

**South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, April 12, 2006 at 10:00 am
Synergy Business Park, Kingstree Building
Columbia, South Carolina**

MEMBERS PRESENT

**John Curl
Al Bailey
Gale Crawford
Caleb Davis
Timothy Roberts
Derrick Williams**

OTHERS PRESENT

**Rick Wilson, Deputy General Counsel
Louis Rosen, Hearing Advisor
Kent Lesesne, Staff Attorney
Charles McAlister, Administrator
Charles Ido, Chief Investigations, OIE
Robbie Boland, Licensing Manager
Christine Driver, Administrative Assistant
Patrice Deas, Administrative Specialist
Faye Grainger, Court Reporter**

MEMBERS ABSENT

Frank Clark

Public Notice of this meeting was properly posted at the Board office and provided to any requesting persons, organizations, or news media in compliance with Section 30-4-80 of the S. C. Freedom of Information Act. A quorum was present at all times.

Call to Order

Mr. John Curl, Chairman, called the meeting to order.

Approval of Minutes

Motion: Mr. Davis moved to approve the minutes of March 8, 2006 meeting. Mr. Williams seconded the motion, and with all members present voting favorably, the motion carried.

Approval of Recommendations of the Investigative Review Committee (IRC)

Motion: Mr. Bailey moved to approve the recommendations of the Investigative Review Committee, dated March 7, 2006. Mr. Williams seconded the motion, and with all members present voting favorably, the motion carried.

Approve Recommendations of Administrator for Bond Claims

Motion: Mr. Williams moved to approve the recommendations of the Administrator for Bond Claim for Joshua D. Freeman. Mr. Davis seconded the motion, and with all members present voting favorably, the motion carried.

Request for Reinstatement of License

Bryan Keith Brewer – Mr. Brewer informed the Commission that he recently applied for an electrical contractors license to be grandfathered in under regulation 106-2 and was denied by staff because of a criminal conviction. Mr. Brewer stated that he was convicted of a high and aggregative nature and is now currently on probation.

Motion: Ms. Crawford moved to approve reinstatement of Mr. Brewer’s license provided that he furnishes the Commission with a letter stating that probation has been satisfactorily completed. Mr. Bailey seconded the motion, and with all members present voting favorably, the motion carried.

Rick Condo - Mr. McAlister informed the Commission that Mr. Condo entered a Consent Agreement, on September 1, 2003, with a public reprimand and a fine of Five Hundred (\$500.00) Dollars, a Do Not Renew Order was issued, on August 14, 2004. Corrections were not completed within a specific time. Mr. Condo did not apply and did not pay the Five Hundred (\$500.00) Dollar fine and chose instead to let his residential builders license lapse on June 30, 2004.

Mr. Condo admitted to the Commission that he did not comply with the Consent Agreement in a timely manner and did not pay the fine. However, he alleged at hat he has been working with the homeowners to resolve these issues. Mr. Condo admitted to engaging in carpentry work on residential projects without proper authorization after his license lapsed, and alleged that he was not aware he was in violation of the law.

Motion - Mr. Bailey moved to reinstate Mr. Condo’s license to active status, upon compliance with any terms and conditions previously imposed by the Commission in the Consent Agreement, dated September 1, 2003, and the following pre-conditions for reinstatement are met. Mr. Davis seconded the motion, and with all members present voting favorably, the motion carried.

- a) Respondent shall pay a fine of One Thousand and No/100 (\$1,000) Dollars to the Commission for violation of Section 40-1-110 and 40-59-220, as mentioned above. Said penalty shall not be deemed paid until received by the Commission.
- b) Respondent must read the Residential Builder Practice Act and Regulations and provide a letter to the Commission staff advising when he has completed this requirement.
- c) Respondent shall maintain a surety bond acceptable to the Board in the amount of Fifteen Thousand and No/100 (\$15,000) Dollars.

Appeal of Administrative Hearing Officer’s Recommendation, David Bennett, for Citation

James E. McGrew - Mr. McAlister informed the Commission that Mr. McGrew is appealing the

Administrative Hearing Officer's Recommendation of a Citation. Mr. Todd Rutherford, attorney for Mr. McGrew, informed the Commission that Mr. McGrew was issued a Citation for violation of Section 40-59-220 for not having a specialty contractor's registration back in 2005.

Mr. Rutherford stated that the definition of carpenter does not fit what Mr. McGrew is doing. Mr. McGrew is a cabinetmaker not a carpenter he builds custom wooden cabinets in his shop and then installs them in speclitative homes. Mr. McGrew has been cited for violation of Section 40-59-220, because he did not have a registration to do what the statute says is carpentry work. Mr. Rutherford asserted that the law is ambiguous up until this point.

Mr. Wilson stated that the definition of carpenter in Regulation 106-1(j) relates to the installation, alteration and repair of rough and general carpentry work on new and existing structures including accessories and related hardware common to the residential building industry. Mr. Wilson further stated that the installation of custom cabinets in a residence puts one under the jurisdiction and definition of carpentry with the Residential Builders Commission.

Mr. Wilson advised the Commission that they are not here to judge Mr. McGrew on the quality of his work, but it is whether or not there had to be a license or registration in place to authorize the installation of cabinets. It's the installation of the cabinets and whether the definition of carpentry is a broad enough term to capture cabinetmakers, framers, or finish carpenters to put people on notice that state law requires a registration for this kind of work.

Mr. Rutherford stated that the Commission should be focused on whether or not the statute puts people on notice that they must be registered with the Residential Builders Commission under carpentry to install cabinets when the definition refers to rough and general carpentry.

Mr. Rutherford concluded that the law is unclear that in 2005 that Mr. McGrew knew or should have known or had any willful intent to violate or disregard the law by not having a license or registration. Mr. Rutherford further concluded that the Administrative Hearing Officer had waived the fine.

In Executive Session: Mr. Bailey made a motion to go into Executive Session for receipt of legal advice. Mr. Williams seconded the motion, and with all members present voting favorably, the motion carried.

Out Executive Session: Mr. Bailey made a motion to go out of Executive Session. Mr. Williams seconded the motion, and with all members present voting favorably, the motion carried.

Motion - Mr. Bailey moved to uphold the Administrative Hearing Officer's findings of the Citation issued, on January 18, 2006. Ms. Crawford seconded the motion, and with all members present voting favorably, the motion carried.

Jim Brodeur, Faye Brodeur and Holley Wallace – Mr. McAlister informed the Commission that he received a letter from Joseph M. McCullouch, Jr., attorney for Jim Brodeur, Faye Brodeur and Holly Wallace requesting that this matter be continued until the next Commission meeting. The request was granted.

Henry R. Privette, Jr. - Although the record shows that he was properly notified of this hearing, he did not appear at the appointed time.

New Business

Residential Builder's License and Specialty Contractor's License – Scope of Practice - Mr. Wilson informed the Commission that we had a situation with a licensed residential builder whose business was focused toward HVAC. The question is whether a licensed residential builder may perform heating and air conditioning (HVAC), plumbing, or electrical work for an owner or another residential builder under the residential builder's license or is a residential specialty license required to authorize HVAC, plumbing or electrical work to be performed by a licensed residential builder.

Staff has taken the position that, although a licensed residential builder is authorized to perform HVAC, plumbing, and electrical work on his own projects, the licensed builder may not hold himself out to perform HVAC, plumbing, or electrical repairs. A licensed residential builder who has engaged in such work in the past under a residential builder's license has questioned this position. Is it within the scope of authorized practice for a licensed residential builder to perform heating and air conditioning (HVAC), plumbing, or electrical work for an owner or another residential builder under the residential builder's license or is a residential specialty license required to authorize HVAC, plumbing, or electrical work to be performed by a licensed residential builder?

After careful consideration, the Commission concluded that it continues to be within the scope of authorized practice for a licensed residential builder to perform any work that is covered by a residential specialty classification regardless of whether such work is authorized by a registration or license issued by the Commission. The Commission recognized that, under current state law, licensed residential builders, as well as licensed specialty contractors, are authorized to obtain building permits for residential construction projects that are covered by a residential specialty classification.

Motion: Ms. Crawford moved to clarify the scope of residential license to cover all specialty classifications. Mr. Bailey seconded the motion, and with all members present voting favorably, the motion carried.

Scope of a Residential Builder's License

Mr. Wilson informed the Commission that in the past the Commission had a policy that if the homeowner denied the builder access to fix the problems with their home then the Commission would dismiss the case. Now the Office of Investigation and Enforcement will pursue a complaint if the homeowner will not allow the builder on the property during an inspection.

Mr. Charles Ido, Chief of Investigation, stated that the procedure now is that the builder must be notified of a site inspection at the complainant's residence and he can be present at the site inspection if he so chooses. However, should the complainant refuse to allow the builder access to the home, the investigator will still

proceed with the site inspection and later share the inspection report with both the complainant and the respondent. The Office of Investigation and Enforcement will not close the case because the complainant will not allow the builder on the premises. If there are code/standard issues, a report will be prepared for the Investigative Review Committee and the IRC will make its recommendations as to how to proceed with the case.

After discussion, the Commission concurred with the policy of the Office of Investigation and Enforcement to continue with the investigation even though the homeowner has denied the builder access to the property during the investigation.

Associations Recommendations to the Commission

Ms. Crawford wanted some information concerning appointments of Commissioners to the Governor's Office. The South Carolina Home Builders Association makes recommendations to the Governor to accept their recommendations for Commission appointments. Mr. Wilson stated that anyone can make a recommendation, but a provision was added when the act was amended reading that the South Carolina Home Builders Association must recommend appointments to the Governor.

Ms. Crawford wanted to know when someone is appointed to a Commission they have to fill out an application and answer questions concerning any sanction of a license. Mr. Wilson stated that we do not have in our Act a prohibition against disciplined people serving as Commissioners, but that is at the discretion of the Governor.

Unfinished Business

None

Adjournment

There being no further business, the business meeting for April 12, 2006, concluded at 1:30 p.m.

The next scheduled board meeting will be held on June 14, 2006, at 10:00 a.m. at the Synergy Business Park, Kingstree Building, Room 108. (Note: Subject to Change)

Approve Recommendations of Administrative Hearing Officer/ Administrative Hearing

Paul Mallard - This matter was heard before John Curl, Administrative Hearing Officer, on February 16, 2006. Mr. Curl's recommendation was as follows:

1. The Respondent pay a fine of Five Hundred (\$500.00) Dollars. This fine shall not be deemed paid until received by the Commission. Failure to pay the fine shall prevent the Respondent from being re-registered.
2. The Respondent's registration as a residential specialty roofing contractor shall be,

and it hereby is, suspended for a period of six (6) months.

3. The original complainant (homeowner) is granted permission to file a claim against the Respondent's surety bond to remedy the problem with the roof.

Mr. John Curl recused himself from voting because he was the hearing officer in this matter.

Motion: Mr. Bailey moved to approve John Curl, Administrative Hearing Officer's Recommendation for Paul Mallard. Ms. Crawford seconded the motion, and with all members present voting favorably, the motion carried.

Transcripts of these hearings may be obtained from Faye Grainger, Certified Court Reporter.