

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

_____ :
IN THE MATTER OF: :

Dale Rankin, :

DBR No.: 19IN007

Respondent. :
_____ :

DECISION

I. INTRODUCTION

This matter arose pursuant to an Emergency Order Summarily Suspending License, Order to Show Cause why License Should not be Revoked, Appointment of Hearing Officer, and Notice of Pre-hearing Conference (“Order to Show Cause”) issued to Dale Rankin (“Respondent”) by the Department of Business Regulation (“Department”) on April 29, 2019. Pursuant to R.I. Gen. Laws § 27-10-1 *et seq.*, the Respondent holds a public adjuster license (“License”). The Order to Show Cause emergently suspended said License. A hearing was held on November 18, 2019. The Department was represented by counsel and the Respondent was *pro se*.¹ The parties timely filed briefs by December 23, 2019.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 27-10-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearing*.

¹ At hearing, the Respondent represented that an attorney who had previously indicated to the Department that he, the attorney, was not representing the Respondent could be representing him. The hearing went forward with the record remaining open for the attorney to confirm representation or not and to enter any further information, if desired. After the hearing, the attorney indicated that he was not representing the Respondent and never entered his appearance. However, time was allowed for the Respondent to consult the attorney and file his closing argument.

III. ISSUE

Whether Respondent's License should be revoked.

IV. MATERIAL FACTS AND TESTIMONY

Rachel Chester ("Chester"), Chief of Consumer and Licensing Services in the Insurance Division, testified on behalf of the Department. She testified that the Department received the Respondent's public adjuster license application ("Application") on or about April 19, 2019, and he was granted the License. She testified that after the Respondent was granted his License, the Department received a complaint indicating that the Respondent previously had his contractor registration revoked by the Contractors' Registration and Licensing Board ("CRB"). She testified that she looked up the Respondent's CRB registration history, and he had six (6) violations since July 20, 2017 and his CRB registration had been revoked in 2017. She testified that the Department was not aware of the revocation of Respondent's CRB registration when the Application was approved. Department's Exhibits Two (2) (Application); and Three (3) (Respondent's CRB registration history).² She testified that after finding out about the CRB revocation, she reviewed the Respondent's Application and he answered "no" to the question that asked whether an applicant has been involved in an administrative proceeding regarding a professional or occupational license.

On cross-examination, Chester testified that she met with the Respondent once about his Application. She testified there is a difference between a public adjuster and a contractor. She testified that the public adjuster holds a license and CRB is responsible for contractors.

On re-direct examination, Chester testified she spoke to a Department Deputy Director and CRB investigator and received information confirming that the Respondent's CRB registration

² There was no Department Exhibit One (1).

had been revoked. Department's Exhibits Four (4) (Respondent's further CRB claim history); and Five (5) (November 4, 2019 Superior Court Order dismissal of Respondent's appeal of CRB revocation).

The Respondent testified on his behalf. He testified that the CRB should never have revoked his CRB registration since he was not given an opportunity for hearing. He testified that he has been discharged in bankruptcy. He testified that it took him a year to pass the public adjuster examination so when he filled out his Application at the Department, he was in a rush. He testified he knows on paper that there is a list of CRB complaints that look bad, but he is very qualified to be a public adjuster. See Respondent's Exhibit One (1) (letter showing he is a member of public adjuster trade organization).

On cross-examination, the Respondent testified that his CRB registration was revoked by the CRB (which he testified that the CRB did by mistake) for claim 9066 [listed on Department's Exhibits Three (3) and Four (4)], and there were other CRB claims unrelated to the CRB revocation claim listed on the Department's Exhibit Four (4). He testified that D&D Home Independent Services LLC held the CRB registration that was revoked and he was the owner of that company. On re-direct, the Respondent testified that he declared bankruptcy and the complaints went to the bankruptcy. On re-cross examination, he testified that a contractor is a profession and an occupation; however, the CRB is a registration and it is made very clear in licensing class that CRB is a registration and not a license and the CRB statute specifically provides for penalties if contractors represent they are licensed when they are registered. He testified that he was given a registration number for his CRB registration and that one applies for the CRB registration and is given a number and one cannot act as a contractor without being registered with the CRB.

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 in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (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 § 27-10-3 provides in part as follows.

Issuance of license. (a) The insurance commissioner may issue to any person a license to act as either a public adjuster; company adjuster; or independent adjuster once that person files an application in a format prescribed by the department and declares under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the department shall find that the individual:

(3) Is trustworthy, reliable, and of good reputation, evidence of which shall be determined by the department;

(4) Has not committed any act that is a ground for probation, suspension, revocation, or refusal of a professional license as set forth in § 27-10-12.

R.I. Gen. Laws § 27-10-12 provides in part as follows:

License denial, non-renewal, or revocation. (a) The insurance commissioner may place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license or may levy a civil penalty in accordance with § 42-14-16 or any combination of actions for any one or more of the following causes:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(8) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

D. Arguments

The Department argued that the Respondent did not dispute that the CRB revoked his CRB registration and along with the revocation, there were other CRB administrative proceedings involving him. The Department argued that the meaning of professional and occupational license in the context of the application is broader than the CRB statute since the application refers to something that gives someone permission to do something that a person otherwise could not do.

The Department argued that the Respondent's interpretation would result in an absurd result by allowing him to omit his disciplinary history on his Application, and since the Respondent's answer was misleading, incorrect, and materially untrue, his License should be revoked.

The Respondent argued he was not untruthful in answering the question since he did not have a CRB license and is not required to hold a license so there are no actions against his license. He argued that the question only asked about licenses and not registrations. He argued that the CRB statute prohibits contractors from referring to themselves as licensed. He argued that the definition of license is one of skill and registration is defined as information given to a government so they are different. The Respondent argued that there were discrepancies at the hearing in reference to the complaint filed against him and how the Department's witness referred to a license.

E. Whether the Respondent's License Should be Revoked

Question Two (2) of the Application states as follows:

Have you or any business in which you are or were an owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?

"Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve and administrative action. "Involved" also means named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:

- a) a written statement identifying the type of license and explaining the circumstances of each incident,
- b) a certified copy of the Notice of Hearing or other document that states charges and allegations, and
- c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

The question defines “involved” to mean having one’s license revoked or suspended or having a fine assessed, etc. and to mean being named in an administrative proceeding related to a professional or occupational license. The CRB is authorized by R.I. Gen. Laws § 5-56-1 *et seq.* to register contractors and enforce the statutory and regulatory requirements for contractors. The Respondent was registered with the CRB. Any hearing before the CRB would be considered an administrative proceeding within the requirements of the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* More specifically, the CRB falls within the definition of a state agency and a hearing before the CRB would be a contested case under said law.

The Respondent had claims filed against him at the CRB that were subject to administrative proceedings. Claim 8567 was filed on July 9, 2015 by a homeowner alleging negligent work and was settled with restitution of \$1,667.00 and closed on January 4, 2017. Claim 8612 was filed on August 20, 2015 and was a contract dispute and was settled with restitution of \$5,000.00 and closed November 1, 2016. Claim 8754 was filed on February 16, 2016 and was a contract dispute and was settled with restitution of \$3,605.00 and closed January 4, 2017. Claim 9066 was filed on June 12, 2017 and led to the revocation issued on October 11, 2017. Claim 9121 was filed on August 10, 2017 by a homeowner alleging negligent work and was disposed of by default on January 29, 2018 when the claimant did not appear. Claims 9360 and 9361 were homeowner’s negligent work claims that were disposed of on August 30, 2018 since the Respondent had filed for bankruptcy. The Respondent paid penalties of \$50, \$250, and \$250 as CRB sanctions for violations in December, 2005, May 8 and June 19, 2017. There were also claims of unregistered work, but it is unclear how many went to hearing.³ Department’s Exhibits Three (3); and Four (4).

³ As discussed at the hearing, the undersigned heard an action taken by the CRB against the Respondent alleging that he worked as an unregistered contractor. The undersigned dismissed the allegation after a hearing by a decision issued in February, 2019. There were three (3) unregistered claims listed on the Department’s Exhibit Four (4). The Respondent believed that all of them were dismissed by the undersigned’s decision. It is unclear if all those claims

The Respondent did not dispute his registration was revoked by the CRB and that there were other claims against him at the CRB including those that were resolved by monetary restitution or default. Instead, the Respondent argued that because of the CRB statute, he was able to answer “no” to Question Two (2). R.I. Gen. Laws 5-65-3(1)(ii) provides in part as follows:⁴

(1) 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.

The application at issue is for anyone that wishes to be licensed as a public adjuster by the State of Rhode Island. Its purpose is to obtain information relevant pursuant to R.I. Gen. Laws § 27-10-3 and R.I. Gen. Laws § 27-10-12 so that the Department can determine whether an applicant meets the licensing criteria. Anyone applying for such a license could have held a license or registration in Rhode Island or another state. In order to evaluate an application under the statute, the Department requests information from applicants regarding actions taken against any type of professional or occupational license held by an applicant.

The question broadly defines “involved” to include any administrative proceedings (including discipline) as well as being the party to any action related to a professional or occupational license (regardless of outcome) and to include a denial (without any hearing) and a withdrawal of license application (to avoid a denial). Clearly, the question very broadly defines “involved” so that applicants cannot try to answer “no” if they had license applications denied

were resolved in one hearing or not, but it was not disputed by the Respondent that the undersigned heard at least one unregistered claim that went to hearing.

⁴ This version was in effect in 2019. The statute was amended as of January 1, 2020. P.L. 2019, ch. 88, art. 4, § 1.

without a hearing or no sanctions were imposed after a hearing.

License is defined⁵ as “permission to act”⁶ or “permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful”⁷ or “official or legal permission to engage in a regulated activity.”⁸ The purpose of a license is to allow the holder to perform a job or task that is not allowed to be performed without a license. Whether called a license or a registration, a contractor cannot act as a contractor without obtaining such authority from the CRB. See R.I. Gen. Laws § 5-65-1 *et seq.* (defines a contractor, requires that a contractor cannot work without being registered as a contractor, etc.).

The CRB statute applies to contractors (and in some cases those acting as contractors without registration). The Respondent did not dispute that a contractor is a profession or an occupation. The Respondent argued that registration is different than licensing in that licensing provides that a licensee has been vetted by testing and a registrant has not provided proof of skill but merely provided basic information. Nonetheless, both a license and registration give permission to the holder of the license or registration to engage in a specified activity.

Question Two (2) is not asking a question about a specific statute like CRB or another statute that provides for registration rather than licensing. Instead, the question asks if an applicant who has had government authorized permission to act in an occupation or profession has been involved (as defined in the application) in administrative proceedings. The Respondent was not advertising his CRB registration but rather was answering a broad question seeking information

⁵ As stated above, if a statute is clear and unambiguous, the words of the statute are to be given their plain and ordinary meanings. In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the “ordinary meaning” of “must.” *Id.*, at 674. As the Court has found, “[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary.” *Defenders of Animals, Inc.*, at 543. While the issue here is an application and not a statute, a review of the definition of “license” is helpful to understanding the context in which it was used.

⁶ <https://www.merriam-webster.com/dictionary/license>.

⁷ *Id.*

⁸ <https://www.thefreedictionary.com/license>.

about a profession or occupation for which the Respondent held government permission to engage.⁹

The Respondent has a long history of administrative proceedings at the CRB in which he was involved as defined in the application. While he may think that the CRB should not have revoked his registration and he is challenging the revocation, he still was involved in that administrative proceeding that revoked his registration. In addition to the revocation, he was involved in numerous other administrative proceedings at the CRB including those settled of by monetary restitution and those that ended in a default or dismissal.¹⁰

The Respondent's answer to Question Two (2) did not omit a small violation of many years ago that he could have conceivably not remembered. Rather his answer omitted a recent revocation that he was challenging in Court and many other recent claims. The Respondent seemed to argue at hearing that his bankruptcy proceedings cleared him of his other claims. Presumably, the claims for which he agreed to monetary restitution may have ended up in bankruptcy court and he may have discharged those debts in bankruptcy, but bankruptcy does not "clear" the administrative proceedings at the CRB in which he was involved.¹¹

The Respondent's answer to Question Two (2) was incorrect since he had been involved in administrative proceedings as asked for in the question. It was misleading since it indicated to

⁹ The official name of the CRB is Contractors' Registration and Licensing Board.

¹⁰ The Respondent raised the issue of the complaint received by the Department regarding his CRB history. The identity of the complainant is irrelevant to the relevant facts in this matter. The Department engaged in its own investigation of the Respondent's CRB status as testified to by Chester. Indeed, the Respondent did not dispute his CRB registration history, but rather disputed that he had to reveal it on his Application. At hearing, the Department did not rely on the information received in the complaint but relied on the information it received through its own investigation after the complaint information was received.

¹¹ Question Three (3) on the Application questions whether an applicant has been in bankruptcy proceedings for those where the applicant held funds held on behalf of others. The Respondent answered "no." The Respondent completed his application on April 29, 2019 and the CRB information indicated that two (2) claims were disposed of on August 30, 2018 as the Respondent was in bankruptcy so prior to his Application. The Department did not pursue this question and answer so it will not be addressed in this decision.

the Department that the Respondent never had any disciplinary history with a professional or occupational license. The answer was incomplete because if he had answered correctly, he would have had to include an explanation of the type of license, a copy of the notice of hearing or document stating the charges and allegations, and a document evidencing the resolution of the charges or final judgment. Since the Respondent answered no, he did not include any of those documents regarding the administrative proceedings that involved claims of negligent work and contract disputes and revocation and CRB unregistered claims all of which the Department could have used in determining his qualifications to act as a public adjuster.

The Respondent's answer was materially untrue since the information he omitted was a long history of CRB administrative proceedings regarding workmanship, contracts, monetary restitution, and revocation that would have gone directly to the Department's evaluation of his trustworthiness, reliability, and good reputation as required by R.I. Gen. Laws § 27-10-3. In addition, as provided for by R.I. Gen. Laws § 27-10-12, an applicant may be rejected for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business within Rhode Island or elsewhere. The Department was unable to evaluate the Respondent's conduct of business without the information regarding his CRB administrative proceedings' history that could have provided pertinent and relevant information about whether he used fraudulent, coercive, or dishonest practices or was incompetent or untrustworthy and financially irresponsible as a contractor.

Since the Respondent provided incorrect and misleading information and provided materially untrue information by representing that he had no administrative proceedings with the CRB when he did, the Respondent obtained his License through misrepresentation.

The Respondent violated R.I. Gen. Laws § 27-10-2(1) and (3) since he gave incorrect, misleading, incomplete, and materially untrue information on his application and obtained his License through misrepresentation.

As the Department was unable to evaluate the Respondent's application without the information the Respondent omitted by giving incorrect, misleading, and materially untrue information and since the Respondent gave incorrect, misleading, and materially untrue information and obtained his License through misrepresentation, the Respondent's License should be revoked.

VI. FINDINGS OF FACT

1. This matter arose pursuant to an Order to Show Cause issued to the Respondent by the Department on April 29, 2019.
2. Pursuant to R.I. Gen. Laws § 27-10-1 *et seq.*, the Respondent holds a public adjuster license.
3. A hearing was held on November 18, 2019 with briefs being timely filed by December 23, 2019.
4. All other facts stated in Sections IV and V are fully incorporated herein as findings of fact.


VII. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 27-10-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 27-10-12(1) and (3), the Respondent's License should be revoked upon execution of this decision.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that Pursuant to R.I. Gen. Laws § 27-10-12(1) and (3), the Respondent's License shall be revoked upon execution of this decision.

Date: January 21, 2020

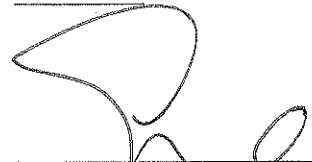

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT (*See attached supplement*)
 REJECT
 MODIFY

Dated: 2/3/2020



Elizabeth M. Tanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES A FINAL ORDER 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 that on this 4th day of ~~January~~ ^{February}, 2020, that a copy of the within decision was sent by first class mail, postage prepaid to Mr. Dale Rankin, 10 Sadler Street, North Providence, R.I. 02911 and by electronic delivery to Sara Tindall-Woodman, Esquire, and Elizabeth Kelleher Dwyer, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue. Cranston, RI.



DIRECTOR'S SUPPLEMENTAL STATEMENT TO ADOPTED DECISION

It should be further noted that the Respondent attested to the following in the "Applicants Certification and Attestation" that he signed and submitted to the Department: *"I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties."*

The application used by the Department is the uniform National Association of Insurance Commissioners (NAIC) form, standard throughout the insurance industry. As confirmed in the Attestation, the application is intended to require an applicant to provide not only true and accurate information, but also full and complete disclosure of information pertaining to an applicant's honesty, trustworthiness, reliability and responsibility, which are material to the requirements for licensure. See R.I. Gen. Laws §§ 27-10-3 and 27-10-12. The Respondent omitted pertinent and material information in connection with his application.