

**STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
CONTRACTORS' REGISTRATION AND LICENSING BOARD
560 JEFFERSON BOULEVARD, SUITE 200
WARWICK, R.I. 02886**

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| In the Matter of: | : | |
| | : | |
| Joseph Morin, J. Morin & Son, Inc., | : | Complaint No. 11181 |
| | : | |
| Respondent. | : | |
| | : | |

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing issued on February 20, 2024 by the Department of Business Regulation Contractors' Registration and Licensing Board ("Department" or "Board") to Joseph Morin/J. Morin & Sons, Inc. ("Respondent"). The Respondent was previously registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.* and was conditionally registered as a contractor during some of the events discussed below. A hearing was held on July 30, 2024. The parties were represented by counsel. Briefs were timely filed by October 11, 2024.

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-65-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 440-RICR-10-00-1 *General Rules and Regulations for Applications, Registration, Licensing, Claims, Violations, and Administrative Hearings*.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a), and if so, what is the appropriate sanction.

IV. MATERIAL FACTS

The parties agreed to the following facts (“ASOF”):¹

1. The Respondent's contractor registration, GC-5649, was suspended on March 30, 2022.
2. On September 28, 2022, the Board's Hearing Officer issued a decision in CRLB No. V-6398, wherein after a default hearing was conducted on September 15, 2022, the Hearing Officer determined the Respondent entered into an agreement in August 2020 with a homeowner to install a pool, and performed negligent and improper work, did not complete a project of construction, breached a contract, failed to provide a written contract and failed to provide a mechanics' lien notice, in violation of R.I. Gen. Laws § 5-65-1 *et seq.* (Decision p. 6). The V-6398 decision ordered Respondent to pay a \$10,000 administrative penalty within 20 days.²
3. On November 9, 2022, the Board's Hearing Officer issued a decision in CRLB No. C-11045, wherein after a default hearing was conducted on October 24, 2022, the Hearing Officer determined that Respondent "entered into an agreement on May 9, 2022 with [a complainant] to perform work and took a deposit of \$30,000 and did not perform the work and has not returned the deposit to said homeowner. The Respondent's failure to return the deposit to the homeowner is conduct as a contractor that is dishonest and fraudulent and injurious to the welfare of the public." (Decision, ¶ 3 and 4.) The C-11045 decision ordered Respondent to return the \$30,000 deposit and pay a \$10,000 administrative penalty within 20 days.
4. Following the expiration of the 20 day payment period without return of the deposit or payment of the administrative penalty ordered by the C-11045 decision, on January 30, 2023, the matter was referred to the R.I. Attorney General's Office; this matter is now K2- 2023-0234A.
5. On December 11, 2022, the Board received complaint number C-11181 ("Complaint"), concerning the Respondent's failure to install a pool at Complainant's property located at 291 Stillwater Rd., Smithfield, R.I. and abide by the contract the Respondent and Complainant signed on January 26, 2022.
6. The Complainant and Respondent's contract referenced in ¶ 5 did not contain a mechanic's lien notice.

¹ See Stipulation of Facts filed by the parties on July 30, 2024 with the undersigned.

² Respondent's Counsel filed a Motion to Vacate the V-6398 Decision, which is pending and which the parties agree will be addressed after a decision or conclusion is reached in the instant matter.

7. The total contract price for Respondent's construction of the pool for the Complainant was \$44,525.30, \$29,000 of which the Complainant paid via two checks of \$5,000 and \$24,000 on February 1, 2022 and July 18, 2022, respectively.

8. The Complainant states that his payment of \$24,000 on July 18, 2022, referenced in ¶ 7 was to secure the commencement of construction within approximately two weeks of the payment.

9. On August 5, 2022, Respondent ordered the pool kit he avers is contemplated by the contract referenced in ¶ 5 from Latham Pool Products, Inc. in Latham N.Y.

10. At the time of the Complaint's filing, the Respondent failed to begin and/or complete installation and/or construction of the pool as outlined in the contract.

11. On or about January 11, 2023, a Board Investigator confirmed with the Complainant that no work had commenced on the installation and/or construction of the pool, no materials had been delivered to the project site, and no remuneration had been returned to the Complainant for any of the aforementioned failures.

12. On March 1, 2023, the CRLB issued a Notice of Hearing regarding the Complaint, and on April 4, 2023, a pre-hearing conference was conducted.

13. On May 15, 2023, the Department and Respondent individually, and by and through counsel agreed to a Stipulation and Consent Order ("Consent Order") regarding the Complaint, which granted Respondent a provisional registration subject to the fulfillment of conditions until July 7, 2023.

14. The Consent Order's paragraphs IO(a)-G), 11 and 13 demonstrate that the premise of the Department's agreement with the Respondent was the Respondent's completion of the pool that is the subject of the Complaint.

15. On July 20, 2023, the Parties signed an Addendum to the Consent Order ("Addendum"), which extended Respondent's provisional registration subject to the fulfillment of conditions to October 10, 2023.

16. On October 21, 2023, the Complainant provided Respondent with a \$7,000 check.

17. Prior to October 21, 2023, Complainant provided Respondent with a \$2,000.00 check to replace a type of installed piping that the municipal inspector rejected.

18. The Complainant asserts having paid additional monies due under the contract by way of purchase of lights and fittings, which Complainant credited toward contract payment.

19. The Complainant asserts to have paid \$41,075.23 towards the total contract price of \$44,525.30 excluding the following out of pocket costs totaling \$11,560.00 that the

Complainant asserts were necessary due to Respondent's failure to complete the pool installation/construction: \$1,600.00 for the pool closing; \$4,800.00 for the filter installation; \$260.00 for the purchase of a backwash pipe and other filter incidentals; \$1,400.00 for light replacement and a handrail; and \$3,500 for the pool cover.

20. On or about October 31, 2023, at a status conference regarding the completion of the Consent Order, Respondent stated to the Board Investigator that he had not completed the pool that is the subject of the Complaint, the Consent Order and Addendum, and that he did not have the financial wherewithal to complete the pool construction.

21. As of the date of this Stipulation, Respondent did not complete the installation and/or construction of the pool at issue in Complaint C-11181.

The Respondent testified on his behalf. He testified that he has worked 39 years in the pool business and became registered in 1990 when it became statutorily required to register as a contractor. He testified he primarily installs inground pools, repairs and remodels pools, and replaces pool liners. He testified the Complainant contacted him in 2022, and he drafted a contract for an inground pool installation. Respondent's Exhibit A. He testified the Complainant signed the contract and gave him \$5,000, and made a second payment of \$24,000 for the installation in July, 2022. The Respondent testified he pulled the permit, called DigSafe, and ordered the pool kit. Respondent's Exhibit B (pool kit invoice).

The Respondent testified that in the Summer of 2022, he had personal and medical issues in that he had diverticulitis, his brother died, and his dog was run over. He testified his son was living with him in the summer and overdosed seven (7) times. He testified he, himself, suffered from depression that summer, and he did not communicate well with the Complainant. He testified that he sought treatment for his physical and mental issues, and in January and February 2023, he felt better and contacted an attorney since he knew his registration had been suspended. He testified in May, 2023, he entered into the Consent Order for a conditional registration to complete the Complainant's pool. He testified that prior to May 15, 2023 he had not performed work for income since July, 2022 because he was unable to work because of his medical issues.

The Respondent testified that when he entered into the Consent Order, he did not have financing for the Complainant's job so he relied on funds from new jobs. He testified he started the Complainant's job in August, 2023. He testified there were unforeseen circumstances such as groundwater which was an additional cost that he could have charged for under the contract, but he absorbed the \$3,500 for the extra work. He testified he had to replace the plumbing due to a mistake by the local inspector over the manufacturer's stamp, and the Complainant gave him a \$2,500 for that, but it really cost \$6,000. He testified the Complainant upgraded the lights so that they cost more. He testified the Complainant gave him a check for \$7,000 rather than the \$12,000 under the contract. He testified the overrun was \$10,000. He testified the only thing left to finish on the pool was the filter and cover. He testified that he was on his way to finish the pool and he and his son both were driving a truck when his son fell asleep and rear ended him and both trucks were totaled and the equipment lost so he was not able to complete the job. He testified he did not have the funds needed to finish the job and did not get the last payment from the Complainant. He testified that if he had his registration, he could finish the job.

On cross-examination, the Respondent testified that 2022 was a difficult time, and he was in the hospital five (5) times from mid-July to mid-August for diverticulitis. He testified his son's issues were from July to the end of the year when he finally got him to detoxification. He testified that his dog was run over on July 21 and his brother died July 28. He testified his son worked for him and it was hard to find workers in 2022. He testified he did speak to the Complainant. He testified that there was a \$10,000 overrun on the Complainant's pool, and he was expecting to use the profits from the other jobs to be able to finish the Complainant's contract.

The Respondent testified that he did not have the difficulties he had in 2022 in 2012 or 2021 or 2018. He testified that he contacted an attorney when he felt better that he could work

again. He testified that his registration is currently suspended, and his website is from 2006 and he does not know how to update it to say that his registration is suspended. He testified his suspension from March 30, 2022 is because he did not reply to a complaint.

Based on the Department's Exhibit Three (3), a print-out of Respondent's disciplinary history with the Board, the parties agreed that the Respondent was subject to the following discipline:

1. Complaint #C-7793 resulted in a \$500 penalty in 2012 against the Respondent.
2. Violation V-4109 and Complaint #C-9480 from 2018 and 2019 respectively were the same complaint that resulted in a \$250 penalty against the Respondent.
3. Complaint #C-9481 in 2018 was resolved with that complainant.
4. Complaint #C-10030 in 2020 was resolved but there is no record of what was agreed.
5. Complaint #C-10364 in 2021 was resolved without penalty.
6. Complaint #C-10521 in 2021 was resolved with that complainant paying Respondent "under protest."
7. Complaint #C-10753 and Violation V-6398 in 2021 and 2022 respectively resulted in a default judgment of a \$10,000 administrative penalty. It is the case referenced in ¶ 2 of the agreed facts.
8. Complaint #C-11045 and Violation V-6693 in 2022 resulted in a default judgment of a \$10,000 penalty and the Respondent being ordered to return the \$30,000 deposit. It is the case referenced in ¶ 3 of the agreed facts.
9. Complaint #C-11181 filed in 2022 is the subject of this hearing.

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

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:

(4) Has violated a rule or order of the board.

(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.

(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)(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. *** 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.

(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 after a hearing by the board. ***

(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.

D. Arguments

The parties both agreed the Respondent did not comply with the Consent Order so that the issue at hearing was what would be the appropriate penalty.

The Department argued the Respondent's inability to complete the Complainant's pool installation in over a year and his admission that he had to take profits from one job to complete another job demonstrated that he was unfit to hold a registration.

The Respondent argued that he only failed to complete the pool installation due to several personal and mental health issues in 2022 and cost overruns on the Complainant's pool. He suggested a suspension of three (3) months as the appropriate penalty.

E. Whether the Respondent Committed Statutory Violations

The parties agreed the Complainant and the Respondent signed the contract to install the pool in January, 2022 and the Complainant paid \$29,000 toward the pool installation. The parties agreed the pool was to be installed during the summer of 2022, and the pool kit was ordered on August 5, 2022. The Complaint was filed on December 11, 2022. The parties agreed that at the time the Complaint was filed no work was performed by the Respondent, and at the time of the Board inspection on January 11, 2023, the deposit had not been returned.

As a result, the Respondent entered into the Consent Order by which he was to complete said pool installation by July 7, 2023 and then entered into an Addendum with the Consent Order by which he was to complete said pool installation by October 10, 2023.

The Respondent did not complete the pool installation by July 7, 2023 nor by October 10, 2023. The Respondent failed to comply with the Consent Order and with the Addendum.

Therefore, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(14) by failing to complete a project of construction as detailed by the Consent Order and Addendum. The Respondent's failure to complete the pool installation resulted in him violating R.I. Gen. Laws § 5-65-10(a)(4) by violating the Consent Order and Addendum, both orders of the Board.

F. Sanctions

The Respondent testified to personal issues that caused a delay, and the Complainant agreed the Respondent could return to do the pool installation. The Department facilitated this with a conditional registration in the Consent Order that allowed the Respondent to install the pool and work. Thus, rather than seeking a revocation of the Respondent's registration in 2023, the Department entered into the Consent Order that provided the Respondent with a conditional registration subject to completing said pool by July 7, 2023. The Respondent did not comply with

the Consent Order nor with the Addendum to the Consent Order that extended the Respondent's registration subject to the fulfillment of conditions by October 10, 2023.

At hearing, the Respondent testified to various cost overruns that he said made it hard to finish the pool and to a car accident that prevented him from finishing the pool installation.

The Respondent's disciplinary history shows several complaints, penalties, and resolutions prior to 2022. However, in 2022, there were two (2) matters that are set forth in the ASOF ¶¶ 2 and 3. One of those matters related to a contract for which the Respondent failed to install a pool and performed negligent and improper work. In the other matter, the Respondent took a deposit of \$30,000 and performed no work and did not return the deposit. While the Respondent has moved to vacate the matter delineated in ASOF ¶ 2, that discipline currently stands. In addition, while the Respondent may have personal issues that precluded him from starting projects and/or finishing the projects, the Respondent kept deposits for work that never was started. The Respondent retained the deposit when he had performed no work in ASOF ¶ 2, and he did in this matter as well as he had not returned the deposit in January, 2023 at which time no work had been performed on the pool installation (and his registration was suspended).³

The Respondent took \$29,000 from the Complainant for work that he did not perform or start in 2022. He was given two (2) chances in 2023 to finish the pool installation. Instead of finishing the installation, he complained about what he termed cost overruns.

The Respondent's request for a three (3) month suspension would have been more apt earlier in this saga. Initially, the Respondent was given a chance in the Consent Order to become

³ At the time the Respondent entered into said contract, he was registered but when he took the second check from the Complainant in July, 2022 and ordered the pool kit in August, 2022, his registration was suspended. It appears the Complainant planned to install the pool without ensuring his suspension was lifted and he was properly registered as a contractor. The Respondent testified that he did not do any work in 2022 on the pool installation but that was not due to the expiration of his registration, but rather he testified it was due to personal and medical issues.

compliant and finish the installation. Instead, the Respondent failed to meet either deadline in the Consent Order or the Addendum for completing the pool installation. As a result, the Respondent never completed the pool installation which was to have been completed in the Summer of 2022. Thus, he failed to complete it more than one (1) year after the initial completion date and after being provided two (2) agreements for him to finish the pool with new deadlines.

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's registration was suspended on March 30, 2022. The Department is not seeking administrative penalties but rather a revocation of the Respondent's registration and a refusal to reinstate the Respondent's registration.

The Respondent was given over one (1) year to come into compliance and resolve this matter. He was unable to do so. He violated R.I. Gen. Laws § 5-65-10(a)(4) and (14). This is not the Respondent's first violation nor his second. Instead, he has two (2) significant recent violations in 2022 regarding taking deposits and not starting or finishing work. He has shown an inability to complete work for which he was paid, and in this matter, he failed to complete the work on which his registration was conditioned.

Because of the nature of the Respondent's violations in this matter and his failure to complete the pool installation pursuant to the Consent Order and Addendum, and his prior serious discipline, revocation is appropriate in this matter.

VI. FINDINGS OF FACT

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

1. The notice of hearing was issued on February 20, 2024 by the Board to the Respondent.

2. The Respondent was registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*; however, that registration was suspended in 2022 and then conditionally reinstated in 2023 as detailed above.

3. The Respondent did not comply with the Consent Order and the Addendum.

4. A hearing was held on July 30, 2024 with the parties represented by counsel. Briefs were timely filed by October 11, 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 twice violated R.I. Gen. Laws § 5-65-10(a)(4) (breach order of Board) and R.I. Gen. Laws § 5-65-10(a)(14) (failed to complete a project of construction).

Pursuant to R.I. Gen. Laws § 5-65-10(a), the Respondent's registration is revoked effective immediately and cannot be reinstated.

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.

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

Entered: October 24, 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 24th day of October, 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 Patrick Dowling, Jr., Esquire, D'Amico – Burchfield, LLP, 536 Atwells Avenue, Providence, R.I. 02909 and by electronic delivery to James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, Matthew Lambert, Principal State Building Code Officer, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886 and Sara Tindall-Woodman, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

