

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:

**Richard Souza d/b/a
 Professional Home Inspection Co.,**

Respondent.

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Complaint No. 6299

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing (“Notice”) issued on April 15, 2024 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to Richard Souza d/b/a Professional Home Inspection Co. (“Respondent”). The Respondent is not registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.*; however, the Board still has jurisdiction in disciplinary proceedings over the Respondent pursuant to R.I. Gen. Laws § 5-65-10(a)(10).¹ A hearing was scheduled for October 21, 2024 at which time the Respondent did not appear. Pursuant to R.I. Gen. Law § 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

¹ 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.”

address by first class and certified mail and by email.² Since the Respondent was adequately noticed of hearing, a hearing was held before the mail undersigned on October 21, 2024.³ Additionally, § 1.17 of the Regulation⁴ 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 § 5-65-1 *et seq.*, and if so, what should be the sanction(s).

² The Notice was sent by certified and first class mail and email to the Respondent's addresses on record with the Department. After receipt of the Notice, the Respondent and Department engaged in negotiations to resolve this matter. They were unsuccessful. A hearing was scheduled by email for October 2, 2024; however, the Respondent requested by email a continuance of the hearing as he was out of town. The undersigned scheduled it for a remote hearing but the Respondent did not appear. The undersigned then sent notice by email to the parties that the hearing would be scheduled for October 21, 2024. The Respondent replied to the scheduling email that he would reach out to the Department to resolve. The Department did not hear from him, and he did not appear at hearing. Department's Exhibit One (1) (Notice) and Three (3) (email chain between Department, Respondent, and undersigned for the rescheduling of the October 2, 2024 hearing to October 21, 2024).

³ The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12.

⁴ 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.

IV. MATERIAL FACTS

Based on the pleadings and exhibits entered at hearing, it is undisputed as follows: The Respondent entered in an oral agreement on or about August 20, 2021 with a homeowner in Pawtucket to construct a deck and shed. The Respondent was not registered as a contractor at that time and still is not registered as a contractor, and the type of work to be performed required registration as a contractor. He accepted a deposit of \$5,000 from the homeowner on an agreement of \$11,000 and did not enter in a written contract with the homeowner. He began the work but never completed the project. The homeowner filed a complaint with the Board. On January 25, 2022, the Board issued a notice of intent to assess civil penalty and opportunity for hearing to Respondent. Department's Exhibits One (1) (Notice); Five (5) (Notice of Intent to Assess Civil Penalty); Six (6) (Board inspection report); Seven (7) (photographs of incomplete shed); and Eight (8) (texts between Respondent and homeowner including August, 2021 texts about the work and referencing the \$5,000 deposit and October, 2021 texts with homeowner asking Respondent why they had not seen him in a month and would he finish the shed).

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 factfinder 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 may take disciplinary action against a contractor who performed work, or arranged to perform work, while the registration was suspended, invalidated, or revoked. ***

(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.

(15) That the registrant has misrepresented his or her registration status as valid when the registration was suspended, revoked, invalidated, inactive, or unregistered as required by the board.

(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. *** 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 ***

(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]

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

It was undisputed the Respondent did not complete the work for which he agreed to perform with a homeowner and for which he took a deposit. It was undisputed the Respondent is not registered as a contractor in Rhode Island and was not registered as a contractor at the time of this incident. It was undisputed the Respondent misrepresented his registration status to the homeowner. It was undisputed the Respondent did not enter in a written contract which is required by statute for contracts worth over \$1,000 and did not include the mechanic's lien. It was undisputed the Respondent breached a contract by failing to perform the work agreed to with the homeowner. Therefore, the Respondent violated R.I. Gen. Laws § 5-65-10(a)(11) (breached contract) (14) (failed to complete project); and (15) (misrepresented registration status). The

Respondent also violated R.I. Gen. Laws § 5-65-3(o) (failure to have a written contract when work was over \$1,000 and failure to include mechanic's lien).

E. Sanctions

The Board requested that a cease and desist order be entered against the Respondent. R.I. Gen. Laws § 5-65-10(c) provides for penalties up to \$5,000 for first offences and up to \$10,000 for subsequent offenses. The Board requested that an administrative penalty of \$5,000 be imposed on the Respondent. The Respondent was previously registered in 2015 so he is well aware of the statutory obligations of a contractor. Indeed, he had a violation in 2015. Department's Exhibit Two (2) (Respondent's 2015 disciplinary history).

Pursuant to R.I. Gen. Laws § 5-65-10(b), the Respondent is ordered to cease and desist from violating R.I. Gen. Laws § 5-65-1 *et seq.* so that he shall not engage in work that requires registration under said statute. The evidence before the undersigned is this is the Respondent's second offense.

Based on the foregoing, the Respondent is ordered to pay a total administrative penalty of \$7,000 for 1) breaching the contract; 2) failing to complete the project; and 3) misrepresenting his registration status (\$2,000 for each violation); and 4) for failing to have a written contract; and 5) failing to have a mechanic's lien in the contract (\$500 for each violation).

VI. FINDINGS OF FACT

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

1. The Notice was issued on April 15, 2024 to the Respondent.
2. A hearing was scheduled for October 21, 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.

3. The Respondent entered into an agreement on or about August 21, 2021 with said homeowner to perform work and took a deposit of \$5,000 and failed to complete the work and breached the contract.

4. The Respondent is not registered as a contractor, and the work for which he contracted to perform required registration as a contractor.

5. Pursuant to § 1.17 of the Regulation, the Respondent is declared to be in default for failing to appear at the hearing.

6. The facts contained in Sections I, IV, and V are incorporated by reference herein.

VII. CONCLUSIONS OF LAW

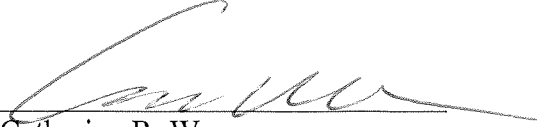
Based on the foregoing, pursuant to R.I. Gen. Laws § 5-65-10(b), the Respondent is ordered to cease and desist from violating R.I. Gen. Laws § 5-65-1 *et seq.* so that he shall not engage in work that requires registration under said statute.

Pursuant to R.I. Gen. Laws § 5-65-10(a)(c), a total administrative penalty of \$7,000.00 is imposed on the Respondent for violating R.I. Gen. Laws § 5-65-10(a)(11); (14); and (15) and R.I. Gen. Laws § 5-65-3(o).

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 7, 2024


Catherine R. Warren
Hearing Officer

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 Contractors' Registration and Licensing 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 7th 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, return receipt requested to:

Mr. Richard Souza
41 Mason Street, Apt. 1
Fall River, MA 02723

and by electronic delivery to:

myprofessionalinspector@gmail.com (Respondent)
James Cambio, Building Code Commissioner (james.cambio@dbr.ri.gov)
Donna Costantino, Associate Director (donna.constantino@dbr.ri.gov)
Matthew Lambert, Principal State Building Code Officer (matthew.lambert@dbr.ri.gov)
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Theresa L. Kaplan