



State of Rhode Island
DEPARTMENT OF BUSINESS REGULATION (DBR)
Division of Building, Design and Fire Professionals
Contractors' Registration & Licensing Board
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<p>IN THE MATTER OF:</p> <p>STEVEN GIANLORENZO D/B/A GIANLORENZO & SONS CONSTRUCTION,</p> <p>APPELLANT.</p>	<p style="text-align: center;">File #12566</p>
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CRLB DECISION AND ORDER

INTRODUCTION

The Contractors' Registration and Licensing Board ("CRLB") of the Department of Business Regulation ("DBR") considered the appeal in the above-captioned matter on Wednesday, June 9, 2021, at approximately 2:00 p.m. during an open meeting of the CRLB held virtually via Zoom Webinar pursuant to Governor Daniel J. McKee's Executive Order 21-59. There was a quorum of the CRLB and the following members of the CRLB were present and participating: Carol O'Donnell (Vice Chair), Paul Brunetti, David Caldwell, Ronald Caniglia, Alfred DeCorte, Elise Geddes, Katherine Kohn, James Koloski, Jose Marcano, Jacqueline Pagel and Tony Raposo. The following CRLB members recused from participating in this appeal: Tom Furey (Chair), and David Grudzinski.¹ Given the Chairperson's recusal, Vice Chair Carol O'Donnell served as Chair for this appeal hearing.

¹ Chair Furey and Mr. Grudzinski were removed as Zoom Webinar "Panelists" during the entirety of the appeal hearing. They were moved to the audience as an "Attendee," which is a role in the Zoom Webinar platform that only permits viewing the Webinar, just like all other members of the audience.

Amy C. Stewart, Esq., was present as legal counsel to the CRLB for this appeal.

Matthew Reeber, Esq., appeared on behalf of Steven Gianlorenzo d/b/a Gianlorenzo & Sons Construction (“Appellant”). Mr. Gianlorenzo was also present.

John Dean, Esq., appeared on behalf of DBR.

JURISDICTION

The Appellant filed a timely appeal of the Hearing Officer’s Order pursuant to R.I. Gen. Laws § 5-65-20 and 440-RICR-10-00-1, § 1.13.2. The Hearing Officer’s Order in this matter was issued on September 21, 2020, and is attached hereto as Exhibit A.

ISSUE

Whether the Hearing Officer’s Order should be affirmed, dismissed, modified and/or the matter remanded for further proceedings.

SUMMARY OF THE ARGUMENTS

Starting with the Appellant, the parties were each given fifteen (15) minutes to present their arguments to the CRLB.

First, Attorney Reeber argued that the hearing should not have gone forward because of a pending Superior Court action filed by the complainant, which under CRLB statutes should have stayed the administrative action. He noted that he requested a stay from the Hearing Officer on January 10, 2020. Nevertheless, he said that the matter was bifurcated by the Hearing Officer and phase one of the bifurcation moved forward to a hearing, which he believes was in violation of the CRLB statutes. He argued that the CRLB should consider this legal issue and find that by holding the hearing after a civil suit was filed and a stay was requested, the underlying decision is improper.

Second, Attorney Reeber argued that the fines imposed against Mr. Gianlorenzo were excessive given that he is a first-time offender and has been in business for over forty years. He

maintained that it was inappropriate to hold Mr. Gianlorenzo to a higher standard and grossly fine him to an excessive amount due to employment with the CRLB.

Finally, Attorney Reeber argued that the conclusions of the independent consultant hired by the CRLB to review the complaint lacked sufficient evidence to sustain the violations.

Attorney Dean argued that R.I. Gen. Laws § 5-65-12(a)(1) does not require hearings on violations of CRLB laws and regulations to be stayed upon the filing of a civil action in Superior Court. He explained that there are two (2) aspects of most CRLB complaints: a claim portion and a violation portion. He stated that the claim portion of a complaint alleges some sort of damages incurred by the homeowner while the violation portion of a complaint involves regulatory action which is solely between the CRLB and the contractor. In this case, he argued that the claim portion of the complaint was stayed through the bifurcation of some of the allegations set forth in the complaint; however, there was nothing that prevented the CRLB from moving forward with the regulatory action on the remaining violations.

Second, Attorney Dean argued that the fines imposed by the Hearing Officer were not excessive and not in excess of the CRLB's statutory authority. He noted that the Hearing Officer's decision considered whether the fines were excessive or arbitrary and lowered some of the fines originally assessed by the CRLB.

Third, Attorney Dean explained that DBR hired an independent consultant to investigate the complaint and conduct an inspection of the subject property to avoid conflicts of interest because Mr. Gianlorenzo was an employee of the CRLB. The consultant identified six (6) potential areas where he felt substantial violations of the building code occurred. Attorney Dean argued that whether the violations were correctable in the future was irrelevant to the finding that they were a violation of CRLB laws. He also noted that the Hearing Officer found violations on four (4) of the

six (6) violations identified by the independent consultant.

In summary, Attorney Dean argued that the Hearing Officer's decision should be upheld by the Board. He stated that the decision was very detailed and contained ample findings and fact and conclusions of law. He further argued that the Hearing Officer's decision was well reasoned and supported by the evidence presented at the hearing.

Attorney Reeber was provided with three (3) minutes for rebuttal. He argued that the CRLB did not offer any notion of due process and fairness to Mr. Gianlorenzo. He said that the independent consultant stated under oath that he would have liked to speak with more people but did not because he signed a confidentiality agreement that constrained him from having such conversations. Attorney Reeber argued that this confidentiality agreement prevented the independent consultant from preparing a complete investigative report.

Additionally, Attorney Reeber argued that the fines imposed by the Hearing Officer should be lowered by the CRLB.

Finally, Attorney Reeber argued that there is no distinction in R.I. Gen. Laws Chapter 5-65 and the CRLB regulations with respect to separating a complaint into a claim portion and a violation portion. He stated that once a complaint is filed and civil action is commenced, all proceedings before the CRLB were supposed to cease.

STANDARD OF REVIEW

Consistent with R.I. Gen. Laws § 5-65-20, 440-RICR-10-00-1.13.2 and the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, the CRLB will affirm the hearing officer's decision if it is supported by substantial evidence in the record. The CRLB will not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact. Alternatively, the CRLB may dismiss or modify the hearing officer's decision if it was arbitrary or capricious,

or affected by other error of law. The CRLB may remand the case for further proceedings, if applicable.

FINDINGS OF FACT

The entirety of the Hearing Officer’s Order (Exhibit A) is hereby adopted and incorporated herein by reference.

CONCLUSION AND ORDER

After reviewing the record and considering the arguments presented in this matter, the CRLB determined that the Hearing Officer’s decision is supported by substantial evidence in the record and upon motion made by James Koloski and duly seconded by Carol O’Donnell, it was

VOTED: To affirm the decision of the hearing officer.

AYES: Carol O’Donnell, Paul Brunetti, David Caldwell,
Ronald Caniglia, Alfred DeCorte, Elise Geddes, Katherine Kohn, James
Koloski, Jose Marcano, and Jacqueline Pagel.

NAYS: Tony Raposo

RECUSALS: Tom Furey, David Grudzinski.

Accordingly, the Hearing Officer’s Order is hereby AFFIRMED.

Carol O’Donnell

July 26, 2021

Carol O’Donnell, Vice Chair
Contractors’ Registration & Licensing Board
Department of Business Regulation

Date

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES A FINAL ORDER OF THE CONTRACTORS' REGISTRATION AND LICENSING BOARD OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 26th day of July, 2021, that a copy of the within CRLB Decision and Order was sent by email and first class mail, postage prepaid to the following:

1. Matthew C. Reeber, Esq. Northwoods Office Park, 1301 Atwood Ave., Suite 215N, Johnston, RI 02919.

AND BY EMAIL TO:

1. Matthew C. Reeber, Esq., mreeber@pdlolaw.com
2. John Dean, Esq., john.dean@dbr.ri.gov
3. James Cambio, james.cambio@dbr.ri.gov
4. Donna Costantino, donna.costantino@dbr.ri.gov
5. Julietta Georgakis, Julietta.georgakis@dbr.ri.gov
6. Amy C. Stewart, Esq., amy.stewart@dbr.ri.gov

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Final Order – Phase 1

In the Matter of File #12566:

Contractors' Registration and Licensing Board ("Board")

vs.

Steven Gianlorenzo d/b/a Gianlorenzo & Sons Construction ("Respondent")

I. INTRODUCTION

An administrative hearing involving the above-named Respondent was conducted on July 14, 2020, before an appointed Hearing Officer, Daniel W. Majcher ("Hearing Officer"), pursuant to R.I. Gen. Laws § 5-65-10, on some of the allegations.¹ In attendance at the hearing were the following parties: Attorney John Dean ("Attorney Dean"), on behalf of the Contractors' Registration and Licensing Board ("Board"), Attorney Matthew Reeber ("Attorney Reeber"), on behalf of Steven Gianlorenzo d/b/a Gianlorenzo & Sons Construction ("Respondent"), and the Respondent. Testimony was heard from the following witnesses: Deborah Renaud ("Homeowner"), John M. Hoyle, Jr. ("Mr. Hoyle"), Chief of Inspections for the Board, Felix I. Zemel ("Mr. Zemel"), a third-party consultant for the Board; and the Respondent.

¹ As will be discussed below, the nine (9) allegations against the Respondent were bifurcated into two separate phases. This decision is only for the allegations heard in phase 1.

II. TRAVEL OF THE CASE

(1) This matter was filed under R.I. Gen. Laws § 5-65-1 *et seq.*, entitled the Contractors' Registration and Licensing Board and the Administrative Regulations and Construction Standards of the Contractors' Registration and Licensing Board ("Board Regulations"),² promulgated thereunder.

(2) A Notice of Violation was issued to the Respondent on October 24, 2019, by the Board's Chief of Inspections, Mr. Hoyle, alleging the following violations:

1. RIGL § 5-65-3(l)(ii) - Use of the word "license" when only registered. \$100.00 fine
2. RIGL § 5-65-3(o) - Failure to have written contract when cost is in excess of \$1,000. \$2,500.00 fine
3. RIGL § 5-65-3(p) - Failure to provide written notice of right of rescission. - \$2,500.00 fine
4. RIGL § 5-65-10(a)(3) - Engaging in dishonest conduct which is injurious to the public. \$2,500 fine
5. RIGL § 5-65-10(a)(7) - Violating state building codes. \$2,500.00 fine
6. RIGL § 5-65-10(a)(ll) - Breach of contract. \$2,500.00
7. RIGL § 5-65-10 (a)(12) - Performing negligent and/or improper work. \$2,500.00 fine
8. RIGL § 5-65-10(a)(14) - Failure to complete a project or willful failure to comply with terms of contract. \$2,500 fine.
9. RIGL § 5-65-18 -Failure to provide Mechanic's Lien Notice. \$2,500 fine

The Notice of Violation is attached hereto as **Exhibit A**.

(3) On November 12, 2019, the Board received a request for a hearing from the Respondent, attached hereto as **Exhibit B**.

(4) A Pre-Hearing Notice was sent on November 19, 2019, stating that the parties should appear for a prehearing conference on December 12, 2019, at 2:00 P.M. at the Rhode Island Department of Administration.

² Pursuant to the recodification of regulations required by R.I. Gen. Laws § 42-35-5, this regulation has been re-codified as 440-RICR-10-00-1 effective January 2, 2019.

(5) On December 6, 2019, Respondent's attorney, Matthew Reeber ("Attorney Reeber") emailed that he was retained by the Respondent in the present matter and requested that the prehearing conference be rescheduled in order for him to prepare a response.

(6) The pre-hearing conference was rescheduled for December 17, 2020, and held on that date. At the pre-hearing conference, the attorneys (Attorney Reeber for the Respondent and Attorney Dean for the Board) indicated that a lawsuit related to the issues in the matter was filed in the Superior Court against the Respondent. Both attorneys requested a continuance to discuss the matter further and decide whether to proceed with the administrative hearing during the pendency of the litigation in Superior Court.

(7) Another pre-hearing conference was re-scheduled for January 7, 2020, with notice sent on December 17, 2019. On January 7, 2020, the attorneys provided an update. Respondent's attorney requested a 6-month delay because of the civil case. The Board's attorney objected to a 6-month delay and urged the regulatory action to proceed as soon as possible because the Respondent is an employee of the Board. Attorney Dean argued that a delay in the matter would place an undue burden on the board because the Respondent was on administrative leave. With that said, Attorney Dean stated the Board would agree to a 3-month continuance in compromise. The concern of the Respondent's attorney, Attorney Reeber, was the duplication of discovery and testimony between the regulatory action and civil suit. After further discussion, the Hearing Officer proposed bifurcating the regulatory matter and splitting the nine (9) allegations into two phases. The allegations would be divided based on which claims could proceed without extensive discovery beyond the Board's administrative file. The allegations which would require more extensive discovery and would be duplicative of discovery in the civil matter, along with requiring testimony from Homeowner Renaud, would be held in abeyance for a later time for a second phase.

Both Attorney Dean and Attorney Reeber were amenable to bifurcating the regulatory action, but requested more time to work out the details of which allegations could be heard. The pre-hearing conference was continued for January 17, 2020 to further discuss.

(8) On January 17, 2020, after hearing extensively from both parties, it was determined by the Hearing Officer to bifurcate the allegations into two (2) phases as follows (numbers correspond with the Notice of Violation (**Exhibit A**)):

Phase 1

1. RIGL § 5-65-3(1)(ii) - Use of the word "license" when only registered. \$100.00 fine
2. RIGL § 5-65-3(o) - Failure to have written contract when cost is in excess of \$1000. \$2,500.00 fine
3. RIGL § 5-65-3(p) - Failure to provide written notice of right of rescission. \$2,500.00 fine
5. RIGL § 5-65-10(a)(7) - Violating state building codes. \$2,500.00 fine
9. RIGL § 5-65-18 - Failure to provide Mechanic's Lien Notice. \$2,500 fine

Phase 2

4. RIGL § 5-65-10(a)(3) - Engaging in dishonest conduct which is injurious to the public. \$2,500 fine
6. RIGL § 5-65-10(a)(11) - Breach of contract. \$2,500.00
7. RIGL § 5-65-10 (a)(12) - Performing negligent and/or improper work. \$2,500.00 fine
8. RIGL § 5-65-10(a)(14) - Failure to complete a project or willful failure to comply with terms of contract. \$2,500 fine

(9) On January 17, 2020, Notice of a Hearing – Phase 1 was issued to the parties providing a hearing date of Wednesday March 11, 2020, at 9:30 A.M.

(10) On March 10, 2020, Attorney Reeber submitted a doctor's note on behalf of the Respondent and requested a postponement until after March 20, 2020. Attorney Dean did not object to a postponement. The hearing was rescheduled to March 30, 2020.

(11) On March 23, 2020, in light of the circumstances surrounding the Covid pandemic, the hearing officer contacted both parties about postponing the hearing. Without objection, the

parties agreed to a postponement, with a pre-hearing status conference to be held in the end of April to revisit the matter.

(12) A pre-hearing status conference was scheduled and held on April 28, 2020. Because of the continuing pandemic, the parties agreed to hold the matter for another month and revisit the schedule. Another status conference was scheduled and held on May 26, 2020, at 10:00 A.M. At the May 26th pre-hearing status conference, the parties agreed to schedule the Phase 1 Hearing for July 14, 2020.

(13) On July 14, 2020, the matter was heard by the hearing officer at the Rhode Island Department of Administration, Conference Room B. Thereafter, the Board was given a week to submit a legal brief in regard to allegation # 2, RIGL § 5-65-3(o) - Failure to have written contract when cost is in excess of \$1,000, with a reply brief to be filed by the Respondent in 7 calendar days.

III. ISSUES – Phase 1

The issue is whether the Respondent violated the following provisions and whether the fines imposed by the Board were appropriate (numbers correspond with the Notice of Violation (Exhibit A)):

Phase 1

1. RIGL § 5-65-3(l)(ii) - Use of the word "license" when only registered. \$100.00 fine
2. RIGL § 5-65-3(o) - Failure to have written contract when cost is in excess of \$1000. \$2,500.00 fine
3. RIGL § 5-65-3(p) - Failure to provide written notice of right of rescission. \$2,500.00 fine
5. RIGL § 5-65-10(a)(7) - Violating state building codes. \$2,500.00 fine
9. RIGL § 5-65-18 - Failure to provide Mechanic's Lien Notice. \$2,500 fine

IV. MATERIAL FACTS AND TESTIMONY

A. Testimony of Deborah Renaud -- Homeowner

Deborah Renaud is the homeowner at 37 Terrace Avenue, Riverside Rhode Island 02915. The Homeowner filed a complaint with the Board on or about October 9, 2020. The Board called the Homeowner as a witness and she testified as follows:

1. **Direct Testimony:**

The Homeowner identified Mr. Gianlorenzo, the Respondent, as someone she knew and had contracted to build a garage foundation about 30 years ago. More recently, the Homeowner had hired Respondent last April 23, 2018 to rebuild her house on the existing foundation. The Homeowner stated she had selected Respondent because he submitted the middle bid of the bids she received. The job involved knocking down the existing house and re-building it on the same foundation in accordance with plans provided by the Homeowner. The Homeowner stated that she never received a detailed document outlining terms and conditions for the work, but that she received “paperwork” from the Respondent entitled “Construction Disbursement Schedule” (“CDS”), attached hereto as **Exhibit C**. The Homeowner further testified that she did not receive any other documentation which included either a right of recession or notice related to a Mechanics Lien. The Homeowner testified that the Respondent began work on the project.

2. **Cross Examination:**

Respondent’s attorney, Attorney Reeber, followed-up and asked whether other documents were provided and specifically identified a Request for Payment records, attached hereto as **Exhibit D**. Homeowner confirmed receipt of the same and stated the Request for Payments matched up with the CDS (**Exhibit C**). Further, Homeowner stated that work was completed sequentially according to the CDS up to a point. Generally, the Request for Payments

submitted by the Respondent and work performed by the Respondent generally matched the CDS. Respondent's attorney introduced **Exhibit E**, attached hereto, which included an unsigned CDS and checks (payments). The testimony was that payments generally followed the CDS up until the entry for vinyl siding. The process for payment was that as soon as the Respondent finished the stated work per the CDS, the Homeowner would pay the Respondent via check.

Further, the CDS was executed and signed on May 29, 2020 and then the following occurred:

- a. Demolition (\$35,000.00) completed, billed and paid.
- b. Foundation and sewer (\$50,000), completed, billed and paid.
- c. Framing (\$50,000) completed, billed and paid.
- d. Roofing (\$10,000) completed, billed and paid.
- e. Windows (\$12,500) unclear if completed, billed and paid.
- f. Siding (\$7,500) unclear if completed, billed and unclear if paid.

The Homeowner testified that the Respondent did not file a Mechanics Lien and that no request was made to rescind the contract. Respondent's attorney established that at some point, Homeowner filed a verified complaint in Superior Court, Providence.

3. **Redirect:**

Homeowner clarified that she made siding payment, but testified that the work was not complete.

B. Testimony of John M. Hoyle, Jr., Chief of Inspections for the Board

The Board called John M. Hoyle, Jr. ("Mr. Hoyle"), Chief of Inspections for the Board, as a witness and he testified as follows:

1. Direct Testimony:

Mr. Hoyle testified he is the Chief of Inspections and he works for the Board. His responsibilities include registering contractors and investigating and enforcing claims brought against contractors. He stated that he receives claims from homeowners against contractors and investigates and reviews the claims and has been in this role for over 7 years. Prior to this position, he had worked for 15 years as the building inspector for East Greenwich. When asked about certifications, Mr. Hoyle stated that he is a Certified Alternate Building Official.

Mr. Hoyle received a “Statement of Claim” from Deborah Renaud, the Homeowner, on October 9, 2019, attached hereto as **Exhibit F**. After he received the claim, he contacted Ms. Renaud and scheduled and conducted a site visit, reported findings back, and then spoke briefly with Mr. Gianlorenzo, the Respondent, who is also an employee of the Board.

He testified that he issued a Notice of Violation (**Exhibit A**). Pertaining to each violation, Mr. Hoyle stated:

- a. **Use of the word “license” when only registered** – Being a licensee and being a registrant have different requirements. Mr. Gianlorenzo is a registered contractor and is not licensed. On the top of the CDS (**Exhibit C**) it provides, “RI License #37.” However, the Respondent is not licensed, he is only registered.
- b. **Failure to have a written contract when cost is in excess of \$1,000** -- Mr. Hoyle testified that the only documentation involved was the CDS and that this does not meet requirements of the statute to be considered a contract because it must contain certain elements such as the registration number, a 3 day right of day right of rescission, and notice related to a possible Mechanics Lien.

2. Cross Examination:

Mr. Hoyle testified that to his knowledge, Respondent has never been the subject of another claim and that he would fall into the category of a “first-time offender.” He noted that the Board is generally more lenient to first-time offenders.

Respondent’s attorney, Attorney Reeber, confirmed with Mr. Hoyle that the CDS is a written document, signed by the parties and that it provides a list of the work to be performed at set pricing. Mr. Hoyle was asked whether there was any evidence that the word “license” was being used intentionally. Mr. Hoyle testified that the Respondent, in his role as an employee for the Board, should have been aware that using the word “license” was a violation. Mr. Hoyle stated there was no evidence of a request of rescission by the Homeowner.

Mr. Hoyle was asked and confirmed that he did not speak to any subcontractors. He stated that he would not normally speak to a subcontractor unless necessary. Mr. Hoyle established that he did not speak to the building inspector for the City of East Providence, but felt it was unnecessary. He stated that the same building code applies across the State of Rhode Island, except with some minor variations based on specific locations. He further stated that the local building inspector would only visit the site if a complaint to the local building inspector had been made.

Mr. Hoyle was asked if he was aware of 6 onsite inspections from the East Providence building inspector’s officer and he stated he was not aware. Respondent’s attorney introduced a document from the East Providence building inspector’s office showing a timeline of events related to the property at 37-39 Terrace Avenue, attached hereto as **Exhibit G**, which appeared to show no cited violations from the East Providence building inspector’s office.

Respondent's attorney asked whether Mr. Hoyle attempted to get the parties together to attempt to resolve the situation as was customarily done. Mr. Hoyle responded that he did not because he was under the impression from Respondent that he would not engage in mediation.

3. Redirect:

Mr. Hoyle testified that the Board may impose fines for a failure to provide a notice of a Mechanics Lien and right of rescission, with the maximum fine being \$5,000.00 per infraction and \$10,000.00 for each subsequent offense. However, Mr. Hoyle stated that in this case a \$2,500.00 fine was assessed by the Board. He stated that the Board determined that because the Respondent was employee of Board and should have known the requirements and the consequences, the fine imposed by the Board was enhanced, even though the Respondent was considered a first-time offender. Additionally, he testified that the Board considered the fact that the Respondent was unwilling to resolve the issue through mediation. Last, he testified that for using the term "license," instead of the word "registration," a \$100.00 fine is stipulated in statute as the penalty.

4. Re-cross:

Mr. Hoyle again testified that the fines were enhanced because the Respondent knew or should have known the regulatory requirements in his position with the Board, despite the Respondent being considered a first-time offender.

C. Testimony of Felix I. Zemel:

1. Direct Testimony:

Mr. Zemel testified that he is employed by Municipal Code Consulting LLC., a third-party consultant who performs building inspections. He stated he has 2 decades of experience as a building official in Massachusetts and Rhode Island and was the former chief building official

for the Commonwealth of Massachusetts. He also served in the capacity as a municipal health official and was a building official for various municipalities in Massachusetts and Rhode Island. He testified he was contacted by the Rhode Island Department of Business Regulation related to this matter because the Board felt inappropriate investigating Mr. Gianlorenzo because of his status as an employee of the Board. Therefore, the Board wanted a third-party consultant involved to investigate the claims. Specifically, Mr. Zemel said he was contacted and engaged by Julietta Georgakis, Deputy Director at the Department of Business Regulation, State of Rhode Island.

The scope of Mr. Zemel's engagement was to review records and conduct an on-site inspection. After his review, Mr. Zemel authored a report which was introduced by the Board and is hereto attached as **Exhibit H** ("Report"). In developing the Report, Mr. Zemel reviewed plans submitted to the East Providence Building inspector's officer and he inspected the site to determine whether the project was built to State Building Code standards. For the site visit, Mr. Zemel stated visited the site with Mr. Hoyle, and another inspector (unclear whether the other inspector was from Mr. Zemel's firm or Mr. Hoyle's office). The property was left open and accessible by the Homeowner. Mr. Zemel did not do any destructive testing, but rather simply viewed anything that was visible and accessible.

After his review, Mr. Zemel testified that he concluded there were actual and potential violations of the State Building code. Additionally, he found inconsistency between the filed plans with the East Providence Building Inspector's office and the actual work completed, which was in and of itself a violation of the State Building Code.

Pertaining to Phase 1 alleged violations, Mr. Zemel testified that the Respondent violated State building Codes as detailed in the Section 3 of the Report. Specifically, both Mr. Zemel's testimony and the Report categorized the violations into 6 separate areas as follows:

- i. **Separation between dwelling units, relative to fire** – Mr. Zemel stated that this was a potential violation because there was no way to determine whether there was appropriate separation without destructive testing. This was a potential violation of SBC 2 R302.3. Mr. Zemel later testified on cross examination that another way to determine whether there was a violation would be to have the Respondent provide evidence, such as a receipt for materials, showing that the appropriate separation was implemented. Mr. Zemel further testified on cross that he did not speak to the Respondent regarding this potential violation.
- ii. **Deviation from the plans approved by the local building official** – According to Mr. Zemel, it appeared that the work completed was not in accordance with the plans on file with local building official, which constitutes a violation. Specifically:
 1. Plans showed a stairway and instead there was only a scuttle hole;
 2. Plans called for existing deck, but a new deck was constructed;
 3. Roof framing to consist of 2x12 ridge rafters, but was constructed with engineered wood trusses.
- iii. **Newly-constructed deck ledgered to back of structure requires frost-protected footings and a permit to build.** The plans called for use of the existing deck. However, a new deck was installed, but there were no frost protected footings, which are required for the installation of a new deck. Additionally, in the records Mr. Zemel had access to, there appeared to be no

permit issued by the East Providence building inspector's office for a new deck. There were questions of whether the Homeowner had requested or approved of using preexisting materials, but Mr. Zemel viewed the Homeowner's desires and intentions irrelevant because the deviation from the filed plans, not having a permit and not using frost-protected footings for a new deck were violations on their face.

- iv. **For the decks at the front and the rear, there were no lateral connections, which would prevent the deck from blowing away.** While this is correctible, this would require significant labor to correct and would include pulling up the decking and then a reinstallation.
- v. **The framing of the roof over the rear second floor deck was insufficient.** Specifically, Mr. Zemel stated that the post was too heavily notched, which in itself was a strict code violation. An outside engineer would have to review the construction and a retrofit would need to be implemented to resolve this issue.
- vi. **There was no landing on the opening side of the door to the second-floor rear deck.** Mr. Zemel testified that this violation was subject to appeal and easily correctible.

Mr. Zemel concluded his testimony that he did not speak to the Respondent regarding any of these identified issues discussed above.

2. Cross Examination:

Again, Mr. Zemel stated there were no discussions about the alleged violations with Respondent, even though the Report itself notes that a discussion or an interview regarding the claims with Respondent was recommended. Therefore, Respondent's attorney, Attorney Reeber,

questioned whether the Report was incomplete. Mr. Zemel responded that in reference to the State Building Code violations, Section 3 of the Report was complete except for one related to the separation of units.³ He testified that except for the issue related to the separation of units, the other violations were visible and were violations on their face.

Mr. Zemel acknowledged that the project was not finalized and there was still work to be done. He reiterated that he did not review documentation from subcontractors and did not speak with the East Providence building inspector or investigate whether the municipality had issued any violations.

There was testimony that there was a Confidentiality Agreement in place between the State and Mr. Zemel which limited who he could speak with regarding the case. Mr. Zemel testified that while he did not speak to the East Providence building inspector, but that he was able to get the plans for the project through the Viewpoint Software System, employed by East Providence. Through the system, he could see plans and inspections and therefore had access to East Providence's records and enough information pertaining to the alleged violation stated in Section 3 of the Report.

3. **Redirect:**

Mr. Zemel stated that in his professional opinion, the violations of the State Building Code could be established by what he actually observed, in conjunction with having the plans through the Viewpoint Software System. Although he admitted that some items in the report were incomplete, most items were *prima facie* violations and speak for themselves.

D. Testimony of Steven Gianlorenzo, the Respondent

³ As noted above, for violation of 3(i) in the Report related to the separation of units, had Mr. Zemel spoken to the Respondent, the Respondent could have provided evidence that there was no violation (i.e. receipts for materials, etc.) Other than this violation in 3(i), the other violations were visible and were *prima facie* violations.

1. Direct Testimony:

Mr. Gianlorenzo testified that he was a registered contractor beginning in April 1990, but was working as a contractor in some capacity since June 1977. He stated there were no other complaints involving his work other than this current one. Mr. Gianlorenzo verified the timeline of events document provided by the East Providence building office (**Exhibit G**) and stated this was provided by Lisa Marx, the Clerk. He also confirmed that this was accessible through the Viewpoint Software System.

Mr. Gianlorenzo stated he would have fixed the issues which represent the State Building Code violations if had been allowed to complete the work. However, he said the Homeowner would not let him finish. He recalled a conversation between himself and Mr. Doyle and Attorney Dean where they walked him out of office. The Respondent testified that he told them that he was not willing to complete the work because the Homeowner would be suing and that she did not want him on the property and would have him arrested. He stated he was in the process of being served and had received a lawyer's letter regarding the project.

2. Cross Examination:

Respondent testified he had extensive wealth of knowledge of building industry which included 40 years in the industry. He had been working with the Board for 7 years. His job involved investigating claims from homeowners and has issued violations hundreds of times. He stated he was very familiar with the laws.

The Board's attorney, Mr. Dean, asked about using the term "license" instead of "registration" and whether he had issued violations for this to other contractors in the past. The Respondent responded by admitting that doing this was a mistake. The Respondent was further

asked about including a right of rescission and a notice of Mechanics Lien. The Respondent admitted that both of these items were required.

As to the violations of the State Building Code, Respondent further admitted that these were violations at the time, but he took the position that unless project was completed or the local official had actually issued a violation, the Board would not pursue such violations against a contractor in his experience. He testified that the Board would call the local official to issue an actual violation, but that this was not done in his case. He also stated that there was no final inspection from the local building inspector.

The Respondent was asked whether he could have completed the job because he was on medical leave. He responded that if he was allowed, he would have finished the job. He testified he did not know when he was served with the lawsuit and confirmed that he never went back to work on the project at issue.

3. Redirect:

Respondent testified that he did not return to work on the project because Homeowner was bringing a lawsuit.

V. RELEVANT STATUTES

§ 5-65-3. Registration for work on a structure required of contractor – Issuance of building permits to unregistered or unlicensed contractors prohibited – Evidence of activity as a contractor – Duties of contractors. [Effective until January 1, 2020.]

...

(l) The registration number of each contractor shall appear in any advertising by that contractor. Advertising in any form by an unregistered contractor shall be prohibited, including alphabetical or classified directory listings, vehicles, business cards, and all other forms of advertisements. The violations may result in a penalty being assessed by the board per administrative procedures established.

...

(ii) Use of the word "license" in any form of advertising when only registered may subject the registrant or those required to be registered to a fine of one hundred dollars (\$100) for each offense at the discretion of the board.

...

(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 a location on or near the signature-line location on or in which the parties to the contract shall initial to evidence the receipt of certain consumer education materials or information approved and provided by the board to the contractor. The educational materials and/or information shall include, but not be limited to, the following notice and shall be provided by the contractor to the homeowner:

NOTICE OF POSSIBLE MECHANIC'S LIEN

To: Insert name of owner, lessee, or tenant, or owner of less than the simple fee.

The undersigned is about to perform work and/or furnish materials for the construction, erection, alterations, or repair upon the land at (INSERT ADDRESS) under contract with you. This is a notice that the undersigned and any other persons who provide labor and materials for the improvement under contract with the undersigned may file a mechanic's lien upon the land in the event of nonpayment to them. It is your responsibility to assure yourself that those other persons under contract with the undersigned receive payment for their work performed and materials furnished for the construction, erection, alteration, or repair upon the land.

Failure to adhere to the provisions of this subsection may result in a one-thousand-dollar fine (\$1,000) against the contractor and shall not affect the right of any other person performing work or furnishing materials of claiming a lien pursuant to chapter 28 of title 34. However, the person failing to provide the notice shall indemnify and hold harmless any owner, lessee, or tenant, or owner of less than the fee simple, from any payment or costs incurred on account of any lien claims by those not in privity with them, unless the owner, lessee, or tenant, or owner of less than the fee simple, shall not have paid such person.

(p) Contracts entered into must contain notice of right of rescission as stipulated in all pertinent Rhode Island consumer protection laws and/or § 5-65-27, if applicable.

§ 5-65-10. Grounds for discipline – Injunctions. [Effective until January 1, 2020.]

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

...

(7) That the registrant has substantially violated state or local building codes.

...

(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. Provided, further, that the board, at its discretion, may, after a hearing, impose an additional fine up to but not to exceed the face value of the contract or the actual damages caused by the contractor, whichever shall be greater. Where the claim is for actual damages, the board shall require proof satisfactory to the board indicating the damages. Where corrective work is completed as ordered by the board, the fine assessed may be reduced as determined 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. All fines collected by the board shall be deposited as general revenues until June 30, 2008, to be used to enforce the provisions of this chapter. Beginning July 1, 2008, all fines collected by the board shall be deposited into a restricted-receipt account to be used to enforce the provisions of this chapter.

§ 5-65-18. Mechanics' lien notice.

As applicable to and in accordance with § 5-65-1 et seq., all written contracts entered into between a contractor under this chapter and a property owner must contain a statement that the contractor, subcontractors, or materialpersons may file a lien in accordance with the Rhode Island mechanics' lien law, chapter 28 of title 34. In the event that mechanics' liens are filed and there is no serious dispute, but merely a failure to pay, then the board may impose a suspension of the registration until such time as the liens are satisfied, either by payment, deposit of the funds in the registry of the court, or with the board.

VI. DISCUSSION

A. R.I. Gen. Laws § 5-65-3(1)(ii) - Use of the word "license" when only registered (\$100 fine imposed by Board)

The evidence showed that Mr. Gianlorenzo is a registered contractor and is not licensed. On the top of the CDS (**Exhibit C**), the Respondent provided “RI License #37.” In his testimony, the Respondent admitted that this was a mistake. Therefore, the Respondent violated R.I. Gen. Laws § 5-65-3(1)(ii), which expressly provides a \$100.00 fine for each offense at the discretion of the Board. The Board’s sanction of \$100.00 for this violation was appropriate.

B. R.I. Gen. Laws § 5-65-3(o) - Failure to have written contract when cost is in excess of 1,000 (\$2,500.00 fine imposed by Board)

The evidence and testimony showed that the CDS (**Exhibit C**) provides the address of the construction project (37-39 Terrace Ave., East Providence RI) at the top of the page, the dollar amount of the project (\$280,000) and list of disbursement steps and the amount per disbursement step. The CDS also includes signatures by both the Homeowner and the Respondent and dates of their signatures. The testimony of the Homeowner was that in addition to the CDS, plans for the project were provided to the Respondent to follow. The CDS admittedly does not include notice of a right of rescission or notice of a Mechanics Lien and was not otherwise provided as required by Rhode Island law.

At the hearing, the Board's attorney stated its position that the CDS was not a written contract as required under R.I. Gen. Laws § 5-65-3(o). The parties were requested by the Hearing Officer to brief the legal issue of whether the CDS constituted a written agreement between the parties. Accordingly, legal memos were submitted. As argued by the Board, the CDS admittedly does not have several of the statutory requirements, including notice of a right of rescission or a notice of a mechanics lien as required by Rhode Island law. Because the CDS does not have these requirements, were not otherwise provided, and because of the broad nature of the document, the Board argues that the CDS is not a written agreement as required by R.I. Gen. Laws § 5-65-3(o). The Respondent's attorney counters that the CDS constitutes a written agreement and has all the basic elements of a contract including mutual agreement and consideration.

In DeAngelis v. DeAngelis, 923 A.2d 1274, 1279(R.I. 2007), the Rhode Island Supreme Court stated the elements of a contract:

It is well established that a valid contract requires 'competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.' Rhode Island Five v. Medical Associates of Bristol County, Inc., 668 A.2d 1250, 1253 (R.I.1996) (quoting *Black's Law Dictionary* 322 (6th ed.1990)).

Consideration consists of “some legal right acquired by the promisor in consideration of his promise, or forborne by the promisee in consideration of such promise.” Darcey v. Darcey, 29 R.I. 384, 388, 71 A. 595, 597 (1909) (internal quotation marks omitted). In determining whether there was sufficient consideration for a binding contract to have been formed, we employ the bargained-for exchange test; that test provides that something is bargained for, and therefore constitutes consideration, “if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.” Filippi v. Filippi, 818 A.2d 608, 624 (R.I.2003) (internal quotation marks omitted).

Even though bare bones and missing a notice of a right of rescission and notice of a mechanics lien, which the Respondent admitted and was independently sanctioned by the Board, the Hearing Officer finds that the CDS constitutes a written agreement between the parties. The CDS is in writing and provides:

- i. The subject matter of the agreement (“Construction Disbursement for 37-39 Terrace Ave, East Providence RI”);
- ii. Legal consideration (i.e. \$280,000 for construction of the house paid incrementally in accordance with the steps in the CDS);
- iii. Mutuality of the agreement – The CDS was signed by both the parties with the intent to perform construction of the house in exchange for payment.
- iv. Mutuality of obligation – The Respondent agreed to construct the house in accordance with the steps of the CDE, while the Homeowner agreed to pay the Respondent for the construction in accordance with the disbursement steps. Both parties signed the CDS.
- v. Competent parties – There was no allegation, evidence or challenge by the Board, the Homeowner or the Respondent that either party to the CDS was legally incompetent to enter into such an agreement.

The CDS represents a written agreement between to the parties. The Respondent is not in violation of R.I. Gen. Laws § 5-65-3(o) as it pertains to having a written contract when the cost is in excess of \$1,000. The Board's violation of this provision and the corresponding sanction of \$2,500 is reversed.

C. R.I. Gen. Laws § 5-65-3(p) – Failure to provide written notice of right of rescission (\$2,500.00 fine imposed by the Board)

The testimony of the Homeowner and Mr. Hoyle, and as admitted by the Respondent in his testimony, the CDS did not include a written notice of right of rescission as required by R.I. Gen. Laws § 5-65-3(p), nor did the Respondent otherwise provide a document with written notice of a right of rescission. Therefore, the Respondent is in violation of this provision.

The Respondent's attorney elicited testimony that the Homeowner never requested a rescission. However, this failure to request rescission does not excuse or explain this violation. To the contrary, because this provision was not provided by the Respondent to the Homeowner, it is unclear whether the Homeowner knew she had a right of rescission.

In regard to the penalty imposed by the Board for this violation, apparently relying on R.I. Gen. Laws § 5-65-10, the Board imposed a sanction of \$2,500.⁴ Mr. Hoyle testified that although the Respondent was a first-time offender, because the Respondent was an employee of Board, the penalties were enhanced.⁵ 440-RICR-10-00-1.12.4 (Fines/Penalties) provides the following authority to the Board:

B. In determining the appropriate fine(s) and/or penalties to impose, the Board shall look to past precedence of the Board for guidance and may consider any

⁴ The Board's attorney elicited testimony that the maximum fine the Board could have impose was \$5000.00, although in its discretion, it chose to impose a \$2,500.00 fine.

⁵ There was no testimony as to the extent of the enhancement, other than a general inference by the Respondent that the Board generally attempts to work out the issue between a first-time offender and a homeowner. As noted in footnote 4, the Board responded that it did not seek the maximum allowed under the statute.

mitigating or aggravating circumstances as known to the Board at the time of the determination. Such circumstances may include, but are not limited to the following:

- 1. The presence of lack of past violations;*
- 2. The Respondent's acceptance of responsibility and candor with the Board;*
- 3. The egregiousness of the violation; and/or*
- 4. Harm to the public.*

While the Regulation above provides examples of mitigating or aggravating circumstances, this list is not all inclusive. The examples provided do not include a situation where the contractor is also an employee of the Board. Whether the Respondent's status as an employee of the Board puts him in a position where he or she should be aware of the rules and this employment in turn becomes an aggravating circumstance warranting an enhanced fine is unclear.

After hearing the evidence and testimony, the Hearing Officer believes that enhancing the fines for the Respondent simply because of Respondent's status as an employee of the Board, without more, is not justified.⁶ All contractors should know the rules and should be held to the same high standards. Holding contractors to different standards because of where they are employed creates complexity and raises an issue of fairness.

⁶ This order does not opine on any employment action involving the Respondent. In fact, other than statements made by attorneys during this administrative matter, the Hearing Officer is not involved and does not have knowledge of any employment action involving the Respondent. Additionally, the Hearing Officer does not opine on whether acting as employee of the Board and also being a registered contractor of the Board creates a conflict of interest, or the appearance of one, under the State's code of ethics. However, as demonstrated in this case, an individual who holds both these positions at the same time creates an awkward situation.

During the hearing, testimony provided by Mr. Hoyle was that the Respondent was a first-time offender, which is a mitigating factor. On the other hand, the Respondent admitted that he knew not providing a right of rescission was a violation.

440-RICR-10-00-1.12.4 (D) provides:

For matters that are appealed pursuant to §§ 1.13.1 and 1.13.2 of this Part, the Hearing Officer and/or the Board may address, modify, and/or impose fines for additional violations or matters based on the evidence presented.

Accordingly, the Hearing officer finds the Respondent in violation of R.I. Gen. Laws § 5-65-3(p) for failure to provide notice of a right of rescission. However, because it appears that the Respondent may have received an increased fine because of his status as an employee of the Board, the Hearing Officer reduces the imposed sanction from \$2,500 to \$1,500.

D. R.I. Gen Laws § 5-65-10(a)(7) - Violating state building codes (\$2,500.00 fine imposed by Board)

R.I. Gen Laws § 5-65-10(a)(7) authorizes sanctions in the event that “the registrant has substantially violated state or local building codes.” (Emphasis added). The evidence and testimony regarding alleged State Building Code violations was primarily provided through Mr. Zemel, a third-party consultant with significant building code experience. Mr. Zemel reviewed plans and toured the site and issued the report, attached as **Exhibit H**. The Hearing Officer found Mr. Zemel to be credible and forthright, including any limitations, real or perceived, in his findings and in his Report. The State Building Code violations were divided into six (6) categories, which are discussed as follows:

- i. **Separation between dwelling units, relative to fire.** Mr. Zemel stated that this was a potential violation because there was no way to determine whether there was appropriate separation without destructive testing. Mr. Zemel testified and as the

report stated, he did not speak with the Respondent directly regarding this alleged violation. He testified that under normal circumstances, the Contractor would be provided an opportunity to submit receipts or invoices to verify the material used in lieu of destructive testing. The report concludes: “Additional documentation is necessary to verify potential damages, including but not limited to the following documents . . . a. Invoices; b. Receipts; c. Cancelled checks; d. Any written communications relative to the claims between the Homeowner and the Respondent.” The report also concludes: “an interview is needed with Mr. Gianlorenzo relative to his response to this claim.” Based on this evidence, the Hearing Officer finds that while there may be a potential violation, but it is not clear that there is an actual violation.

- ii. **Deviation from the plans approved by the local building official** – Mr. Zemel stated that it appeared that the work completed was not in accordance with the plans on file with local building official, which constitutes a *prima facie* violation.

Specifically:

1. Plans showed a stairway and instead there was only a scuttle hole;
2. Plans called for existing deck, but a new deck was constructed; and
3. Roof framing to consist of 2x12 ridge rafters, but was constructed with engineered wood trusses.

The Hearing Officer agrees with Mr. Zemel and accordingly finds the Respondent violated the State Building Code in this category.

- iii. **Newly- constructed deck ledgered to back of structure requires frost-protected footings and a permit to build.** Mr. Zemel testified there were no frost protected

footings for the newly constructed deck and this was a violation of the State Building Code on its face. The Hearing Officer agrees and accordingly finds the Respondent violated the State Building Code related to this item.

- iv. **For the decks at the front and the rear, there were no Lateral connections, which would prevent the deck from blowing away.** Mr. Zemel testified that while this is correctible, doing so would require significant labor to correct and would include pulling up the decking and then reinstallation. Accordingly, the Hearing Officer finds the Respondent violated the State Building Code related to this item.
- v. **The framing of the roof over the rear second floor deck was insufficient.** Specifically, Mr. Zemel testified the post was heavily notched, which in itself was a strict code violation. The Hearing Officer agrees and accordingly finds the Respondent violated the State Building Code related to this item.
- vi. **There was no landing on the opening side of the door to the second-floor rear deck.** Mr. Zemel testified that this violation was subject to appeal and easily correctible. Therefore, the Hearing Officer finds that this was not a “substantial” violation of the State Building Code at present.

As discussed in section C above, although the Respondent was a first-time offender, it appears the fine may have been enhanced because of the Respondent’s status as an employee of the Board. After consideration, the Hearing Officer finds that the Respondent substantially violated the State Building Code in the 4 of the 6 categories as noted above and therefore was in violation of R.I. Gen Laws § 5-65-10(a)(7). However, because 2 of the categories were not violations (or were not substantial at present), the Hearing Officer determines that the fine should be reduced in this area to \$1,500.

E. R.I. Gen. Laws § 5-65-18 Failure to provide Mechanic's Lien Notice (\$2,500 fine imposed by the Board)

The testimony of the Homeowner and Mr. Hoyle, and as admitted by the Respondent in his testimony, the CDS did not include a written Mechanic's Lien notice, nor did the Respondent otherwise provide such notice to Homeowner, as required by R.I. Gen. Laws § 5-65-18 and § 5-65-3(o). Therefore, the Respondent is in violation of these provisions.

R.I. Gen. Laws § 5-65-18 provides that “[a]s applicable to and in accordance with § 5-65-1 *et seq.*, all written contracts entered into between a contractor under this chapter and a property owner must contain a statement that the contractor, subcontractors, or materialpersons may file a lien in accordance with the Rhode Island mechanics' lien law, chapter 28 of title 34.” While this provision does not mention any sanctions, R.I. Gen. Laws § 5-65-3(o) specifically mentions a failure to provide notice of a Mechanic's Lien and expressly states: “Failure to adhere to the provisions of this subsection may result in a one-thousand-dollar fine (\$1,000) against the contractor . . .” (Emphasis added).

Despite this express language in the statute related to a notice of a Mechanic's Lien stating a \$1,000.00 fine, the Board appears to rely on its broader general authority in § 5-65-10(c)(1) to impose sanctions and had fined the respondent \$2,500.00 for this violation.

The general rule of statutory construction as stated in R.I Gen. Laws § 43-3-26⁷ is that a special statute will control over a general statute. *See Whitehouse v. Moran*, 808A.2d 626, 629-30 (R.I.2002) (“The general rule of statutory construction clearly provides that when a statute of general application conflicts with a statute that specifically deals with a special subject matter,

⁷ This statute provides: “Wherever a general provision shall be in conflict with a special provision relating to the same or to a similar subject, the two (2) provisions shall be construed, if possible, so that effect may be given to both; and in those cases, if effect cannot be given to both, the special provision shall prevail and shall be construed as an exception to the general provision.”

and when the two statutes cannot be construed harmoniously together, the special statute prevails over the statute of general application. This rule of construction is set forth in G.L.1956 § 43-3-26. *See also Police and Firefighter's Retirement Association of Providence v. Norberg*, 476 A.2d 1034, 1036 (R.I.1984)).

The Hearing Officer finds that the general authority is in conflict with the specific provision expressly stating a \$1,000.00 fine for failing to provide Notice of a Mechanic's Lien to Homeowner. Therefore, the Hearing Officer finds the Respondent in violation of this provision and imposes a \$1,000.00 fine in accordance with statute.

VII. FINDINGS OF FACT – Phase 1

Based on the testimony and evidence at hearing, I make the following findings of fact:

(A) The parties were notified of the hearing and a hearing was held on July 14, 2020 with the parties resting on the record.⁸

(B) The Respondent improperly stated that he was “licensed,” when he was only registered.

(C) The Respondent did not provide the Homeowner with a notice of a right of rescission and/or a notice of a Mechanic's Lien as legally required.

(D) As discussed above, based on Mr. Zemel's observations and review of the plans, the Respondent substantially violated the State Building Codes in 4 of the 6 categories.

VIII. CONCLUSIONS OF LAW – Phase 1

1. The CDS represents a written agreement between the Homeowner and the Respondent and the Respondent did not violate § 5-65-3(o) - Failure to have written contract when cost is in excess of \$1,000 dollars.

⁸ As discussed above, legal memos were subsequently submitted related to a legal issue of whether the CDS represented a written agreement between the parties.

2. Based on the foregoing, the Respondent violated the following provisions of law and the appropriate fines are as follows:

a.	§ 5-65-3(l)(ii) - Use of the word "license" when only registered	\$100.00 fine
b.	§ 5-65-3(p) - Failure to provide written notice of right of rescission.	\$1,500.00 fine
c.	§ 5-65-10(a)(7) - Violating state building codes.	\$1,500.00 fine
d.	§ 5-65-18 -Failure to provide Mechanic's Lien Notice	\$1,000.00 fine
	Total	<u>\$4,100.00 fine</u>

3. Any enhanced fines imposed by the Board simply because of the Respondent’s status as an employee of the Board were improper.

4. The \$2,500 fine imposed for a failure to provide notice of a Mechanic’s Lien was in excess of the \$1,000 fine set by statute in § 5-65-3(o) for such a violation.

IX. FINAL ORDER – Phase 1

Based upon the above findings of fact and conclusions of law, testimony heard, and evidence presented at the hearing, the following FINAL ORDER will be issued:

The Respondent, Steven Gianlorenzo, on behalf of Gianlorenzo & Sons Construction, has violated the following provisions and is subject to the following fine:

a.	§ 5-65-3(l)(ii) - Use of the word "license" when only registered	\$100.00 fine
b.	§ 5-65-3(p) - Failure to provide written notice of right of rescission.	\$1,500.00 fine
c.	§ 5-65-10(a)(7) - Violating state building codes.	\$1,500.00 fine
d.	§ 5-65-18 -Failure to provide Mechanic's Lien Notice	\$1,000.00 fine
	Total	<u>\$4,100.00 fine</u>

As a result, the Respondent is ORDERED to pay a fine of \$4,100 in total. Fines are due within 20 days of receipt of this ORDER unless specified otherwise.

Either Party adversely affected by this ORDER may file an appeal 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 the Final Order. Regulation 440-RICR-10-00-1.13.2 provides as follows:

1.13.2 Appeal of Final Order by the Hearing Officer to the Full Board

A. A Final Order issued pursuant to §§ 1.11.4 or 1.13.1 of this Part, 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 the Final Order.

B. If timely filed, the Full Board shall hear the appeal during one of its Board meetings, pursuant to the Open Meetings Act, R.I. Gen. Laws Chapter 42-46.

C. Board Consideration of Appeal:

1. Members of the Full Board shall only consider evidence presented to the Hearing Officer, issues raised in the appeal, and written and/or oral argument relative to the Final Order issued by the Hearing Officer.

2. Time allowed for oral argument may be limited by the Board.

3. The Board will not consider new or additional evidence.

4. The Board may allow the Board staff investigator to report on his/her investigative findings.

D. Upon conclusion of the testimony and consideration of the evidence and argument, the Board shall issue a decision affirming, modifying, dismissing, or remanding the violation back to the Hearing Officer.

E. In accordance with R.I. Gen. Law § 5-65-6, the decision shall be considered delivered when deposited in the United States mail and/or sent registered or certified or post office receipt secured to the last known address of record.

F. Decisions of the Full Board may be appealed to the Superior Court in accordance with § 1.13.3 of this Part.

G. Appeals which are timely filed, shall be scheduled once the State of Emergency has been lifted. All enforcement and fines due shall be stayed until such time as the hearing officer has issued an appeal decision.

NO NEW TESTIMONY OR EVIDENCE will be accepted and only issues raised to the Hearing Officer will be heard. Unless otherwise appealed, payment in full in the total amount of \$4,100 or a payment plan otherwise established with the Contractors' Registration and Licensing Board at the address above is required within the time prescribed above. All fines must be made payable to the Contractors' Registration and Licensing Board at the address stated above.

Phase 2 of the above-mentioned matter will be held in abeyance until a later date, as determined by the Hearing Officer in consultation with the parties.

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

Daniel W. Majcher

Date: September 21, 2020

Daniel W. Majcher, Esq., #7265
Hearing Officer
R.I. Department of Administration
Division of Legal Services
One Capitol Hill, 4th Fl.
Providence, RI 02908
Tel: (401) 222-8880
Fax: (401) 222-8244

I, the undersigned, hereby certify that a copy of the foregoing FINAL ORDER was emailed to the BOARD's Attorney, John Dean, Esquire, and RESPONDENT's attorney, Matthew Reeber, Esquire by electronic mail on the date stated below:

Signed: *Daniel W. Majcher*

Date: September 21, 2020