Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
October 8, 2003 (3:00 p.m.)

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Jennifer L. Parrish, Board member, presided. No other Board members were present.

Doug Schroder appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc=Disciplinary Case	C=Complainant/Claimant
Lic=Licensing Application	A=Applicant
RF=Recovery Fund Claim	R=Respondent/Regulant
Trades=Tradesmen Application	W=Witness
	Atty = Attorney

	Participants
1. Mark Estrada and Rachel Garcia and Donald E. Haight, t/a AAAmerica's Best Construction File Number 2003-00594 (RF)	None

The meeting adjourned at 4:05 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION RECOVERY ACT CLAIM OF MARK ESTRADA AND RACHEL GARCIA (CLAIMANTS) AND DONALD E. HAIGHT T/A AAAMERICA'S BEST CONSTRUCTION (REGULANT)
LICENSE NUMBER 2705 039505

FILE NUMBER: 2003-00594

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 8, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Mark Estrada and Rachel Garcia c/o Jeffrey F. Mangeno, Esquire and Donald E. Haight, t/a AAAmerica's Best Construction on September 2, 2003. The following individuals participated at the conference: Douglas Schroder, Staff Member; and Jennifer L. Parrish, Presiding Board Member. Neither Haight

(Regulant), nor anyone on his behalf, appeared at the IFF. In addition, neither Estrada or Garcia (Claimants), nor anyone on their behalf, appeared at the IFF.

Background

On **October 16, 2001,** in the Prince William General District Court, Mark Estrada and Rachel M. Garcia obtained a **Judgment** against AAAmerica's Best Construction, Inc., **in the amount of $10,778.37, plus interest, $61.00 costs and $2,500.00 attorney's fees**.

The **claim** in the amount of **$10,000.00** was received by the Department of Professional and Occupational Regulation on **August 26, 2002.**

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

> The Warrant in Debt does not recite the basis for the suit. The block designated "Other" has been marked. A note "bill of particulars" has been included. In the Case Disposition ***"treble damages VCPA"*** has been noted next to the amount awarded.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

> The claimants **did** contract with the regulant.
>
> The Board issued Class A License Number 2705039505 to Donald E. Haight t/a AAAmerica's Best Construction, a sole proprietor, on **June 3, 1997**. The license was permanently revoked on **June 29, 2001**. The claimant entered into a written contract with AAAmericas Best Construction, Va Lic# 2705039505 on **November 16, 1999** for home repairs on the claimant's residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

> The Contractors Board was served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did receive pleadings and/or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **October 16, 2001**. The claim was received on **August 26, 2002**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with AAAmericas Best Construction for home repairs on the claimant's residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

> On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

> Debtor's interrogatories were not conducted, as the regulant could not be found.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

> The Warrant in Debt does not recite the basis for the suit. The block designated "Other" has been marked. A note "bill of particulars" has been included on the Warrant in Debt. In the Case Disposition ***"treble damages VCPA"*** has been noted next to the amount awarded.
> In the Affidavit of Facts dated **October 4, 2002** the claimants assert that the regulant did not complete the repairs. The roof replacement had been partially performed by the regulant and failed inspection. The regulant refused to bring the roof into compliance. The roof leaked and caused interior damage. The regulant abandoned the contract and has failed and refused to complete the work. The cost of completing the contract by another contractor is not less than $4,090.79.

10. Code of Virginia Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

> On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. Code of Virginia Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

> The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of $6,153.79, or $4,372.33, depending upon whether the board receives proof of the actual amount of attorney's fees paid by claimants in order to obtain this judgment. The Order of the court clearly states that the judgment against the Regulant's was based upon its improper and dishonest conduct. The analysis of the claim, therefore, rests on two separate issues.

The first issue is that the judgment obtained by the claimants is against AAAmerica's Best Construction, Inc., while the board's regulant and the party to the contract is actually the sole proprietorship of AAAmerica's Best Construction. The issues in this lawsuit, however, clearly relate to the actions of our regulant. AAAmerica's Best Construction, our regulant, apparently did not contest the lawsuit, including that portion of the Bill of Particulars alleging that the Defendant was a licensed contractor through this board. Just because that fact is alleged does not make it true, but it is important to note that our regulant never contested that contention. A major consideration of this board in prior recovery fund claims where there has been a discrepancy between the name of the regulant and the name of the defendant against whom a judgment has been entered relates to whether or not the conduct that resulted in the judgment was committed by this board's regulant. It is clear from the record that the improper and dishonest conduct which resulted in this judgment was committed by our regulant, who was the named party to the contract with the claimants.

The second issue relates to the amount of this claim and whether or not the entire claim of $10,000 can be paid by the recovery fund. Pursuant to Virginia Code Section 54.1-1123(C), the amount which can be paid by our recovery fund cannot include "any amounts that do not constitute actual monetary loss to the claimants." It is clear from the pleadings in this case, and from the details in the final order of the court, that the judgment amount was made up of $3,592.79 as compensation to the claimants, and the remaining amount (triple the compensatory damages) constituted statutory damages or exemplary damages. Clearly, the amount of the judgment greater than $3,592.79 does not constitute actual monetary loss to the claimants.

Therefore, the above recommendation that the board pay the sum of $6,153.79, includes the following items:

$3,592.79	(Actual Monetary Loss)
$ 61.00	(Court Costs)
$2,500.00	(Attorney's Fees)

Total: $6,153.79

Although this board often does not award full attorneys fees in these recovery fund claims, such payment may be made by this board if it constitutes actual monetary loss. In this case, there was no evidence in the record of the actual attorney's fees paid by the claimants. Assuming the claimants can send to the board prior to its vote on this issue proof that they have in fact paid $2,500, my recommendation would be to pay that amount. If no such proof is forthcoming, I recommend that we allow 20% of the monetary loss amount, for the following totals:

$3,592.79	(Actual Monetary Loss)
$ 61.00	(Court Costs)
$ 718.54	(20% attorney fees)

Total $4,372.33

By:

_____

Jennifer L. Parrish
Presiding IFF Board Member
Board for Contractors
Date: October 8, 2003