

South Carolina Department of Labor, Licensing and Regulation

Contractors' Licensing Board
110 Centerview Drive, Room 201-03, Columbia, S.C.
10:00 A.M.
Minutes of April 26, 2007, Quarterly Board Meeting

BOARD MEMBERS PRESENT:

Lewis Caswell, Chairman
Kim Lineberger, Vice Chairman
Daniel Lehman
Frank Walker
Bill Neely
Mark Plyler
Douglas Greer

ABSENT MEMBERS:

Wendi Nance

BOARD STAFF PRESENT:

Richard Wilson, Esq., Deputy General Counsel
Michael Anderson, Administrator
Gary Wiggins, Program Manager, CHACS Section
Stan Bowen, Chief Investigator, OIE
Andrew Dempsey, Investigator
Joyce Thurber, Program Coordinator
Christa Bell, Esq., Staff Counsel
James Saxon, Esq., Hearing Attorney
Byron Ray, Alarm Business Licensing Coordinator

OTHERS PRESENT:

Senator Jim Richie, representing Contractor Resource
Howell and Joan Clyborne, Contractor Resource
Randy Morris, Procurement for SCANA Strategic Sourcing
Belton T. Zeigler, Esq. of Haynsworth, Sinkler, Boyd, P.A. (SCANA Counsel)
Keith Morris, Applicant Credential Review
Jenny Hunnicut, Esq. representing Desimone Construction
Steve Desimone, Desimone Construction
Mr. and Mrs. Scot Oakes, Preferred Aire, Inc.
Gary Mason, Service License Manager, Home Depot

Where action is recorded below, it is taken in each case on a motion duly made, seconded and carried unanimously unless indicated otherwise.

Call to Order:

Chairman Lewis Caswell called the meeting to order at 10:01 A.M. with a quorum of members present.

Mr. Caswell stated that the Notice and Agenda for the April 26, 2007 meeting was posted and forwarded in accordance with Section 30-4-80 of the South Carolina Code of Laws, (1976, as amended), relating to the Freedom of Information Act.

Vote of Absent Board Members:

Public Member Wendi Nance had a scheduling problem because the board meeting date was changed from April 19 to April 26, 2007.

Motion: Mr. Greer moved to excuse the absence of Wendi Nance. The motion was seconded by Ms. Lineberger and passed.

Approval of Agenda:

Upon review of the Agenda previously sent to all members, a motion was made.

Motion: Ms. Lineberger moved to approve the Agenda of April 26, 2007. The motion was seconded by Mr. Greer and passed.

Approval of the January 18, 2007, Quarterly Board Meeting Minutes:

The minutes were discussed as previously sent to board members for review.

Motion: Mr. Neely moved to approve the minutes as printed. The motion was seconded by Ms. Lineberger and passed.

Public Comment: None

Chairman's Remarks: Mr. Caswell recognized Senator Jim Richie from Spartanburg in attendance. He thanked Gary Wiggins for his advice and work in assisting staff during the transition period between administrators, Ronald E. Galloway, who retired in November 2006, and new administrator, Michael S. Anderson, who was hired in March 2007. Mr. Wiggins stated that he has known Michael Anderson for more than twenty years and thinks he will do a fine job for the Board. Michael S. Anderson was recognized and welcomed as the new Contractors' Licensing Board Administrator. Mr. Anderson was formerly the Chief Investigator for the Contractors' Board and several other boards in the Office of Investigation and Enforcement.

Administrator's Remarks:

(1) Mr. Anderson introduced new licensing employee, Byron Ray, replacing Patti Mucklevaney, who retired in June, 2006. He will be coordinating the Burglar/Fire Alarm and Fire Sprinkler licensing programs.

(2) Stan Bowen, a veteran Contractors' Licensing Board investigator, replaced Michael Anderson as the Chief Investigator in the Office of Investigation and Enforcement.

(3) Mr. Anderson commented that the Board has had a number of licensing and compliance issues with those applying and licensed by the Grandfather (GF) provision, pursuant to the S.C. Code of Laws Section 40-11-290 and S.C. Code of Regulations Section 29-2. The provision was implemented April 1, 1999, and after ten years, many applicants do not have the documentation required to show what work was performed during years 1997 through 1999. There have also been numerous compliance complaints against those GF licensees for substandard work and exceeding license classifications and limitations.

Those qualified to apply, have been given ten years to obtain the Grandfather license, allowing them to be approved for Group 1 (\$30,000) projects for general contractors and Group 1 (\$17,500) projects for mechanical contractors supplying experience in lieu of a technical examination. Section 40-11-230(A)(3) states that 'an applicant who has not been certified as a qualifying party for four or more consecutive years must take and pass the technical or Code of Laws examination or both, as required by the Board'. Therefore, based on this statute, Mr. Anderson and Mr. Wiggins have administratively discontinued the issuance of the Grandfather license as of January 1, 2007. No further action was taken.

(4) Wes Williams, president of Skyline Roofing, has raised an issue regarding the bumper stickers issued by the City of Columbia for General and Mechanical contractors. The numbers on the stickers are G- # and M-#, which in his opinion are somewhat misleading to the public because the numbers are so similar to the General and Mechanical license numbers of the Board. The bumper sticker just indicates that a business license has been obtained from the City of Columbia. After discussion, Rick Wilson, deputy general counsel, will check into this issue for the Board.

New Business:

(1) Approval of IRC Recommendations for January 11, (No February IRC), March 1 and April 5, 2007:

The January 11, 2007, IRC Report was reviewed as previously sent to members. There being no discussion, a motion was made.

Motion: Mr. Greer moved to approve the January 11, 2007, IRC Report and Recommendations. The motion was seconded by Mr. Lehman and passed.

The March 1, 2007, IRC Report was reviewed as previously sent to members and questions answered by the assigned investigator.

Motion: Mr. Walker moved to approve the March 1, 2007, IRC Report and Recommendations. The motion was seconded by Ms. Lineberger and passed.

The April 5, 2007, IRC Report was reviewed as previously sent to members. The date of the report was corrected from April 9 to April 5, 2007. The request to make the change will be forwarded to the OIE staff person in charge of the report preparation.

Motion: Mr. Lehman moved to approved the April 5, 2007 upon the correction of the date. The motion was seconded by Mr. Greer and passed.

(2) Experience Reviews:

• Wyman Abstance:

Mr. Neely had previously reviewed the experience of Wyman Abstance, but wanted the full board to review and advise. Following a general discussion of the work listed, a motion was made.

Motion: Mr. Neely moved to disapprove the experience of Wyman Abstance due to his experience being almost solely residential and not commercial. The motion was seconded by Mr. Plyler and passed.

• Matthew Early:

Matthew Early of Myrtle Beach could not be present to present his experience to the Board. Mr. Caswell was sent his request for review of his six years of HVAC /R technician experience primarily with the USAF from 1996-1999, but in 2002 entered another field and could not provide experience within the last five years. Mr. Caswell presented the experience resume to the board with the recommendation that it was insufficient in commercial work. Following a discussion, a motion was made.

Motion: Mr. Walker made a motion to not approve the experience of Matthew Early because of inadequate commercial experience. The motion was amended to suggest he apply to the S.C. Residential Builders Commission for licensure. The amended motion was seconded by Ms. Lineberger and passed

(3) American Contractors Exam Services and Jason Ward-Stewart:

Jason Ward-Stewart was not present but is an applicant for a PSI examination, which he has failed twice and requested a third sitting. Mr. Anderson briefed the board that Mr. Stewart based his request to take the exam a third time on a flier from American Contractors Exam Services, which stated that if the applicant failed an exam three times in a year, money would be refunded. The last time Mr. Stewart sat for the exam was on January 12, 2007. However, the statute only allows an applicant to take an exam twice in one year. So the complaint is really with American Contractors Exam Services who has a no pass/no pay policy. Following a discussion, a motion was made.

Motion: Ms. Lineberger moved to authorize Mr. Anderson to write American Contractors Exam Services, clarifying the law and send them a copy of the statute. The motion was seconded by Mr. Lehman and passed.

(4) Keith S. Morris requested waiver of the S.C. Alarm exam in lieu of his qualifications:

Mr. Morris, sworn in by the court reporter, stated that he works for Ackerman Security Systems out of Atlanta, Georgia, as the national licensing manager and has been in the alarm industry for 31 years. He has held a NICET IV certificate for twelve years, which requires continuing education and is also licensed in seven other states. He has passed the S.C. Alarm Code of Laws examination with PSI. He also sat on the Florida Alarm Association Board of Directors for six years. Mr. Lehman, Alarm Industry member, asked if he was licensed in North Carolina? He stated that he is licensed in North Carolina and just sat for the license in Tennessee, which requires 16 hours of testing. Mr. Lehman stated that between North

Carolina, Florida and Georgia, with their requirements for testing, his experience would qualify him to waive the S.C. Alarm exam. Further, he stated that the security industry has not embraced reciprocity from state to state, which makes it difficult to get licensed in other states without testing in each state. **Motion: Mr. Lehman recommended that the board accept the experience of Keith S. Morris in lieu of the S.C. Burglar Alarm examination. The motion was seconded by Mr. Walker and passed.**

(5) Board clarification of 40-11-420 "Who acquires building permit for licensed entity", letter from Peter Nomikos, Mauldin Building and Zoning Director, Mauldin, S.C.:

Mr. Nomikos had written a letter asking, "Could a third party not associated with a license pull the permit?" The verbiage in the Contractors' statute varies from the verbiage in Chapter 1 of the Building Codes statute, covering permitting. Poinsett Homes LLC hired a third party to handle all administrative functions for them. The party is not operating as a construction manager, but is performing administrative tasks such as obtaining all business and professional licenses, and pulling the permits for them. Mr. Caswell suggested that the third party, Contractor Resources, as an agent for the contractor performing administrative services, be given a notarized letter of "Agency", authorizing them to pull permits for the contractor. Senator Jim Richie, representing Contractor Resources, spoke to confirm that Contractor Resources does have letters from all their clients stating that they are authorized to act as "Agent" for that contractor. Mr. Richie offered the letters for review should the Board have questions. The Board accepted the information and thanked Senator Richie and Contractor Resources for coming.

Chairman Caswell suggested that a letter of information be sent to all city and county jurisdictions clarifying the issue stating that a letter of "Agency" would be appropriate in such cases. Mr. Anderson commented that he and Mr. Wiggins had been reviewing the Contractors' statute for clean-up changes and will take the information under advisement for changes at the next submission to the legislature.

(6) Policy of Required Examinations As Prescribed by the Board:

Mr. Anderson presented the Board with a written policy of what examinations are to be prescribed by the Board. Mr. Lehman asked that the statement at the end of the written policy be taken off because it is confusing. Following a discussion, a motion was made.

Motion: Mr. Lehman made a motion to accept the Policy of Required Examination as Prescribed by the Board with the noted clarification. The motion was seconded by Mr. Greer and passed.

The Policy was corrected and will be forwarded to the Chairman for signature and attached to the Minutes.

(7) Interpretation of 40-11-260 (A) "Bids and job not to exceed \$___ per job":

Belton T. Zeigler, Esquire, was present on behalf of South Carolina Electric & Gas (SCE&G) to comment on how to interpret the S.C. Code Ann. 40-11-260 when companies use a Request for Proposal (RFP) process to pre-qualify contractors for future jobs, and in this case for a directional drilling work. On a recent bid for directional drilling work, a protest was lodged because a contractor believed that the winning bidders should be disqualified because the total cost of the work is above the winning bidder's project limitation as a licensed S.C. Contractor. He further explained the process of how the RFP was awarded.

Every two or three years, SCE&G sends a RFP to certain contractors asking them to provide their costs and other terms for future jobs. The contractors are selected on their technical qualification and experience and past performance as it relates to the type of work in question. No specific jobs or projects are listed. Contractors, however, are asked to quote prices to do future work on a "per job" and a "per hour" basis. When the need arises for specific work requested under RFP, job-specific specification and drawings will be provided to the selected contractor and the contractor will accept or decline the work. If accepted, the contractor will be paid on the basis of the individual job performed. He concluded by asking the Board to consider the interpretation of 40-11-260 (A), using the RFP process and a contractor is selected from a pre-qualified pool of contractors. Only when a contractor is selected for a particular job should the project limitation come into play. Otherwise, he continued, many small businesses,

minority businesses and small disadvantaged business entities would be excluded from work, whom SCE&G now utilizes.

Mr. Randy Morris, Procurement for SCANA Strategic Sourcing, was sworn to testify. He assured the Board that SCE&G complies with hiring only those contractors that meet the State's licensing requirement in both classification and project limitation as part of the RFP. Mr. Morris responded to questions of the board and stated that at least a Group 1 license is required. Any project exceeding \$100,000 would be bid separately. The RFP does not grant anyone a contract. Mr. Caswell also pointed out that an RFP without a contract number is not a contract.

Mr. Caswell commented that the Board needs to give Mr. Anderson and the staff guidance as to what position the Board has taken on the item of an RFP versus a contract. Therefore, a motion was made. **Motion: Frank Walker moved that the Board adopt a policy that would require the contractor that is selected for specific work or a specific portion of the RFP to meet the licensing requirements and group limitations for that job and remain within the parameters of the law for each work order held as a separate job or contract and not the entire RFP. The motion was seconded by Ms. Lineberger and passed.**

A policy will be approved by the Board at the next board meeting and attached to the minutes.

(8) Board Position on Senator's Thomas' Proposed Senate Bill S0525 Amending 40-11-20 Definitions: Senate Bill S.0525 amends Section 40-11-20, South Carolina Code of Laws (1976, as amended), so as to revise existing definitions and add new definitions relating to General and Mechanical Contracting. Following a general discussion of the proposed bill, a motion was made. Mike Anderson brought up the wording in the definition of "Mechanical Contractor", in which some questions had been previously raised. Following a discussion, a motion was made to state the Board's position regarding the Bill. **Motion: Mr. Walker moved to support Senate Bill S0525 as printed. The motion was seconded by Ms. Lineberger and passed.**

(9) Discussion on a Policy for "what work the Electrical Contractor can perform on primary underground conduit".

A & G Electrical Contractors, Inc. had written to Mr. Wiggins requesting advisement on what work an electrical contractor can perform on trenching and laying primary underground conduit with no wiring or power. Representatives from SCE&G had also requested clarification on what work can be performed by high voltage versus low voltage utility contractors. There has been some confusion on cable and terminations work. Electrical member Frank Walker advised that if the work involves terminations over \$5,000, a general contractor electrical utility license is required. An electrical license is required for all overhead electrical wiring on public rights-of-way and underground electrical distribution systems of less than six hundred volts serving private properties.

Motion: Mr. Greer moved that contractors trenching and laying primary underground conduit must comply with the S.C. Code of Laws, Sections 40-11-410 (4) (n) Public Electrical Utility and (5) (d) Electrical license classifications and hold the proper license to accomplish that work. The motion was seconded by Ms. Lineberger and passed.

The hearing recessed to allow James Sexton, Hearing Attorney, to be called for the Final Order Hearings. Back in session, the hearing was resumed by a consensus vote.

Vote on Administrative Hearing Officer Recommendations:

- (1) 2005-0106 CLB vs Steve Desimone dba Desimone Construction, Respondents,
License # CLG 15536:

At the Final Order Hearing, the State was represented by Christa Bell, Esquire, assistant general counsel. The Respondent, Steve Desimone, of Desimone Construction, was present and was represented by Jenny Hunnicut, Esquire. Joe Chandler was Hearing Officer for the Administrative Hearing, but was not present. Mr. Desimone testified on his own behalf. The Homeowner and Investigator Chas Nicholson testified for the State.

Mrs. Bell presented the Hearing Officer's Report and Recommendation from the Administrative Hearing held December 13, 2006. The issue stemmed from alleged substandard flashing work which had allowed water to penetrate the wall where it connected with the rear deck at the second level of the residence.

RECOMMENDATION: Based on the Findings of Fact and Conclusions of Law, the Hearing Officer recommended that no evidence was put forth showing that the Respondent was responsible for the substandard work and recommended that the Complaint be dismissed.

The State's position is that the Hearing Officer's Recommendation should be reconsidered because of the time line of construction and the Certificate of Occupancy being issued three weeks after the Respondent was pulled off the job. The Respondent testified that he did not install the flashing, the deck or the HVAC unit. Ms. Hunnicut represented the Respondent, stating that the requested stamped design flashing plans had never been given to the Respondent and he had shown concern over that matter. She asked that the Hearing Officer's recommendation be accepted.

Motion: Mr. Lehman moved to accept the Hearing Officer's Recommendation to dismiss the Complaint against Steve Desimone and Desimone Construction. Mr. Greer seconded the motion and it was passed. Transcripts are available in the board office for a limited time period.

(2) 2005-0096 CLB vs Scot Oakes dba Preferred Aire, Inc., Respondents,
License # CLM 103977:

At the Final Order Hearing, the State was represented by Christa Bell, Esquire, assistant general counsel. The Respondent, Scot Oakes of Preferred Aire, Inc., was present and represented himself. Dan Lehman was the Hearing Officer for the Administrative Hearing and recused himself from the board decision on the Recommendation. Scot Oakes was sworn and testified on his own behalf.

Mrs. Bell presented the Hearing Officer's Report and Recommendation from the Administrative Hearing held on November 21, 2006. The charges stemmed from the installation of an American Standard heat pump and air handler unit rather than a Trane 12 SEER air handler and heat pump unit as specified in the contract at the residence of Adam McClusky, Complainant, at 23 Oyster Reef Drive, Hilton Head Island, South Carolina. When the correct unit was reinstalled, the homeowners were unable to be present to pay for the unit as stipulated in the contract. The Respondent removed the unit causing alleged damage to the home.

Mrs. Bell stated that the State takes no position on the matter.

RECOMMENDATION: Based upon the evidence, Findings of Fact and Conclusions of Law, the Hearing Officer recommended that the Respondent be issued a Letter of Caution stating that the Respondent should not make changes or substitutions in his contracts without first notifying the customer and obtaining their approval. He further recommended that no costs for the investigation or hearing be imposed because had the matter been more fully investigated, it would have been handled by the Investigative Review Committee and possibly never brought to a hearing.

Motion: After consideration of the Recommendation, a motion was made by Mr. Greer to accept the Hearing Officer's findings and support and affirm the Recommendation. The motion was seconded by Mr. Plyler and passed. Transcripts are available in the board office for a limited time.

(3) 2005-0229 CLB vs McCar Homes, Respondent
License # CLG 108454:

At the Final Order Hearing Christa Bell, assistant general counsel, represented the State. The Respondent, McCar Homes formerly represented by Tom Carroll, Vice President, was not present and was not represented by legal counsel. Dan Lehman was the Hearing Officer and recused himself from the board decision on the Recommendation.

Ms. Bell presented the Hearing Officer's Report and Recommendation from the Administrative Hearing held on January 23, 2007 where the Respondent was charged with substandard work, failure to provide pertinent records and documents as requested by the department and failure to comply with a directive of the board.

RECOMMENDATION: Based on the Findings of Fact and Conclusions of Law, the Hearing Officer recommended the following:

- (1) The Respondent shall pay a fine of \$1,000.00 with thirty days of the date of the final order; failure to pay would result in suspension of the Respondent's license until such time as the fine is paid;
- (2) The Respondent shall repair within thirty days of the final order, the two remaining painting items in the Complaint and verify the timely completion of the work with the department investigator; the department is to be notified if the homeowners fail to allow reasonable access to the home;
- (3) The Respondent's license shall be placed in a probationary status for a period of twelve month from the date of the final order. Any further violations of the practice act could result in the temporary suspension of the Respondent's license until further hearing and order of the Board;
- (4) Failure by the Respondent to comply with any of the terms and conditions of the final order in this matter shall result in the temporary suspension of the Respondent's license.

Ms. Bell presented a letter from the Respondent's attorney, Cecil H. Nelson, Jr., Esquire, requesting that the fine be reduced to \$500.00 and the probationary period be reduced to six months. Following a discussion, a motion was made.

Motion: Mr. Neely moved that the Hearing Officer's Recommendation be approved. The motion was seconded by Ms. Lineberger and passed. Transcripts are available in the board office for a limited time.

The hearing was adjourned by motion of Mr. Greer, seconded by Mr. Plyler and passed.

The next regularly scheduled board meeting will be held on Thursday, July 19, 2007 at 10:00 A.M. in Room 201-03 of the Synergy Business Park, Kingstree Building, 110 Centerview Drive, Columbia, South Carolina. There being no further business, the board meeting was adjourned at 12:15 P.M.

Respectively submitted,



Michael S. Anderson, Administration