

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

<p>In the Matter of:</p> <p>Robert Gervais a/k/a “Bob” Gervais d/b/a ARG Construction, Respondent.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Complaint 24-182</p>
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DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing issued on October 4, 2024 by the Department of Business Regulation Contractors’ Registration and Licensing Board (“Department” or “Board”) to Robert Gervais a/k/a “Bob” Gervais d/b/a ARG Construction (“Respondent”). The Respondent’s registration as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq.* expired in November, 2024; 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 December 12, 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 notices of hearing were sent to the Respondent’s last known address by first class and certified mail and by email.² Since the Respondent was

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.”

² The initial notice of hearing was sent to the Respondent’s addresses on record with the Department by first class mail, certified mail, and email. Department’s Exhibits One (1) (notice of hearing and certified mail receipt; United

adequately noticed of hearing, a hearing was held before the undersigned on December 18, 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 § 5-65-10.

IV. MATERIAL FACTS

Based on the pleadings and exhibits entered at hearing, it is undisputed as follows: The Respondent entered in a contract on or about April 18, 2024 with a homeowner in Newport to replace deck railing for said homeowner's property. The Respondent accepted a deposit in the amount of \$7,040.00 from the homeowner. At the time of the contract, the Respondent was registered as a contractor, and the work to be performed required registration as a contractor. The

States Post Office tracking sheet print out showing returned to sender); Two (2) (amended notice of hearing; letter notice scheduling the December 12, 2024 hearing sent by first class mail and certified mail and by email; receipt for certified mail and print out from the tracking website for the United States Post Office showing addressee unknown); and Three (3) (Respondent's registration history with mailing and email addresses).

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.

Respondent accepted the deposit but failed to perform any work for which he contracted to perform. On June 6, 2024, said homeowner filed a complaint with the Board as no work had been performed by the Respondent and the deposit had not been returned despite the homeowner contacting the Respondent for the return of the deposit. Department's Exhibits Two (2) (amended notice); Five (5) (Board inspection report); Six (6) (contract); Seven (7) (copy of deposit check); and Eight (8) (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. 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 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.

(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.

D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10 and if so, what Should be the Sanction

It was undisputed the Respondent arranged to perform work as a contractor for a homeowner and took a deposit and performed no work. For those violations, the Board requested that a cease and desist order be entered against the Respondent and that he be ordered to return the homeowner’s deposit and that the Respondent not be able to renew or reinstate his registration without compliance with this decision.

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)(10), the Respondent is ordered to return the homeowner's deposit of \$7,040.

VI. FINDINGS OF FACT

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

1. The Notice of Hearing was issued on October, 2024 to the Respondent.
2. A hearing was scheduled for December 12, 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 a contract on or about April 18, 2024 with said homeowner to perform work and took a deposit of \$7,040 and did not perform the work and has not returned the deposit to said homeowner.
4. The Respondent's registration as a contractor expired in November, 2024.
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(a)(10), the Respondent is ordered to return the deposit of \$7,040 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(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), the Respondent may not renew or reinstate his registration without complying with this decision.

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

Entered: December 30, 2014



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 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

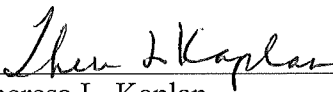
I hereby certify on this 30th day of December, 2024 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to:

Mr. Robert Gervais
11 Ellis Avenue
Warren, R.I. 02885
Attn: ARG Construction

and by electronic delivery to:

rgervais12@yahoo.com (Respondent)
argconstruction@yahoo.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