Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
January 13, 2004 (9:00 a.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.

Jennifer Kazzie 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
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

		Participants
1.	Timothy L. Sturgill & Bill Sturgill t/a Sturgill & Son File Number 2002-02640 (Disc) (**No Decision Made)**	Bill Sturgill – R Stephen Conte – R's Atty Sheryl Tyner – C
2.	Home Consulting Plus Inc. t/a Housing Made Simple File Number 2003-02568 (Disc) **(Continued)**	
3.	Elmo Lawrence File Number 2003-03383 (RF)	Elmo Lawrence – C Mary Lawrence – C Henry L. Marsh – C's Atty Lucy Nickols – C's Atty Kenny Jordan – W
4.	Clarence Frazier t/a C & L Enterprise Services File Number 2003-02928 (Disc)	Andrew Stanton – C Mary Ellen Stanton - C
5.	Clarence Frazier t/a C & L Enterprise Services File Number 2003-02889 (Disc)	None

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6.	Clarence Frazier t/a C & L Enterprise Services File Number 2003-022544 (Disc)	None
7.	Ivan Porter t/a Commonhealth Construction & Restoration File Number 2003-00911 (Disc)	Porter – R
8.	Juan Caba t/a Bon Air Construction File Number 2003-01188 (Disc)	None
9.	KJ Construction of Virginia Corporation t/a KJ Roofing Inc. File Number 2003-01457 (Disc)	None
10.	Waltman Heating & Electrical Contractors Inc. File Number 2003-01423 (Disc)	Irvin Waltman – R

The meeting adjourned at 2:45 p.m.

BOARD FOR CONTRACTORS

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Mark D. Kinser, Chairman

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Louise Fontaine Ware, Secretary

COPY TESTE:

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Custodian of Records

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BOARD FOR CONTRACTORS

RE: **In the matter of the Virginia Contractor Transaction Recovery Act**
Claim of Elmo and Mary Lawrence (Claimants) and Carl E. Thacker t/a
C. E. Thacker Construction (Regulant)
LICENSE NUMBER: 2705-040310

FILE NUMBER: 2003-03383

Summary of the Reconvened Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Elmo Lawrence c/o Henry Marsh, III, Esquire and Carl E. Thacker, C. E. Construction on December 2, 2003. The following individuals participated at the conference: Elmo and Mary Lawrence, Claimants; Henry Marsh, III, Attorney for Claimants; Lucy Nickols, Attorney for Claimants; Kenny Jordan, Witness for Claimants; Jennifer Kazzie, Staff Member; and Jennifer Parrish, Presiding Board Member.

No one appeared on behalf of Carl E. Thacker, C. E. Construction.

An IFF Conference was previously convened on July 29, 2003. At the November 19, 2003, Board meeting, the Board voted to reconvene the IFF.

Background

The **claim** in the amount of **$10,000.00** was received by the Department of Professional and Occupational Regulation on **May 23, 2003**.

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.

As directed by HB2630 (Virginia Acts of Assembly, 2003 Session, Chapter 441) the claimants are not required to obtain a Judgment.

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2. **<u>Code of Virginia Section 54.1-1120(A)</u>** 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 2705040310 to Carl E. Thacker t/a C. E. Thacker Construction, on **July 17, 1997**. The license was revoked on **May 14, 2001**. The claimants entered into a written contract with C. E. Thacker Construction for renovations to their home on **January 5, 1999.**

3. **<u>Code of Virginia Section 54.1-1120(A)(1)</u>** 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 not served prior to the claim being filed.

4. **<u>Code of Virginia Section 54.1-1120(A)(2)</u>** 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 not receive any pleadings or documents prior to the claim being filed.

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

As directed by HB2630 (Virginia Acts of Assembly, 2003 Session, Chapter 441) the claimants are not required to obtain a Judgment. The claim was received on **May 23, 2003**.

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

The claimants entered into a written contract with C. E. Thacker Construction for renovations to their home on **January 5, 1999.**

7. **<u>Code of Virginia Section 54.1-1120(A)(5)</u>** 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

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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 "NA."

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.

On the claim form the claimants answered question number 7 as "none".

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.

Judgment was not obtained.

In the Affidavit of Facts (not dated), the claimants assert they contracted with the regulant for the completion of major renovations to the "old homestead". The regulant and his employees were paid to work 8 hours a day and only worked 6 hours per day. The

regulant did not reimburse the claimants for carpeting and tile they purchased for the project. The City Inspector instructed the regulant to replace all rotten wood on the house. The regulant instructed his men to "brick up the manhole" so the claimants could not check under the house. The regulant did not purchase the HVAC unit as previously agreed to in the contract. The work was not completed in a workmanlike manner. The claimants terminated the regulant's services.

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10. **<u>Code of Virginia Section 54.1-1120(B)</u>** 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. **<u>Code of Virginia Section 54.1-1123(C)</u>** 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 this and the previous Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of $10,000.00.

After previously being unable to make this recommendation due to insufficient evidence of (1) improper and dishonest conduct and (2) the amount of damages resulting from such conduct, Mr. and Mrs. Lawrence returned for a second IFF. In this hearing, we heard testimony from Mr. Kenny Jordan, a contractor who was hired to investigate and prepare a report documenting Mr. Thacker's deficient work, and who was hired to make some of the urgent repairs.

After hearing testimony from Mr. Lawrence and from Mr. Jordan, and after reviewing the color photographs of the work performed by Thacker, it was clear that a majority of the work was either unfinished (abandoned), performed in a fraudulent manner, or performed in a grossly negligent manner. The total price of the three contracts between the Lawrences and Thacker was $64,900. Of this price, they paid him $48,000. According to the testimony and report of Mr. Jordan, it would cost between $60,000 - $80,000 to correct the defective work performed by Thacker and meet the building code requirements for the work Thacker was hired to perform.

The Lawrences have paid Mr. Jordan approximately $15,979 to make some of the urgent repairs so that the home was livable. The Lawrences have been unable to afford many of the other repairs, but the cost of those repairs will clearly exceed the $10,000 of this claim. For example, correcting the uneven walls and ceiling in the living room was estimated by Mr. Jordan to cost $10,000. Examples of other items not yet corrected include the foundation for the addition, the lack of a barrier under the siding, the leaky roof in the master bedroom, the crooked floors and ceiling in the right front bedroom, and many other items.

Pursuing this claim has been a very long, difficult task for the Lawrences. From the evidence presented today, it does appear that the damages sustained by the Lawrences due to the improper and dishonest conduct of Thacker clearly exceed the $10,000 limit of the recovery fund.

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By: _____

Jennifer Parrish
Presiding IFF Board Member
Board for Contractors

Date: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: CLARENCE E. FRAZIER
T/A C & L ENTERPRISE SERVICES
LICENSE NUMBER 2705 066852

FILE NUMBER: 2003-02928

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Clarence E. Frazier (Frazier) on October 20, 2004. The following individuals participated at the conference: Andrew and Mary Ellen Stanton, Complainants; Jennifer Kazzie, Staff Member; and Jennifer L. Parrish, Presiding Board Member. Neither Frazier, nor anyone on his behalf, appeared at the IFF.

Background

On April 29, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Andrew Y. Stanton ("Stanton") regarding a contract entered into with Clarence E. Frazier ("Frazier") t/a C & L Enterprise Services.

On or about April 27, 2002, Stanton entered into a contract with Frazier, in the amount of $18,650.00, to finish a basement at 6105 Mountain Springs Road, Clifton, Virginia.

Summation of Facts

1. The contract specified "The work to be performed under this Contract shall be commenced on or before April 16th 2002 and shall be substantially completed on or before June 7 2002."

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2. On or about May 21, 2002, Frazier commenced the work. As of April 26, 2003, Frazier failed to complete the work. Frazier failed to obtain a written change order for a change of the estimated completion date.

3. The contract specified "Contractor shall obtain all permits necessary for the work to be performed at owner's expense (sic)."

4. On May 8, 2003, about a year after he had begun the work, Frazier was issued a building permit for work performed at 6105 Mountain Springs Road, Clifton, Virginia; however, Frazier failed to obtain electrical and plumbing permits. Stanton obtained the electrical and plumbing permits sometime between June and July of 2003. Frazier failed to comply with the terms of the contract.

5. On or about May 21, 2002, Frazier commenced the work. As of April 26, 2003, Frazier failed to complete the work, including the following items:

- Finishing up the drywall
- Painting the drywall work
- Providing for air conditioning in the craft room and bathroom
- Finishing up the bathroom
- Finishing the electrical in the utility room
- Replacing the window that was broken by his subcontractor
- Replacing a hole in the wall of our garage that was made by one of his subcontractors
- Reattaching the water line for the ice maker for the refrigerator that was cut by one of his subcontractors.

Since Frazier failed to complete the job, Stanton obtained another contractor to complete the job.

6. During the IFF, Stanton testified that Frazier paid him $4,700.00 to reimburse him for the expenses Stanton incurred to have another contractor complete the basement. These were out of pocket expenses paid by the Stantons for which they filed a Warrant in Debt. On the eve of trial, Mr. Frazier finally paid Ms. Stanton in lieu of having a judgment obtained against him.

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Conclusion and Recommendation

Count 1: <u>18 VAC 50-22-260(B)(31) (Effective September 1, 2001)</u>

Frazier's failure to obtain a written change order for a change of the estimated completion date as specified in the contract, in violation of Board Regulation 18 VAC 50-22-260(B)(31). Therefore, I recommend a monetary penalty of $250.00 be imposed.

Count 2: <u>18 VAC 50-22-260(B)(15) (Effective September 1, 2001)</u>

Frazier's failure to comply with the terms of the contract by failing to obtain electrical and plumbing permits, is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of $750.00 be imposed. Even though Frazier obtained the building permit about a year after the start of construction, he never obtained either the electrical or the plumbing permits.

Count 3: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Frazier's failure to complete the job, is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of $2500 plus license revocation be imposed.

By:

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Jennifer L. Parrish
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 066852 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

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BOARD FOR CONTRACTORS

RE: CLARENCE E. FRAZIER
T/A C & L ENTERPRISE SERVICES
LICENSE NUMBER 2705 066852

FILE NUMBER: 2003-02889

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Clarence E. Frazier, t/a C & L Enterprise Services (Frazier) on October 20, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Jennifer L. Parrish, Presiding Board Member. Neither Frazier, nor anyone on his behalf, appeared at the IFF.

Background

On April 24, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Joe and Leslie Plazio (the Plazios) regarding a contract entered into with Clarence E. Frazier (Frazier), t/a C & L Enterprise Services.

On or about April 27, 2002, Plazio entered into a contract with Frazier, in the amount of $13,400.00, to remodel a carport into living space at 10910 Fairchester Drive, Fairfax, Virginia.

Summation of Facts

1. The contract specified "The work to be performed under this Contract shall be commenced on or before 5/9/02 and shall be substantially completed on or before 6/21/02."

2. On or about May 25, 2002, Frazier began the demolition work. Frazier failed to comply with the terms of the contract.

3. On May 30, 2002, S. Higginbotham (Higginbotham), Building Inspector for the City of Fairfax Office of Code Administration, issued a Stop Work Order for failure to obtain a building permit for work being performed by Frazier at 1910 Fairchester Drive, Fairfax, Virginia. Higginbotham required a building permit be obtained by May 31, 2002.

4. On June 3, 2002, the City of Fairfax issued building permit number B-02-042381 for renovation of the existing enclosed porch at 10910 Fairchester Drive, Fairfax, Virginia.

5. On June 14, 2002, the Plazios paid Frazier $348.45 for the permit. According to the City of Fairfax, the permit fee was $146.45. In addition to the permit fee, the City of Fairfax assessed a fine of $202.00 for the stop work order.

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6. During the construction, Frazier discovered rotting in the roof. The Plazios entered into a verbal agreement with Frazier, in the amount of $1,200.00, to replace rotten timbers in the roof. On June 14, 2002, the Plazios paid Frazier for the additional work.

7. Frazier failed to use a written change order for a modification to the scope of work performed and for the additional cost.

8. In December 2002, the Plazios discovered water intrusion into the newly finished living room, which resulted in damage to the carpet. The Plazios contacted Frazier to discuss the problem.

9. On January 5, 2003, the Plazios noticed a large water spot and stain. Plazio found a gap at the bottom channel that allowed water to enter the house. On January 5, 2003, the Plazios spoke to Frazier regarding the problem. Frazier promised to return to the Plazios' residence on January 6, 2003, to assess the problem. On January 6, 2003, Frazier failed to return to the Plazios' residence. The Plazios attempted to contact Frazier several times regarding the problem.

10. On January 29, 2003, the Plazios sent a formal complaint to the Better Business Bureau (BBB) regarding Frazier's failure to uphold the warranty and fix defective work. As of March 13, 2003, Frazier failed to respond to the BBB regarding the complaint. Frazier failed to contact the Plazios regarding the repairs or return to make repairs.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Frazier's failure to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of $250.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Frazier's failure to obtain a building permit prior to the commencement of work is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommended a monetary penalty of $500.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

Frazier's failure to obtain written change orders for the modification to the scope of work preformed and for the additional cost is a violation of Board Regulation 18 VAC 50-22-260(B)(31). Therefore, I recommend a monetary penalty of $250.00 be imposed.

Count 4: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

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Frazier's failure to contact the Plazio's regarding the repairs or return to make repairs is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $2500 and license revocation be imposed.

By:

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Jennifer L. Parrish
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 066852 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: CLARENCE E. FRAZIER
T/A C & L ENTERPRISE SERVICES
LICENSE NUMBER 2705 066852

FILE NUMBER: 2003-02544

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Clarence E. Frazier, t/a C & L Enterprise Services (Frazier) on October 20, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Jennifer L. Parrish, Presiding Board Member. Neither Frazier, nor anyone on his behalf, appeared at the IFF.

Background

On March 10, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Rebecca A. Morgan ("Morgan") and Jeffrey Stein ("Stein") regarding a contract entered into with Clarence E. Frazier ("Frazier"), t/a C & L Enterprise Services.

On or about October 14, 2002, Morgan entered into a contract with Frazier, in the amount of $10,000.00, for home improvements at 3145 Memorial Street, Alexandria, Virginia, Fairfax County, Virginia.

Summation of Facts

1. On or about October 21, 2002, Frazier commenced work, including constructing structural changes to the home.

2. On April 14, 2003, David Sharp ("Sharp"), Fairfax County Building Permits Office, advised Investigator Morgan T. Moore, the Board's agent, that Frazier was required to submit plans and drawings to the building official's office prior to

construction. Frazier failed to obtain a building permit or submit plans for approval prior to starting construction.

3. On April 23, 2003, Frazier obtained building permit number 03-112-B-09-30.

4. The contract specified work "shall be commenced on or before October 21, 2002 and shall be substantially completed on or before November 8th, 2002."

5. On or about October 21, 2002, Frazier commenced work. As of November 8, 2002, Frazier failed to complete the work, but promised the work would be completed by November 16, 2002. As of November 16, 2002, Frazier failed to complete the work as promised.

6. Frazier again promised the work would be completed by November 19, 2002, excluding the installation of the bay window which was to be installed on November 23, 2002. As of November 23, 2002, the bay window was installed, but Frazier failed to complete the work. Frazier failed to obtain a written change order for the modification to the original contract.

7. On November 24, 2002, Morgan provided Frazier with a punch list of items to be corrected. Frazier agreed to return to complete the punch list items after the Thanksgiving holiday. As of March 6, 2003, Frazier failed to complete the punch list items as promised.

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8. On or about November 23, 2002, RJT Industries Inc. of Woodbridge, subcontractor for Frazier, installed a bay window at the Morgan home.

9. On or about February 21, 2003, Morgan received a letter from RJT Industries Inc. that Frazier never paid RJT Industries Inc. for installation of the bay window and that RJT Industries would be placing a mechanic's lien on Morgan's property.

10. On or about February 26, 2003, Frazier told Morgan that he would resolve the matter with RJT Industries Inc. As of March 5, 2003, Frazier failed to contact RJT Industries Inc. and failed to pay RJT Industries Inc. for services performed, which Morgan had paid Frazier for.

11. On or about April 10, 2003, Morgan filed a Warrant in Debt against Frazier for failing to pay RJT Industries Inc. On or about April 21, 2003, Frazier paid RJT Industries Inc. and Morgan withdrew the Warrant in Debt.

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Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Frazier's failure to obtain a building permit or submit plans for approval prior to starting construction, is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $250.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

Frazier's failure to obtain a written change order for the modification to the original contract, is a violation of Board Regulation 18 VAC 50-22-260(B)(31). Therefore, I recommended a monetary penalty of 500.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Frazier's failure to complete the punch list items as promised, is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $2500 and license revocation be imposed.

Count 4: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Frazier's failure to contact RJT Industries Inc. and failure to pay RJT Industries Inc. for services performed, which Morgan had paid Frazier for, is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $2500 and license revocation be imposed.

By:

_____

Jennifer L. Parrish
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 066852 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: IVAN D. PORTER
T/A COMMONWEALTH CONSTRUCTION
LICENSE NUMBER 2705 039835

FILE NUMBER: 2003-00911

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Ivan D. Porter, t/a Commonwealth Construction (Porter) on October 22, 2003. The following individuals

participated at the conference: Ivan D. Porter, Respondent; Jennifer Kazzie, Staff Member; and Jennifer L. Parrish, Presiding Board Member.

Background

On August 29, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from John R. Saunders (Saunders) regarding Van Porter & Co.

On June 25, 2000, Saunders' residence was damaged by a fire. Ivan D. Porter, t/a Commonwealth Construction & Restoration, was hired to repair the fire damage at 1604 Hudson Street, Lynchburg, Virginia.

Summation of Facts

1. Porter failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed.

2. On February 21, 2003, Porter provided a written response to a request from Investigator Becky Angelilli, the Board's agent. In the letter, Porter told the Board's agent that any "items that need to be addressed as a result of our work will be inspected and completed if necessary within the next two weeks."

3. Porter admitted at the IFF that after making this agreement, he failed to take any action to contact the Saunders.

4. Porter then received a notice of the IFF, and so on April 25, 2003, the Board's agent received an email from Nina Porter explaining that they have been in contact with the Saunders and will take care of the Saunders as soon as possible at their convenience. Nina Porter also stated "Please be assured that we will make sure they are satisfied with the work."

4. On June 16, 2003, the Board's sent a request to Porter, by email, regarding an update on the progress made. The Board's agent did not receive a response to this email.

5. As of July 29, 2003, Porter failed to make any inspection or repairs to the Saunders' job. According to Porter, he talked to Mr. Saunders but was told that he would not be allowed to come back to the property.

6. Porter provided false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the Board by promising, on February 21, 2003, to make inspection and repairs within two weeks and not doing so.

Conclusion and Recommendation

Count 1: <u>18 VAC 50-22-260(B)(8) (Effective May 1, 1999)</u>

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Porter's failure to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of $300.00 be imposed. Porter testified that since this matter arose, he is now diligent in always getting a written contract signed in every job. In addition, I recommend Porter successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

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Count 2: 18 VAC 50-22-260(B)(13) (Effective January 1, 2003)

Porter's actions in providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the Board is a violation of Board Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend a monetary penalty of $500.00 be imposed. In addition, I recommend Porter successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

_____

Jennifer L. Parrish
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 039835 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

DRAFT

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: JUAN CABA
T/A BON AIR CONSTRUCTION
LICENSE NUMBER 2705 066671

FILE NUMBER: 2003-01188

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Juan Caba, t/a Bon Air Construction (Caba) on October 22, 2003. The following individuals participated at the conference: Jennifer Kazzie; Staff Member; and Jennifer L. Parrish, Presiding Board Member. Neither Caba, nor anyone on his behalf, appeared at the IFF.

Background

On October 24, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Michael Wittkamp (Wittkamp) regarding a contract entered into with Juan Caba (Caba), t/a Bon Air Construction.

On March 30, 2002, Wittkamp entered into a contract with Caba, in the amount of $4,865.00, to remodel a bathroom at 5102 Park Avenue, Richmond, Virginia.

Summation of Facts

1. The contract used by Caba in the transaction failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) when the work is to begin and the estimated completion date, (d) a "plain language" exculpatory clause, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, (h) the contractor's license number, expiration date, and classification or specialty services, and (i) a statement providing that any modification to the contract which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

2. The contract specified "Modify electrical to allow Jacuzzi, exhaust fan, and raise ligt (sic) fixture."

3. Caba completed the work on May 5, 2002, including plumbing and electrical work.

4. On October 24, 2002, a review of the licensing records for the Board for Contractors, revealed Caba was issued Class C Contractor's license number 2705066671 on January 25, 2002, with the home improvement contracting (HIC) and commercial improvement contracting (CIC) specialty services.

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5. On June 5, 2003, David Schanz, Plan Reviewer for the City of Richmond Department of Community Development, advised Investigator Renee Popielarz, the Board's agent, that Caba failed to obtain an electrical permit for the work performed at the subject property, in violation of Section 109.1 of the Uniform Statewide Building Code.

6. On November 22, 2002, the Board's agent made a written request to Caba at the address of record of 907 Hilltop Drive, Richmond, Virginia 23225, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by December 9, 2002. As of June 25, 2003, Caba refused or failed to respond to the Board's agent's request.

7. On December 15, 2002, the U. S. Postal Service verified Caba received mail at 907 Hilltop Drive, Richmond, Virginia 23225.

8. On December 19, 2002, the Board's agent made a written request to Caba, via Certified Mail, at the address of record of 907 Hilltop Drive, Richmond, Virginia 23225, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by January 1, 2003.

9. On December 19, 2002, the Board's agent made a written request to Caba, via Certified Mail, at an address provided by Jessica Sefrin, a friend of Wittkamp's, of 8008 Stiles Road, Richmond, Virginia 23235, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by January 1, 2003. On or about December 21, 2002, the certified letter sent to 8008 Stiles Road, Richmond, Virginia 23235 was signed for.

10. As of June 25, 2003, Caba refused or failed to respond to the Board's agent's request.

Conclusion and Recommendation

Count 1: <u>18 VAC 50-22-260(B)(9) (Effective September 1, 2001)</u>

Caba's failure to make use of a legible written contract that contains all provisions specified in the regulation is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend a monetary penalty of $250.00 be imposed.

Count 2: <u>18 VAC 50-22-260(B)(27) (Effective September 1, 2001)</u>

Caba's actions of practicing in a classification, specialty service, or class of license for which the contractor is not licensed is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend a monetary penalty of $1,000.00 be imposed. In addition, I recommend Caba successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 3: <u>18 VAC 50-22-260(B)(6) (Effective September 1, 2001)</u>

Caba's failure to obtain an electrical permit for the work performed at the subject property, in violation of Section 109.1 of the Uniform Statewide Building Code, is a violation

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of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $500.00 be imposed. In addition, I recommend Caba successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 4: 18 VAC 50-22-260(B)(13) (Effective September 1, 2001)

Caba's failure to respond to an investigator seeking information in the investigation of a complaint filed with the board is a violation of Board Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend a monetary penalty of $2,000.00 be imposed. In addition, I recommend Caba successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

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Jennifer L. Parrish
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 066671 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: K J CONSTRUCTION OF VIRGINIA CORPORATION
T/A K J ROOFING, INC.
LICENSE NUMBER 2705 042642

FILE NUMBER: 2003-01457

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to K J Construction of Virginia Corporation, t/a K J Roofing, Inc. (KJ) on October 22, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Jennifer L. Parrish, Presiding Board Member. Neither K J Construction of Virginia Corporation, nor anyone on its behalf, appeared at the IFF.

Background

On November 21, 2002, the Enforcement Division of the Department of Professional of Occupational Regulation received a written complaint from Cassie Nicotera (Nicotera), regarding work performed by K J Construction of Virginia Corporation (K J), t/a K J Roofing Inc.

On July 19, 2002, Nicotera and Jean Pioano entered into a regional sales contract with Mark and Cathryn Tarwater (the Tarwaters) to purchase the home at 6004 Creekstone Lane, Centreviile, Virginia.

Based on the home inspection, it was determined that the roof needed to be replaced. On or about July 20, 2000, the Tarwaters entered into a contract with K J, in the amount of $10,614.00, to replace the roof at 6004 Creekstone Lane, Centreville, Virginia.

A review of the licensing records of the Board for Contractors revealed K J was issued Class A Contractor's license number 2705042642 on January 21, 1998. The records further revealed Kevin J. Trizna (Trizna) was the Designated Employee, Qualified Individual, and Responsible Management for K J.

Summation of Facts

1. On April 16, 2003, Dave Sharp (Sharp), FOIA Coordinator for Fairfax Building Code Services, told Assistant Director Linda J. Boswell, the Board's agent, that K J failed to obtain a building permit prior to replacing 20 sheets of Fire Retardant Treatment (FRT), in violation of Section 109.1 of the Uniform Statewide Building Code (USBC). K J failed to obtain a required building permit prior to performing work.

2. The contract specified "ALL LABOR WARRANTED FOR 10 YEARS."

3. In August 2000, Nicotera closed on the home and moved into the subject property. After moving in, Nicotera discovered the roof leaked. Nicotera attempted to contact K J, but the phone was disconnected.

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4. In December 2002, Nicotera sent a certified letter to K J regarding the leaking roof. On December 6, 2002, the certified letter was signed for by D. Trizna.

5. As of April 16, 2003, K J failed to honor the warranty and make repairs to the leaking roof.

6. On January 24, 2003, the Board's agent made a written request to K J at the address of record of 6212 Old Keene Mill Court, Springfield, Virginia 22152, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by February 14, 2003. On February 5, 2003, the certified letter was signed for by M. Trizna. As of April 16, 2003, K J refused or failed to respond to the Board's agent.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

KJ's failure to obtain a building permit prior to replacing 20 sheets of Fire Retardant Treatment, in violation of Section 109.1 of the Uniform Statewide Building Code, is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $500.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

KJ's failure to honor the warranty and make repairs to the leaking roof is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

Count 3: 18 VAC 50-22-260(B)(13) (Effective January 1, 2003)

KJ's failure to respond to an investigator seeking information in the investigation of a complaint filed with the board is a violation of Board Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend a monetary penalty of $2,500.00 and license revocation be imposed.

By:

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Jennifer L. Parrish
Presiding IFF Board Member
Board for Contractors
Date: _____

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FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 042642 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: WALTMAN HEATING & ELECTRICAL CONTRACTORS, INC.
LICENSE NUMBER 2701 015689

FILE NUMBER: 2003-01423

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 13, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Waltman Heating & Electrical Contractors, Inc. (Waltman) on October 22, 2003. The following individuals participated at the conference: Irvin Waltman, President of Waltman Heating & Electrical Contractors, Inc.; Jennifer Kazzie, Staff Member; and Jennifer L. Parrish, Presiding Board Member.

Background

On November 8, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Nalda Thung (Thung) regarding a contract entered into with Waltman Heating & Electrical Contractors Inc. (Waltman).

On or about July 22, 2002, Thung entered into a verbal agreement with Waltman, in the amount of $1,600.00, to install a new condensing unit at 1632 Wilton Road, Petersburg, Virginia.

Summation of Facts

1. On or about July 23, 2002, Waltman began and completed the installation of the condensing unit.

2. Waltman failed to make use of a legible written contract, prior to the commencement of the work, clearly specifying the terms and conditions of the work to be performed.

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Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8) (Effective September 1, 2001)

Waltman's failure to make use of a legible written contract, prior to the commencement of work, clearly specifying the terms and conditions of the work to be performed is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of $100.00 be imposed. In addition, I recommend that a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

At issue in this case is whether or not a contract is required under the laws and regulations of the board under the circumstances of this contract. Mr. Waltman contracted (orally) with the homeowner for the purchase and installation of a Carrier condenser unit for a heat pump (this is the outside unit) for the sum of $1,600. Mr. Waltman contends that this is a "service contract" or "routine maintenance" and therefore does not require a contract. He seeks direction from the Board on whether he is wrong.

The reason I recommended such a small fine is that I find Mr. Waltman acted in good faith in that he did not believe a contract was necessary. I believe, based upon the law and regulations of this Board, however, that he is incorrect. Pursuant to Virginia Code Section 54.1-1100, Mr. Waltman qualifies as a "contractor," in that he, "for a fixed price…contracts for performing the construction,…repair or improvement of any building or structure…." Under Board Regulation 18 VAC 50-22-250(B)(8), it is a violation if the contractor fails to have a written contract containing certain required provisions **unless** it involves routine maintenance or service (under a service contract).

In my opinion, the purchase and installation of a new heat pump condenser unit costing $1,600 is not "routine maintenance," nor was it "servicing" under any service contract.

By:

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Jennifer L. Parrish
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

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THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2701 015689 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

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