

**South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Columbia, South Carolina**

MEMBERS PRESENT

**John Curl
Al Bailey
Frank Clark
Caleb Davis
Timothy Roberts
Derrick Williams**

OTHERS PRESENT

**Rick Wilson, Deputy General Counsel
Sheridon Spoon, Deputy General Counsel
Jamie Saxon, Hearing Advisor
Christa Bell, Staff Attorney
Charles McAlister, Administrator
Charles Ido, Chief of Investigations, OIE
Patrice Deas, Administrative Assistant
Faye Grainger, Court Reporter**

MEMBERS ABSENT

Gale Crawford

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. Bailey moved to approve the minutes of May 9, 2007 meeting. Mr. Williams seconded the motion, and with all members present voting favorably, the motion carried.

Approve Recommendations of the Investigative Review Committee

Motion: Mr. Davis moved to approve the recommendations of the Investigative Review Committee for May 1, 2007. Mr. Williams seconded the motion, and with all members present voting favorably, the motion carried.

Approval of Recommendations of the Administrative Hearing Officer, Douglas Green, for Citation Appeals

Motion: Mr. Bailey moved to approve the recommendations of the Administrative Hearing Officer, Douglas Green, for citation appeals on behalf of Bubby Dyson, Mark Smith, Davis Seabaugh,

**South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Page 2 of 11**

Timothy Scott Bauman, and Jeff McBeth. Mr. Davis seconded the motion, and with all members present voting favorably, the motion carried.

Motion: Mr. Bailey moved to approve the recommendations of the Administrative Hearing Officer, Douglas Green, for citation appeals on behalf of Tina Waters and Lisa Stanley. Mr. Davis seconded the motion, and with all members present voting favorably, the motion carried.

Mr. Rick Wilson informed the Commission that Sheridan Spoon will be replacing him on the litigation team, and Mr. Spoon will serve the Commission well.

Appeal Administrative Hearing Officer, Douglas Green, for Citation

Alice M. Hancock: Mr. McAlister informed the Commission that Ms. Hancock was issued a Citation and Order to Cease and Desist on February 28, 2007, for engaging in the unlicensed practice of residential building. Hearing Officer, Douglas Green, upheld the Citation and Order to Cease and Desist, and Ms. Hancock has appealed his decision before the full Commission.

Ms. Hancock stated that she is a landscape designer and consultant which involves landscape renovations for the television network, Home and Garden Television (HGTV), program "Landscape's Challenge". Ms. Hancock asserted that she did not undertake to perform any activities or services regulated by the Residential Builders Commission.

A review of the evidence and testimony established that Ms. Hancock undertook to perform landscape renovation services only. Additional work was performed for the homeowner by licensed persons recommended by Ms. Hancock, but contracted strictly with the homeowner. The Commission finds that a residential specialty contractor's registration was not required and that the Citation was improperly issued.

Motion: Mr. Williams moved to dismiss the Citation and Order to Cease and Desist for unlicensed practice of residential building issued to Ms. Hancock. Mr. Davis seconded the motion, and with all members present voting favorably, the motion carried.

Application Review

Brian Keith Grissom – Mr. McAlister informed the Commission that Mr. Grissom has applied for a residential builder's license and answered "Yes" on question two on the application regarding criminal convictions.

Mr. John Rhea, Attorney for Mr. Grissom informed the Commission that Mr. Grissom was convicted of involuntary manslaughter and placed on five (5) years probation in April of 2005.

**South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Page 3 of 11**

Motion: Mr. Bailey moved to issue Mr. Grissom a residential builder's license on a probationary status upon satisfaction of all terms and conditions of probation. Mr. Davis seconded the motion, and with all members present voting favorably, the motion carried.

- a. Applicant shall be issued an authorization to engage in the practice of residential builder in this State in a probationary status upon satisfaction of all other requirements for authorization and faithful compliance with the following terms and conditions of probation, which shall continue in effect until expiration of his criminal probation and until further Order of the Commission:
- b. Applicant must take and pass the licensing examination for residential builders.
- c. Applicant shall appear and report to the Commission as requested by the Commission.
- d. Applicant shall comply with all state and federal laws, including those governing residential builders.
- e. After not less than one (1) year of faithful compliance with all conditions of probation, Applicant may petition the Commission to terminate this Agreement.

John R. Bell - Although the record shows that he was properly notified of this appearance he did not appear at the appointed time. No action was taken.

Christopher Sawyer – Mr. McAlister informed the Commission that Mr. Sawyer has applied for a residential specialty contractor's registration and answered "Yes" on question two on the application regarding criminal convictions. Mr. Sawyer has applied to become a residential specialty contractor in painting.

Mr. Sawyer advised the Commission that he was convicted of simple possession of marijuana, on September 28, 2000 and of criminal domestic violence on July 29, 2004. Mr. Sawyer provided several letters of reference pertaining to his work as a painter.

Motion: Mr. Williams moved to issue a license to Mr. Sawyer to engage in the business of residential specialty contracting in this State in a probationary status provided he faithfully complies with the following terms and conditions of probation, which shall continue in effect for a period of not less than one (1) year and until further Order of the Commission. Mr. Davis seconded the motion, and with all members present voting favorably, the motion carried.

- a. Applicant annually shall provide a copy of his current criminal records as maintained by the State Law Enforcement Division (SLED). Said SLED report must be submitted directly to the Commission on or before the first day of July of each year.
- b. Applicant shall comply with the state and federal laws, including those governing

South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Page 4 of 11

- c. residential building and residential specialty contracting.
- d. Applicant shall appear and report to the Commission as requested by the Commission.
- e. After not less than one (1) year of faithful compliance with all conditions of probation, Applicant may petition the Commission to terminate this Agreement.

Willie C. Bratcher - Although the record shows that he was properly notified of this appearance he did not appear at the approved time. No action was taken.

Joseph L. Ivey, Jr. - Mr. McAlister informed the Commission that Mr. Ivey has applied for a residential plumbing license and answered "Yes" on question two on the application regarding criminal convictions.

Mr. Ivey informed the Commission that he was paroled after serving nine (9) years of a twenty five (25) year sentence after an armed robbery conviction.

Motion: Mr. Williams moved to issue Mr. Ivey authorization to engage in the practice of residential specialty plumbing in this State in a probationary status until October 2008 and upon satisfaction of all other requirements for authorization and faithful compliance with the following terms and conditions of probation, which shall continue in effect until expiration of his criminal probation and until further Order of the Commission Mr. Davis seconded the motion, and with all members present voting favorably, the motion carried.

- a. Applicant shall provide to staff one (1) letter of recommendation from Applicant's parole officer on Applicant's behalf in support of the application. Said letter shall address in detail Applicant's compliance with the terms and conditions of his parole.
- b. Applicant's letter of recommendation shall be verified by the Commission.
- c. Applicant shall appear and report to the Commission as requested by the Commission.
- d. Applicant shall comply with all state and federal laws, including those governing residential builders.
- e. After a period of not less than one (1) year of continuous compliance with the terms and conditions of this Agreement, Applicant shall be eligible to petition the Commission for termination of this Agreement.

New Business

Approve Policy/Procedures for Bond Claim Hearings - Mr. McAlister submitted a copy of the revised Policy/Procedures for Bond Claim Hearings for the Commission review. The amended procedures state that a hearing is being scheduled before an administrative hearing officer appointed

**South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Page 5 of 11**

by the Commission, pursuant to Section 40-1-90(A) of the amended Code, for the purpose of determining whether the alleged violations of the applicable building code and construction standards are the responsibility of the licensee as substandard professional performance at the time they were performed. Hearings on bond claims will be conducted by the administrative hearing officer. A review by the Commission of the Administrative Hearing Officer's Report and Recommendation may be requested in writing within ten (10) days of the date of the Recommendation.

Motion: Mr. Williams moved to approve the revised Policy/Procedure for Bond Claim Hearings as amended. Mr. Roberts seconded the motion, and with all members present voting favorably, the motion carried.

Unfinished Business

Gregory Kuykendall - Mr. McAlister informed the Commission that this matter was sent to an administrative hearing officer for a bond hearing. It was determined that this matter would be appealed by the bonding company so staff brought this matter to the full Commission instead of a hearing officer. Mr. McAlister stated that Platte River Insurance Company has already paid \$15,000.00 to the homeowner for repairs to their home.

Mr. Drayton Hastie, Esquire informed the Commission that Mr. Kuykendall held two bonds at the time of inspection and Platte River has paid this claim on behalf of the homeowner. Mr. Hastie contends that the Massachusetts Bay Insurance Company bond was no enforce at the time of construction.

Mr. John Curl stated that it does not matter if the two bond were enforce at the time of construction the Commission cannot stack bonds. The Commission can only authorize \$15,000.00 payout on any one claim. The Statute only required a \$15,000.00 surety bond for residential builders.

Mr. Joel Stiles informed the Commission that it has cost him \$45,000.00 to make the necessary repairs to his home, and wanted to know how the Commission could allow a residential builder to only carry a \$15,000.00 surety bond.

Motion: Mr. Davis moved to dismiss this matter, due to the fact, that Platte River Insurance Company had paid the allotted \$15,000.00 to the homeowner. Mr. Bailey seconded the motion, and with all members voting favorably, the motion carried.

Mr. McAlister informed the Commission that he has ended his Terri program with the State effective July 16, 2007, and this will be the last board meeting he will be attending.

Adjournment

There being no further business, the business meeting for June 13, 2007 concluded at 11.35 a.m.

The next scheduled board meeting will be held on August 8, 2007, at 10:00 a.m. Synergy Business Park, Kingstree Building, Room 111. (Note: Subject to Change)

Hearings

Mr. Williams called the hearings to order. Mr. James Saxon was the hearing advisor.

Approve Recommendations of Administrative Hearing Officer, John Curl for Administrative Hearing

Peter Spano – This matter was heard before John Curl, Administrative Hearing Officer, on January 30, 2007. Mr. Curl's recommendation was as follows:

1. The Respondent pay a fine of Ten Thousand (\$10,000.00) 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 or licensed.
2. The Respondent's registration as a residential specialty contractor in all categories be, and it hereby is, revoked. The Respondent is directed to return his pocket card to the Commission's offices within seven (7) days of the service of this order upon him.
3. If the Respondent reapplies in the future for licensure, he must appear before the Commission, and answer to the Commission for his incompetence and misconduct in this matter. At that time, the Respondent shall appear before the Commission and present, among other matters, evidence satisfactory to the Commission, in its discretion, regarding the Respondent's fitness and qualifications to be registered as a residential specialty contractor in this state. At that time, the Commission, in its discretion, may deny licensure, require passage of an examination, among other requirements, or impose such additional terms and conditions upon the Respondent's registration as it may deem appropriate.
4. A Cease and Desist Order is hereby issued to the Respondent, pursuant to S.C.Code Ann. 40-59-10, requiring the Respondent to cease and desist from engaging in the practice of residential home building and residential specialty contracting.
5. This order is to take effect immediately.

**South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Page 7 of 11**

Mr. W. Christopher Castro, Esquire, represented Mr. Spano in this matter. Mr. Castro informed the Commission that paragraph two of the Hearing Officer's Recommendations, Conclusion of Law section states that Peter Spano did violate S.C. Code Ann. Sections 40-59-240(c), and 40-1-110(d), (f), and (g) in that he "failed to comply with local permitting laws, used a fraudulent statement in a document connected with the practice of the profession, committed a dishonorable act that was likely to deceive the public, and lacks the professional or ethical competence to practice.

Mr. Spano did not fail to comply with local permitting laws. Mr. Spano was contacted by Mike Antonaides of TCS Construction, Inc. to perform some work at the Schweiger residence. Mike Antonaides applied for and received the initial construction permit for the addition onto the home of Phyllis and Ron Schwiger. At all times during the period in question Peter Spano has held, and continues to hold, a residential specialty contractors license for heating, and air conditioning (HVAC). According to Robert Cox of the Georgetown County Department of Planning and Development, a blanket permit obtained by the general contractor covers all work done on a job by the individually licensed specialty contractors. Because Mr. Spano was licensed as a specialty contractor, the work performed by Peter Spano only required that he sign the "check off" sheet on the originally issued building permit. Peter Spano did sign the "check off" sheet for the work that he and his crew performed.

Peter Spano did initially install internal parts inside the existing heat pump at the Schweiger residence. Mr. Spano was called back to the Schweiger residence because of a diagnosed lightning strike to the existing equipment. At that time, Mr. Spano plainly indicated, both verbally and in writing, that he would be installing a Carrier Payne 3.5 ton heat pump to replace the malfunctioning equipment. Mr. Spano did install the equipment that he stated would be installed.

Peter Spano did not commit any acts during this process that were dishonorable, unethical, or unprofessional. Mr. Spano specifically informed the Schweigers that they would be receiving a Carrier Payne 3.5 ton unit and indicated this fact on his service order/invoice. Mr. Spano did install a Carrier Payne 3.5 ton unit at the Schwiger home. Mr. Spano replaced a faulty Carrier Payne 3.5 ton unit at the Schweiger home. Mr. Spano replaced a faulty Carrier Payne unit with an identical Carrier Payne unit.

Peter Spano did install a smaller sized air handler unit in the Schweiger home due to the small attic opening and the insistence of the homeowner. Because the attic opening at the Schweiger household was only 20.5" x 24", a larger air handler would not fit through the opening. After consulting with Mr. Schweiger and informing him of these facts, Mr. Schweiger affirmatively stated that he did not want a larger sized opening cut into his attic. At this time, Peter Spano contacted the Carrier corporation technical helpline for advice on the installation. The Carrier personnel informed Mr. Spano that, under the confines of the Schweiger attic, the installation would work if he changed the size of the orifice and increased the fan speed to the "maximum" setting. Mr. Spano followed the

**South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Page 8 of 11**

advice dispensed by the Carrier technical helpline.

Chapter 14, Section M1401.3 of the International Residential Building Codes states as follows: "Sizing – heating and cooling equipment shall be sized based on building loads calculated in accordance with ACCA Manual J or other approved heating and cooling calculation methodologies."

By consulting with the Carrier Corporation technical helpline Peter Spano did in fact comply with building code requirements by seeking an "other approved heating and cooling calculation methodology." Mr. Schweiger did not want a larger opening cut into his ceiling. In fact, Mr. Schweiger was adamant in his refusal to allow Mr. Spano to cut a larger opening in his ceiling. Given these two limitations, Mr. Spano did in fact attempt to comply with building code regulations by modifying the orifice and fan speed settings as recommended by Carrier Corporation.

Mr. Castro respectfully requests that the board vacate the recommendations promulgated at the January 30, 2007 hearing and reinstate Peter Spano to active status as a residential specialty HVAC contractor.

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

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

After receiving advice from counsel it was determined that Mr. Spano has violated S.C. Code Ann 40-59-240(c), 40-1-110(d), (f), and (g) in that he failed to comply with local permitting laws, used a fraudulent statement in a document connected with the practice of the profession, committed a dishonorable, unethical or unprofessional act that was likely to deceive, defraud, or harm the public, and lacks the professional or ethical competence to practice, as evidenced by his misconduct in making misrepresentations about the brand and sizes of equipment to be installed, failing to obtain the required local work permit, and violating the building code requirement regarding the capacity of the HVAC unit needed for the home.

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

Motion: Mr. Davis moved to approve John Curl's, Administrative Hearing Officer's Recommendation for Peter Spano with the following modifications. Mr. Roberts seconded the motion, and with all members present voting favorably, the motion carried.

1. The Respondent pay a fine of Eight Thousand (\$8,000.00) Dollars. This fine

South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Page 9 of 11

shall not be deemed paid until received by the Commission. Failure to pay the fine shall prevent the Respondent from being re-registered or licensed.

2. The Respondent's license shall be in a probationary status for two (2) years. Should the Respondent be found in violation of any provisions of the practice act or the Commission's regulations, it could result in his license being suspended.
3. This Order is to take effect immediately.

Stephen McAnualty - This matter came before John Curl, Administrative Hearing Officer, on April 12, 2007. Mr. Curl's recommendation was as follows

1. The Respondent shall have thirty (30) days from the service of this Order upon him to conform to the areas in question to applicable building codes and standards, as verified and deemed satisfactory by a representative of the Commission. The Respondent must verify the timely completion of all work with the Commission, and compliance with the Order shall not be deemed complete until the Commission receives such verification. The homeowner shall provide reasonable access to the residence during normal working hours, and at other mutually-convenient times as may be necessary for the purpose of completing all work in a timely manner. The Respondent must notify the Commission should the homeowner fail to allow reasonable access to the residence.
2. If the areas in question are not brought into compliance with applicable building codes and standards within thirty (30) days from the service of this Order upon the Respondent his license to engage in the practice of residential home building shall be automatically and immediately suspended.
3. The Respondent shall pay a fine of Fifteen Hundred Dollars (\$1,500.00). Should he satisfactorily meet the requirements of paragraph one of this section, this fine shall be reduced to Five Hundred Dollars (\$500.00). This fine shall not be deemed paid until the Commission receives it. Failure to pay this fine shall result in the Respondents license being automatically and immediately suspended.
4. This Order is to take effect upon its service upon the Respondent or his counsel.

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

Motion: Mr. Bailey moved to approve Mr. Curl, Administrative Hearing Officers Recommendation for Stephen McAnalty. Mr. Davis seconded the motion, and with all members voting favorably, the motion carried.

Larry Blizzard – This matter was heard before John Curl, Administrative Hearing Officer, on April 12, 2007. Mr. Curl's recommendation was as follows:

**South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Page 10 of 11**

1. The Respondent shall pay a fine of One Thousand Dollars (\$1,000.00). This fine shall not be deemed paid until the Commission receives it. Failure to pay this fine shall result in the Respondent's license being automatically and immediately suspended.
2. The Respondent's license to engage in the practice of residential home building shall be automatically and immediately suspended until such time as he pays the judgment against him in full or reaches a legally-binding settlement agreement concerning the judgment.

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

Motion: Mr. Bailey moved to approve Mr. Curl, Administrative Hearing Officer's Recommendation for Larry Blizzard. Mr. Davis seconded the motion, and with all members voting favorably, the motion carried.

Larry Jackson – This matter was heard before John Curl, Administrative Hearing Officer, on April 17, 2007. Mr. Curl's recommendation was as follows:

1. The Respondent shall pay a fine of Ten Thousand (\$10,000.00) 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. However, the fine will be reduced to \$1,000.00 if the Respondent provides proof to the Administrator of the Commission, satisfactory to the Administrator, that he has repaid the homeowner the \$5,200.00 paid by the homeowner.
2. The Respondent's registration as a residential specialty contractor be, and it hereby is, revoked. The Respondent is directed to return his pocket card to the Commission office within seven (7) days of the service of this order upon him.
3. If the Respondent reapplies in the future for licensure, he must appear before the Commission, and answer to the Commission for his incompetence and misconduct in this matter. At that time, the Respondent shall appear before the Commission and present, among other matters, evidence satisfactory to the Commission, in its discretion, regarding the Respondents fitness and qualifications to be registered as a residential specialty contractor in this state. At that time, the Commission, in its discretion, may deny licensure, require passage of an examination, among other requirements, or impose such additional terms and conditions upon the Respondents registration as it may deem appropriate.
4. A Cease and Desist Order is hereby issued to the Respondent, pursuant to S.C. Code Ann. 40-59-100, requiring the Respondent to cease and desist from engaging in the practice of residential home building and residential specialty contracting.

**South Carolina Residential Builders Commission
Board Meeting Minutes, Wednesday, June 13, 2007
Page 11 of 11**

5. This order is to take effect upon service of this order upon the Respondent.

Ms. Bell informed the Commission that Mr. Jackson was registered by the Commission to engage in the business of residential specialty contracting. His registration is limited to the categories of carpentry, painting/wallpaper, and floor covering.

Mr. Jackson entered into a contract, on January 17, 2006, to improve the residence, including adding a complete room addition. The scope of the work clearly exceeded the scope of his residential specialty registration. Mr. Jackson collected \$5,200.00 from the homeowner under the contract in two payments of \$1,700.00 in cash and, on January 17, 2006, and \$3,500.00 by check, dated January 13, 2006, and has not returned the money to the homeowner. Mr. Jackson wrote the homeowner a letter, dated February 5, 2006, in which he admitted owing the homeowner the funds advanced, that he could not perform the job, and asked for additional time in which to pay back the funds owed. The homeowner by letter, dated February 13 2006, demanded the return of the funds which had been advanced. The project was eventually completed by other builders.

Mr. Jackson entered into a \$13,200.00 contract in this case, which exceeded the \$5,000.00 limit for specialty contractors without a bond approved by the Commission.

Mr. Jackson informed the Commission that he had his leg amputated and was not able to return to work and requested that the Commission consider a reduction of the fine.

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

Motion: Mr. Clark moved to approve Mr. Curl, Administrative Hearing Officer's Recommendation for Larry Jackson. Mr. Davis seconded the motion, and with all members voting favorably, the motion carried.

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