (failure to pull permit)<sup>6</sup> – five (5) times
- 2) R.I. Gen. Laws § 5-65-10(a)(10) (failure to return deposit) - twice
- 3) R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract) – 11 times
- 4) R.I. Gen. Laws § 5-65-10(a)(12) (negligent or improper work) – four (4) times
- 5) R.I. Gen. Laws § 5-65-10(a)(14) (failure to complete project) – nine (9) times
- 6) R.I. Gen. Laws § 5-65-3(j) (hired unregistered contractor) - once
- 7) R.I. Gen. Laws § 5-65-3(o) (mechanic's lien) – nine (9) times
- 8) R.I. Gen. Laws § 5-65-27 and R.I. Gen. Laws § 5-65-10(p) (right of rescission) - thrice

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<sup>6</sup> R.I. Gen. Laws § 5-65-3(m) also requires that contractors pull permits required by the building code on behalf of the owner prior to commencing the work involved.



In addition, Respondent violated R.I. Gen. Laws § 5-65-10(a)(9) by engaging in repeated acts in violation of this chapter. The complaint violations all occurred within a nine (9) month period in 2022 with an additional breach of contract violation in 2021 and in 2023.

**E. Arguments**

The Department argued there were nine (9) complainants about the Respondent in less than a year, and he committed over 30 violations. It argued the maximum penalties should be imposed and the deposits be ordered to be returned. It requested the revocation of and permanent bar on Respondent's registration and the issuance of a cease and desist order against the Respondent.

The Respondent argued that while there is no doubt that deposits were taken and work was not completed, he tried to fix the situation. He argued that if one believes the Respondent's testimony there was chaos caused by Agrilli and a domino effect in terms of the various contracts and work to be performed. He argued that there is no prior history of violations so that permanent revocation is not warranted in these extenuating circumstances. It argued that if the fines are too high, there could be a substantial due process issue.

**F. Sanctions**

Currently, the Respondent's registration is suspended. Department's Exhibit Two (2) (Respondent's registration records). During 2022, the Respondent held a registration pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* Department's Exhibit Three (3) (investigative report) indicated the Respondent's registration expired February 1, 2023. However, the First Notice indicated the Respondent delayed filing his renewal application in 2022 so that one of the contracts was made when

the Respondent was not registered.<sup>7</sup> Nonetheless, the Board has jurisdiction over registered contractors as well as people not registered but performing work requiring registration.<sup>8</sup>

While Senior testified the Respondent did not oversee day-to-day operations or perform jobs but rather just sold the jobs, the Respondent was registered and he and his company<sup>9</sup> entered into the contracts to perform the jobs. Senior blamed Agrilli and others for the problems the Respondent had with the complainants. He analogized that a general contractor might have some responsibility but a subcontracting electrician who negligently wired a building that caused a fire would be responsible rather than the general contractor. However, the issue here is not civil liability and lawsuits but rather the Respondent's responsibilities as the contractor registered under the statute.

The Respondent did not dispute he had not returned the two (2) deposits. And except for Department's Exhibit Six (6), he did not assert he had completed the work on those projects but rather agreed that the work was incomplete. He and his father both asserted they tried to solve the problems caused by Agrilli and others. Senior testified that they had been able to rectify about 10 other complaints after Agrilli's departure.

A review of the complaints show that most complaints came in after Agrilli left. However, one complaint came in before he left (Exhibit Four (4)) and one complaint contract was entered into after he left (Exhibit 11). For the lawsuits, one contract was entered into in 2021 and the work stopped in March, 2022 before Agrilli left, and the other lawsuit contract was entered into in 2023 after Agrilli left. Agrilli's departure apparently caused disruption to Respondent's work, but the Respondent did not return deposits and just stopped working on some jobs. Senior testified the

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<sup>7</sup> There was no documentation about this for complaint 11065 so the undersigned did not address this alleged violation.

<sup>8</sup> 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."

<sup>9</sup> The Respondent listed DCJ Landscape Services as his company in his registration records. Department's Exhibit Two (2).

Respondent did not return one deposit because the homeowner would not sign a payment plan. Senior testified that they stopped paying the other deposit back because the homeowner complained about the payments.

While the Respondent and Senior testified to the disruption caused by Agrilli, they were able to identify these nine (9) complaints, and in some cases spoke to the homeowners. However, they did not complete the jobs. They blamed Agrilli. They blamed Tyco. They blamed another subcontractor. They blamed the homeowners. In some cases, they pointed out the homeowner collected on insurance money; though, that does not change the fact that the Respondent did not complete the required work. Furthermore, the Respondent was unaware of the statutorily required mechanic's lien or right of rescission or that it was his responsibility to ensure permits are pulled.

If this was one just one (1) or two (2) complaints after Agrilli left – assuming he caused such problems – the Respondent's explanation might seem more plausible. However, the number of complaints within one (1) year along with one (1) each from 2021 and 2023, indicates that the Respondent's inability to act as registered contractor was not just caused by Agrilli and his problems. Rather, the Respondent did not know basic requirements of contractor contracts (mechanic's lien, right of rescission) and did not return deposits taken when no work was performed. The Respondent did not dispute that work was not completed. The Respondent was unable to finish work and much of the work that was performed was negligent and unsafe. This pattern of violations within less than one (1) year is egregious and raises serious questions as to the Respondent's capabilities as a registered contractor.

R.I. Gen. Laws § 5-65-10(c) provides for penalties up to \$5,000 for first offences and for penalties up to \$10,000 for subsequent violations. The Respondent did not have any violations prior to these numerous complaints. Obviously, the Respondent committed many subsequent violations.

For example, he breached a contract 11 times so that could be considered a first offense and then 10 subsequent offenses. However, the undersigned will recommend the maximum first offense penalty for breach of contract and stay within the first offense matrix for other penalties.

The Respondent's numerous and egregious violations in less than one (1) year (nine (9) complaints in 2022) justify the revocation of the Respondent's registration. He clearly is unable to perform as a contractor as evidenced by these repeated serious violations in less than one (1) year.

Pursuant to R.I. Gen. Laws § 5-65-10(c), the following administrative penalties are imposed against the Respondent for the following violations:

- 1) \$55,000 for 11 violations of R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract) at \$5,000 each;
- 2) \$20,000 for four (4) violations of R.I. Gen. Laws § 5-65-10(a)(12) (negligent and improper work) at \$5,000 each; and
- 3) \$18,000 for nine (9) violations of R.I. Gen. Laws § 5-65-10(a)(14) (failure to complete project) at \$2,000 each; and
- 4) \$5,000 for violating R.I. Gen. Laws § 5-65-10(a)(9) (engaging in repeated acts in violation of this chapter).
- 5) \$4,500 for violating R.I. Gen. Laws § 5-65-10(a)(7) (permit) (five (5) times); R.I. Gen. Laws § 5-65-3(j) (unregistered contractor) (once); R.I. Gen. Laws § 5-65-3(o) (mechanic's lien) (nine (9) times); and R.I. Gen. Laws § 5-65-10(p) and R.I. Gen. Laws § 5-65-27 (right of rescission) (thrice) at \$250 each for those 18 violations.

Therefore, the Respondent shall pay an administrative penalty of \$102,500.

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent shall return the remaining deposit of \$7,000 to the homeowner of complaint 11094.

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent shall return the deposit of \$21,500 to the homeowner of complaint 23-002.

Pursuant to R.I. Gen. § 5-65-10(a), the Respondent's registration is revoked. His registration cannot be reinstated or reissued due to his numerous and egregious violations of R.I. Gen. Laws § 5-65-10(a).

Additionally, pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*, the Respondent shall be enjoined from obtaining and/or holding a contractor registration and/or engaging in any work that requires registration as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* both individually and through any business activity so that he shall not act as a manager or become an owner or part owner of any company that engages in contracting.

The Department requested a permanent bar on the Respondent from acting as a contractor. However, rather than a permanent bar, the Respondent is barred for seven (7) years from applying to act as a contractor. Obviously, if the Respondent chooses, in future, to apply to become a contractor after seven (7) years, the Department does not have to issue such a registration, and of course, would consider in any evaluation of such an application whether the Respondent had complied with this decision and was able to demonstrate knowledge and understanding of the statutory obligations as a contractor, etc.

## **VI. FINDINGS OF FACT**

1. The First Notice was issued on March 23, 2023 to the Respondent. The Second Notice was issued on May 18, 2023. The matters were consolidated.
2. A hearing was held on February 23 and July 17, 2024.
3. The Respondent was registered as a contractor in 2022 as detailed above.
4. The facts contained in Section IV and V are reincorporated 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 \$102,500 is imposed against the Respondent for the violations as detailed above.

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent shall return the remaining deposit of \$7,000 to the homeowner of complaint 11094 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)(10), the Respondent shall return the deposit of \$21,500 to the homeowner of complaint 23-002 and confirm the same with the Board within 20 days of the date of this decision.

Pursuant to R.I. Gen. § 5-65-10(a), the Respondent's registration is revoked. His registration cannot be reinstated or reissued due to his numerous and egregious violations of R.I. Gen. Laws § 5-65-10(a).

Pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*, the Respondent shall be enjoined from obtaining and/or holding a contractor registration and/or engaging in any work that requires registration as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* both individually and through any business activity so that he shall not act as a manager or become an owner or part owner of any company that engages in contracting.

The Respondent is barred for seven (7) years from applying to act as a contractor.

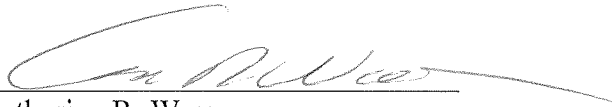
The administrative penalty is due 20 days from the execution of this decision.<sup>9</sup>

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

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<sup>9</sup> Payment should be made to Contractors' Registration and Licensing Board at 560 Jefferson Boulevard, Warwick, R.I. 02886.

Entered: 8/14/24

  
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 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 14<sup>th</sup> day of August, 2024 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and by electronic mail to Christopher Lefebvre, Esquire, 2 Dexter Street, Pawtucket, R.I. 02860 and Chris@lefebvre.law.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 Joshua Nault, Esquire, and Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

