

RI Ave.
Windham Hill Rd.
P.O. Box

91	7108	2133	3935	8328	4190
91	7108	2133	3935	8328	4206
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STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
CONTRACTORS' REGISTRATION AND LICENSING BOARD
560 JEFFERSON BOULEVARD, SUITE 200
WARWICK, R.I. 02886

In the Matter of:

Craig Antony Hekking d/b/a Ost Design,

CRLB No. C 24-127

Respondent.

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on August 29, 2024 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to Craig Antony Hekking d/b/a Ost Design (“Respondent”). The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* A hearing was scheduled for October 22, 2024 at which time the Respondent did not appear. Pursuant to R.I. Gen. Laws § 5-65-6 and § 1.15.1 of 440-RICR-10-00-1 *General Rules and Regulations for Applications, Registration, Licensing, Claims, Violations, and Administrative Hearings* (“Regulation”), service may be made by first-class mail or certified mail and service is complete upon mailing when sent to the last known address of the party. In this matter, the Notice was sent to the Respondent’s last known addresses by first class and certified mail and by email.¹ Since the

¹ The initial notice of the prehearing conference was sent by first class and certified mail and by email to the Respondent’s addresses on record with the Department. The Respondent picked up two (2) certified mail notices and the other certified mail notice was returned to sender. The Respondent did not appear at the prehearing conference. A full hearing was scheduled for October 22, 2024. By letter dated September 26, 2024, the Department provide notice of the hearing date by first class and certified mail and email to the Respondent to his addresses on record with the Department. The Respondent picked up one (1) certified mail notice and the other two (2) certified mail notices were returned to sender. Department’s Exhibits One (1) (initial notice with certified mail receipts and United States Post Office website tracking sheet print-out); Two (2) (notice of full hearing with certified mail receipts and United States

Respondent was adequately noticed of hearing, a hearing was held before the undersigned on October 22, 2024.² Additionally, § 1.17 of the Regulation³ provides that a default judgment may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party. The Board was represented by counsel who rested on the record.

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-65-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 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 should be the sanction(s).

IV. MATERIAL FACTS

Based on the pleadings and exhibits entered at hearing, it is undisputed as follows:

In April, 2022, the Respondent received a deposit check and in July, 2022 entered in a contract with a Newport homeowner to renovate the kitchen. The Respondent took a deposit of \$9,698.20 from the homeowner and did not start the work and did not return the deposit.

Post Office website tracking sheet print-out); Three (Respondent's registration record with his home and business addresses); and Four (4) (criminal information filed that contains Respondent's address).

² The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12.

³ Section 1.17 of the Regulation provides as follows:

If any Party to a proceeding fails to answer a complaint, plead, appear at a prehearing conference or hearing or otherwise fails to prosecute or defend an action as provided by these Rules, the Hearing Officer or Board may enter a default judgment against the defaulting Party or take such action based on the pleadings and/or other evidence submitted by the non-defaulting Party as the forum deems appropriate. Challenge to such an order shall be made as a motion for reconsideration per § 1.15.6 of this Part.

Department’s Exhibits One (1) (notice of hearing); and Four (4) (criminal information including copy of deposit check and contract).

In December, 2023, the Respondent entered into a contract to lease a dumpster from a vendor who filed a complaint with the Board. The Respondent received the dumpster and used the dumpster for construction services but failed to pay the Complainant for these services. Department’s Exhibits One (1) (Notice); Five (5) (Board inspection report); Six (6) (contract for dumpster services); and Seven (7) (complaint).

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:

(3) That the registrant, licensee, or applicant has engaged in conduct as a contractor that is dishonest or fraudulent that the board or office finds injurious to the welfare of the public.

(10) The board 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.

(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.

(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. ***

(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. Where corrective work is completed and/or if restitution is made to the person for whom the work was to be performed, the fine assessed may be reduced as determined by the board. 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. Whether the Respondent violated R.I. Gen. Laws § 5-65-10

Based on the testimony and the exhibits entered at hearing, it was undisputed the Respondent entered in a contract with the homeowner and accepted a deposit in the amount of \$9,698.20 for work that he never performed. The Respondent never started the project. The Respondent violated R.I. Gen. Laws § 5-65-10(a)(14) by failing to complete said project. The Respondent violated R.I. Gen. Laws § 5-65-10(a)(3) by engaging dishonest conduct to the public by failing to return the deposit when no work was even started.

Based on the testimony and the exhibits entered at hearing, it was undisputed the Respondent breached a contract relating to construction by failing to pay for a dumpster used for construction. The Respondent violated R.I. Gen. Laws § 5-65-10(a)(3) by engaging dishonest conduct to the public by failing to pay for services rendered. The Respondent violated R.I. Gen. Laws § 5-65-10(a)(11) by breaching the contract for the dumpster.

E. Sanctions

R.I. Gen. Laws § 5-65-10(a) provides that a registration may be suspended for violations of R.I. Gen. Laws § 5-65-10. The Board requested that administrative penalties be imposed on the Respondent, the deposit be ordered returned, and the Respondent's registration be suspended until the penalties are paid and the deposit returned. R.I. Gen. Laws § 5-65-10(c) provides for penalties up to \$5,000 for first offences and up to \$10,000 for second offenses.

In relation to the homeowner, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(3) and (14). As this is the Respondent's first offense, an administrative penalty of \$2,000 is imposed for these two (2) violations in relation to the homeowner. Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the deposit of \$9,698.20 to said homeowner.

In relation to the dumpster subcontractor, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(3) and (11). As this is the Respondent's second offense, an administrative penalty of \$3,000 is imposed for these two (2) violations regarding the dumpster contract.

V. FINDINGS OF FACT

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

1. The Notice was issued on August 29, 2024 by the Board to the Respondent.
2. The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*
3. A hearing was scheduled for October 22, 2024 at which time the Respondent did not appear. As the Respondent was adequately notified, the hearing was held with the Board resting on the record.
4. Pursuant to § 1.17 of the Regulation, the Respondent is declared to be in default for failing to appear at the hearing.
5. The facts contained in Sections I, IV, and V are incorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the foregoing, the Respondent twice violated R.I. Gen. Laws § 5-65-10(a)(3) (dishonesty) and violated R.I. Gen. Laws § 5-65-10(a)(11) (breached a contract) and violated R.I. Gen. Laws § 5-65-10(a)(14) (failure to complete a project).

Pursuant to R.I. Gen. Laws § 5-65-10(a)(c), a total administrative penalty of \$5,000 is imposed on the Respondent for violations of R.I. Gen. Laws § 5-65-10(a)(3); (11); and (14).

Pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the deposit of \$9,698.20 to said homeowner 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), the Respondent's registration is **suspended until he complies with the terms of this decision** (repayment of the deposit; payment of the administrative penalty). The suspension shall **begin 14 days** from the date of this decision.⁴

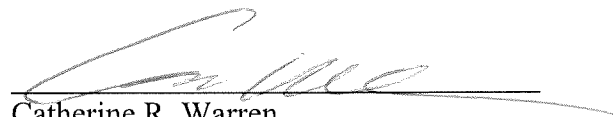
During the Respondent's suspension, pursuant to R.I. Gen. Laws § 5-65-1 *et seq.*, the Respondent shall be enjoined from engaging in any work that requires registration as a contractor pursuant to R.I. Gen. Laws § 5-65-1 *et seq.* both individually and through any business activity so that he shall not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

The administrative penalty is due 20 days from the execution of this decision.⁵

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

Entered:

November 6, 2024


Catherine R. Warren
Hearing Officer

⁴ If the Respondent complies with the decision within 14 days of the decision, his registration will not be suspended. He must provide proof of compliance to the Board. The Board may entertain a short term payment plan for a resolution of this decision, but that is at the discretion of the Board.

In addition, the Respondent did not appear at hearing. It is not known if he has now actually paid for the dumpster services. Proof of such recent payment might cause the Board to agree to modify the penalties imposed for the dumpster services violations.

⁵ Payment should be made to Contractors' Registration and Licensing Board at the above address.

NOTICE OF APPELLATE RIGHTS

Pursuant to R.I. Gen. Laws § 5-65-20 and § 1.13.2 of the Regulation, this decision may be appealed to the full Board by requesting an appeal in writing to the 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 6th day of November, 2024 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail to Craig Antony Hekking, 28 Rhode Island Avenue, Newport, R.I. 02840; OST Design Builders ATTN: Craig A. Hekking, 40B Windmill Hill Road, Newport, R.I. 02837; and OST Builders ATTN: Craig A. Hekking, PO Box 13, Adamsville, R.I. 02801 and by electronic delivery to alatimber@gmail.com and ostdesignbuild@gmail.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, and Megan Mihara, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite 200, Warwick, R.I. 02886, Joshua Nault, Esquire, and Pamela Toro, Esquire, and Joshua Nault, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

