

**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:

David Cotoia, Sr. d/b/a D&D Landscape Services,

Respondent.

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**Registration No. GC 48701
Complaint No. 23-428**

DECISION

I. INTRODUCTION

This matter arose from a Notice of Intent to Deny Application for Contractor Registration Renewal ("Notice") issued on May 17, 2024 by the Department of Business Regulation ("Department") to David Cotoia, Sr. d/b/a D&D Landscape Services ("Respondent"). Pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*, the Respondent holds a registration as a contractor. A hearing was held on July 16, 2024. The parties were 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.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-65-3 and/or R.I. Gen. Laws § 5-65-10, and if so, should his registration renewal application be denied and/or other sanctions be imposed.

IV. MATERIAL FACTS

Anthony Whitfield (“Whitfield”), Chief of the Contractor Registration Board (“Board”), testified on the Department’s behalf. He testified he is familiar with Charles Lawrence’s (“Complainant” or “Homeowner”) complaint against the Respondent, and he spoke to the Complainant, conducted an inspection of the property, and made a report. Department’s Exhibit Four (4) (inspection report). He testified there were three (3) contracts between the Respondent and the Homeowner all of which were for work that required registration as a contractor.

Whitfield testified the first contract was for removing flagstones and a retaining wall and installing a new retaining wall. He testified the first contract did not include a mechanic’s lien nor a right of rescission as the Homeowner was over 60 years of age. Department’s Exhibit 5(a) (first contract). He testified the Homeowner provided copies of three (3) checks that he gave for payment for the first contract. Department’s Exhibits 5(b); (c); and (d). He testified that two (2) of the checks were made out to the Respondent, but the third check was made out to an unregistered individual; though, the memorandum on the check indicated it was for the Respondent’s company. He testified the second contract was for the removal of a wall and installation of a new screenhouse. He testified a building permit was required for the removal of and construction of a new exterior wall. He testified the contract did not have the mechanic’s lien nor a right of rescission for a person over 60 years old and no permit was pulled. Department’s Exhibits 6(a) to (d) (second contract and copies of three (3) checks made out to Respondent). He testified the Respondent did not perform the work under the first and second contract.

Whitfield testified the third contract was for the completion of a drainage system. He testified that the contract did not include a mechanic’s lien nor a right of rescission for a person over 60 years of age. He testified the Respondent did not perform any work under the third

contract, and he did not return the Homeowner's deposit. Department's Exhibits 7(a) and (b) (third contract and check showing deposit of \$4,995 which was also the full amount). He testified he spoke to the Complainant, and the Complainant's recitation of what happened was consistent with his own inspection of the property. Department's Exhibit Eight (8) (Homeowner's complaint).

On cross-examination, Whitfield testified that he has conducted over 150 inspections for the Board, and he took photographs when he went to the Homeowner's house for the first time.

The Complainant testified on behalf of the Board. He testified he is over 60 years old. He testified the first contract was for the removal of flagstones and in the course of doing that work, the Respondent damaged the porch and was able to obtain insurance coverage for the damage, so the second contract was for damage to the porch caused by the work performed by the Respondent under the first contract. He testified the insurance company made the payment and it was easier to pay the Respondent for the second contract with the insurance money especially after the Respondent threatened to walk off the job if he did not pay the full amount for the second contract. He testified that during the work, the Respondent found the back yard was full of water and said he could fix it and would give him a deal if he also used his landscaping company. He testified the Respondent said if he paid the full amount up front, he would come the following week, so he paid but the Respondent never came. He testified he reached out to the Respondent before he filed his complaint, but never heard from him.

The Respondent testified on his behalf. He testified that he had been given a lead for the Homeowner and met with him at his house and signed the contract. He testified the subcontractor was paid by the Homeowner's check but despite that payment, the subcontractor did no work and left. He testified the Homeowner signed a mechanic's lien (not put into evidence). He testified that picking up the flagstones caused the screen house to buckle so the second contract was to fix

that damage. He testified the third contract was because the backyard was mushy and sinking, and he gave the Homeowner a discount for the contract, and the Homeowner received landscaping work from him. He testified he did not go back to do the third contract work because of the Complainant's complaint. He testified he did not finish the first contract. He testified there still is the floor to do on the second contract. He testified that he never started the third contract. He testified he gave a notice of rescission because he had a copy from the Internet.

On cross-examination, the Respondent testified that there was only one signed mechanic's lien. He testified the unregistered subcontractor ran off with his money.

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 and Regulation

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.

(11) That the registrant breached a contract.

(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.

(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.

(d) In any decision following a hearing, the hearing officer, board, or office may require the registrant, in addition to or in lieu of a fine, to attend continuing education courses as appropriate. Failure to adhere to the requirement may result in immediate revocation of the registration.

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.

(m) The contractor must see that permits required by the state building code are secured on behalf of the owner prior to commencing the work involved. The contractor's registration number must be affixed to the permit as required by the state building code.

(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]

(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.

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

Elderly person¹ in-home solicitation — Right to cancel.

(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] ***

¹ 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. Arguments

The Department argued the Respondent never completed the work for any of the contracts and did not include the right of rescission nor mechanic's lien in the contracts. The Department is not seeking a denial of the registration renewal application,² but rather requested the Respondent be ordered to repay the third contract's deposit, that administrative penalties for the violations as first offenses be imposed, and that the Respondent be ordered to take continuing education on contractual requirements and the building code such as when to pull permits. It requested the Respondent's registration be suspended until he makes said payments.

The Respondent argued that these were first offenses and that the Homeowner received landscaping work under the third contract and that any penalties imposed should be on the lower end of the scale as first offenses.

E. Whether the Respondent Committed any Statutory Violations

The Respondent admitted he did not complete the work for all three (3) contracts. He testified the unregistered subcontractor did not do any work, but the unregistered contractor was paid for work by the Homeowner's check. The Respondent argued the Respondent received landscaping work as part of the third contract, but the evidence is the Respondent took the deposit and never even started that work. Any landscaping work done by the Respondent is irrelevant to the contract for the contracting work. While all three (3) contracts were with the same Homeowner, none of them included the mechanic's lien or right of rescission for a person over 60 years old. The Respondent testified the Homeowner signed a mechanic's lien and that he gave him a right of rescission, but there was no documentary evidence for those required forms. The Respondent did not pull the required permit for the second contract.

² Department's Exhibit One (1) (Respondent's renewal of registration application dated May 9, 2024).

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

- 1) R.I. Gen. Laws § 5-65-10(a)(10) (failure to return deposit) – once
- 2) R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract) – thrice
- 3) R.I. Gen. Laws § 5-65-10(a)(14) (failure to complete project or contract) – thrice
- 4) R.I. Gen. Laws § 5-65-3(j) (hired unregistered contractor) – once
- 5) R.I. Gen. Laws § 5-65-3(m) (failure to pull permit) – once
- 6) R.I. Gen. Laws § 5-65-3(o) (mechanic's lien) – thrice
- 7) R.I. Gen. Laws § 5-65-27 and R.I. Gen. Laws § 5-65-10(p) (right of rescission) – thrice

F. Sanctions

The Respondent admitted that he did not complete the work on any of the contracts. He has not returned the deposit for the third contract to the Homeowner. These are the Respondent's first violations. However, the first contract was entered into in August, 2023, the second contract in September, 2023, and the third contract in October, 2023. Department's Exhibits 5(a), 6(a), and 7(a). That is a short period of time to have three (3) violations. 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. Obviously, the Respondent committed subsequent violations after the first contract's violations. However, the undersigned will stay within the first offense matrix for the penalties.

A penalty of \$2,500 for the first breach of contract with a penalty of \$5,000 each for the two (2) subsequent breach of contracts shall be imposed. A penalty of \$2,000 for each violation of failure to complete a contract shall be imposed. A penalty of \$250 each for remaining violation shall be imposed. Thus, pursuant to R.I. Gen. Laws § 5-65-10(c), the following administrative penalties are imposed against the Respondent for the following violations:

- 1) \$12,500 for violations of R.I. Gen. Laws § 5-65-10(a)(11) (breach of contract) (\$2,500 for first violation; \$5,000 each for second and third violations);
- 2) \$6,000 for three (3) violations of R.I. Gen. Laws § 5-65-10(a)(14) (failure to complete project or contract) at \$2,000 each; and
- 3) \$2,000 for violating R.I. Gen. Laws § 5-65-3(m) (permit) (once); R.I. Gen. Laws § 5-65-3(j) (unregistered contractor) (once); R.I. Gen. Laws § 5-65-3(o) (mechanic's lien) (thrice); 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 eight (8) violations.

Therefore, the Respondent shall pay an administrative penalty of \$20,500.

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent shall return the deposit of \$4,995 to the Homeowner.

Pursuant to R.I. Gen. Laws § 5-65-10(a), the Respondent's registration is renewed but will be **suspended until he complies with the terms of this decision** (repayment of the deposit; payment of the administrative penalty). The suspension shall **begin 20 days** from the date of this decision.

Pursuant to R.I. Gen. Laws § 5-65-10(d), the Respondent must complete 25 hours of continuing education within 90 days of this decision on the topics of contracts, building code, and statutory requirements of contractors. The continuing education shall be those classes approved by the Board, and the Respondent shall inform the Board of what classes he proposes to take. This requirement shall be in addition to any other required continuing education for a contractor.

VI. FINDINGS OF FACT

1. The Notice was issued on May 17, 2024 to the Respondent.
2. A hearing was held on July 16, 2024.

3. The Respondent is registered as a contractor and submitted an application to renew that registration on May 9, 2024.

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), the Respondent's registration is renewed subject to the following conditions:

1) An administrative penalty of \$20,500 is imposed against the Respondent for the violations as detailed above.

2) Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent shall return the remaining deposit of \$4,995 to the Homeowner and confirm the same with the Board within 20 days of the date of this decision.

3) Pursuant to R.I. Gen. Laws § 5-65-10(a), the Respondent's registration will be **suspended until he complies with the terms of this decision** (repayment of the deposit; payment of the administrative penalty). The suspension shall **begin 20 days** from the date of this decision.³

4) Pursuant to R.I. Gen. Laws § 5-65-10(d), the Respondent must complete 25 hours of continuing education within 90 days of this decision on the topics of contracts, building code, and statutory requirements of contractors. The continuing education shall be those classes approved by the Board, and the Respondent shall inform the Board of what classes he proposes to take. This requirement shall be in addition to any other required continuing education for a contractor.

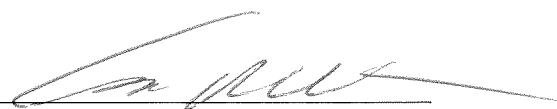
The administrative penalty is due 20 days from the execution of this decision.⁴

³ If the Respondent complies with the decision within 20 days of the decision, then the registration will not be suspended. He must provide proof of compliance to the Board..

⁴ Payment should be made to Contractors' Registration and Licensing Board at 560 Jefferson Boulevard, Warwick, R.I. 02886.

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

Entered: August 13, 2024


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 13th 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@lefebvrellaw.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.

