

**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:

**Stephen M. Davis d/b/a SMD Realty and
Construction Corp.,**

Respondent.

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CRLB No. 2023-306

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 Stephen M. Davis d/b/a SMD Realty and Construction Corp. (“Respondent”). The Respondent previously was but no longer is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* A hearing was held on August 8, 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.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 440-RICR-10-00-1 *General Rules and Regulations for Applications, Registration, Licensing, Claims, Violations, and Administrative Hearings.*

III. ISSUE

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

IV. MATERIAL FACTS

The parties stipulated the Respondent was previously registered as a contractor and his registration expired on November 1, 2023. The parties agreed the Respondent and the complainant in this matter entered into a construction contract on or about April 7, 2023, and the work for the contract was for work that requires registration as a contractor. The parties stipulated that on April 7, 2023, the Respondent received a \$13,500 deposit from said complainant, and the deposit check was made payable to the Respondent's wife. The parties agreed the Respondent did not begin or complete any of the work for which the deposit was made. See stipulation.

While the Respondent stipulated he did not return said deposit, his attorney provided arguments for mitigation as to why the deposit was not returned. The attorney stated the Respondent and his wife were in business together for 27 years with the wife working as the bookkeeper, and the Respondent's wife filed for divorce on the same day the deposit check was made out to her. Respondent's Exhibit One (1) (Respondent's divorce proceedings in court showing the Respondent's wife filed for divorce on April 7, 2023). He indicated that on May 12, 2023, a Family Court judge appointed a commissioner to take operational control of the Respondent's business, and the commissioner controls the deposits and checks and was directed to take an inventory of the business and make a financial report to the court. Respondent's Exhibit Two (2) (May 12, 2023 court order). The attorney represented he worked with the Department to try to return the deposit but has been unable to obtain the necessary funds. He represented there was enough money within said commissioner's control to pay the deposit back.

The Department represented that it appreciated the Respondent tried to obtain the money for the return of the deposit. It indicated it was not seeking an administrative penalty but just the

return of the deposit, and it was not seeking a cease and desist order because the Respondent has not engaged in any unregistered work and is no longer working as a contractor.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998).

B. **Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required to prevail. *Id.* See *Lyons v. R. I. Pub. Employees Council 94*, 559 A.2d 130 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there

is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Relevant Statutes

R.I. Gen. Laws § 5-65-10 provides in part as follows:

(a) The board or office may revoke, suspend, or refuse to issue, reinstate, or reissue a certificate of registration if the board or office determines, after notice and opportunity for a hearing:

(10) The board or office 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.

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

The parties agreed the Respondent took a deposit from said complainant for work he never started or completed. Therefore, he violated R.I. Gen. Laws § 5-65-10(a)(10) by failing to return the deposit as no work had been performed. Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent must return the deposit to said complainant.

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 no longer registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* but was at the time of this matter.
3. The Respondent took a deposit of \$13,500 from said complainant for work as a contractor but never started or completed said work.
4. A hearing was held on August 8, 2024.
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 failed to return a deposit when no work was performed in violation of R.I. Gen. Laws § 5-65-10(a)(10).

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the deposit of \$13,500 to said complainant homeowner and confirm the same with the Board within 20 days of the date of this decision.

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

Entered: August 26, 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 26th 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 delivery to Scott Lutes, Esquire, One Turks Head Place, Suite 1440, Providence, R.I. 02903 and scottluteslaw@yahoo.com and by electronic delivery to James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, Matthew Lambert, Principal State Building Code Officer, Christina Santos, Administrator Management Information Systems, and Megan Mihara, CRLB, 560 Jefferson Boulevard, Warwick, R.I. 02886, Joshua Nault, Esquire, and Pamela Toro, Esquire, DBR, 1511 Pontiac Avenue, Cranston, R.I.

