

**MINUTES
OF THE COLLIER COUNTY
CONTRACTORS' LICENSING BOARD**

December 20, 2017
Naples, Florida

LET IT BE REMEMBERED that the Collier County Contractors' Licensing Board, having conducted business herein, met on this date at 9:00 AM in **REGULAR SESSION** in Administrative Building "F," 3rd Floor, Collier County Government Complex, Naples, Florida, with the following Members present:

Chairman: Richard Joslin

Vice Chair: Michael Boyd

Members: Kyle Lantz
Terry Jerulle
Matthew Nolton
Patrick White

Excused: Robert Meister

ALSO PRESENT:

Everildo Ybaceta – Supervisor, Contractors' Licensing Office
Kevin Noell, Esq. – Assistant Collier County Attorney
Jed Schenck, Esq. – Attorney for the Contractors' Licensing Board
Jack Gumph – Licensing Compliance Officer
Gary McNally – Citizen Observer

Any person who decides to appeal a decision of this Board will need a record of the proceedings and may need to ensure that a verbatim record of said proceedings is made, which record includes the testimony and evidence upon which any Appeal is to be made.

I. ROLL CALL:

Chairman Richard Joslin opened the meeting at 9:10 AM and read the procedures to be followed to appeal a decision of the Board.

Roll Call was taken; a quorum was established; **five (5) voting members** were present.

II. AGENDA- ADDITIONS OR DELETIONS:

Deletion:

Under **Item VIII** – “*New Business*,” the County **WITHDREW** the following case:

- “D. Steven A. Grillo – Contesting Citation #11067”

The case will be **CONTINUED** to a later date.

III. APPROVAL OF AGENDA:

Patrick White moved to approve the Agenda as amended. Matthew Nolton offered a Second in support of the motion. Carried unanimously, 5 – 0.

(9:13 AM – Kyle Lantz arrived. Quorum was changed to six [6] voting members.)

IV. APPROVAL OF MINUTES – SEPTEMBER 8, 2017 AND OCTOBER 18, 2017:

A. September 8, 2017 – Emergency Minutes

Correction:

- **Vice Chairman Michael Boyd** noted he attended the Emergency Meeting. His status was changed from “Excused” to “**Present.**”

Patrick White moved to approve the Minutes of the September 8, 2017 Emergency Meeting as amended. Kyle Lantz offered a Second in support of the motion. Carried unanimously, 6 – 0.

B. October 18, 2017

Kyle Lantz moved to approve the Minutes of the October 18, 2017 meeting as submitted. Matthew Nolton offered a Second in support of the motion. Carried unanimously, 6 – 0.

Chairman Joslin noted the Board was to have met to dismiss the Emergency Meeting prior to the expiration of the temporary licenses.

Everildo Ybaceta, Supervisor – Contractors’ Licensing Office, confirmed the 90-day period expired on November 4, 2017.

V. **PUBLIC COMMENT:**
(None)

VI. **DISCUSSION:**

A. **Election of Officers for 2018**

Chairman Richard Joslin opened the Floor for nominations.

Kyle Lantz nominated Michael Boyd to serve as Chairman of the Contractors' Licensing Board for 2018. Patrick White offered a Second in support of the motion. Mr. Boyd accepted the nomination. Motion was carried unanimously, 5 – 0. Mr. Boyd abstained from voting.

Matthew Nolton nominated Kyle Lantz to serve as Vice Chair of the Contractors' Licensing Board for 2018. Terry Jerulle offered a Second in support of the motion. Mr. Lantz accepted the nomination. Motion was carried unanimously, 5 – 0. Mr. Lantz abstained from voting.

Chairman Joslin closed the Floor.

The Chairman and Vice Chair will assume their offices on January 17, 2018.

VII. **REPORTS:**

A. **Temporary Licenses issued after Hurricane Irma**

Chairman Joslin noted numerous contractors had registered for temporary licenses in the wake of Hurricane Irma. The majority were for tree removal (105) and landscaping (79).

The Board had been provided a list of the contractors, their licenses, the type of license granted, the company name and the qualifier for each company.

Chairman Joslin stated it would have been helpful to know where each contractor was from, i.e., their home state. He asked if the contractors were still working in Collier County.

Everildo Ybaceta, Supervisor - Contractors' Licensing Board Office, responded, "No, they are not."

Kyle Lantz noted seven tree removal contractors did not have qualifiers listed. He asked if this was a typographical error

Everildo Ybaceta replied the information may not have been available at the time due to the volume of temporary licenses being issued.

Kyle Lantz: Overall, how did the process work? Not specifically, what did you do. I mean, but "good" or "bad." Were there things that you would do differently?

Everildo Ybaceta: There were some shortfalls that we encountered along the way. We will capture more information the next time around – if there is a next time. We are in the process of putting together a strategy for future hurricane emergency plans.

Patrick White asked if the Board would be informed of the strategy and changes to the current plan and the response was, “Yes, sir.”

Terry Jerulle asked if the County was preparing to put more people in the field.

Everildo Ybaceta stated he was interviewing candidates with the goal of adding two more Licensing Compliance officers. “More boots on the ground.”

Terry Jerulle clarified -- he asked if there would be more people in the field on a temporary basis during an emergency. He stated in his neighborhood he chased away several dozen potentially unlicensed individuals trying to do work. He continued there would be no way to capture the entire County based on the current staff.

Everildo Ybaceta agreed.

Terry Jerulle further stated he hoped the new emergency plan would include provision to hire additional compliance officers on a temporary basis.

Everildo Ybaceta stated one option being considered was to join forces with Code Enforcement since that department has a larger staff. He will discuss this option with the Director of Code Enforcement to determine how to implement it in the event of another emergency. He clarified this option would be implemented only in the event of an emergency. But two more Licensing Compliance Officers will be hired as permanent staff.

Terry Jerulle agreed with the proposed plan and he noted there were “too many carpetbaggers coming here to try to make money.” He knew of instances in his neighborhood where work was begun, down payments were made, but the homeowners were left with unfinished jobs. He also suggested publicizing options available to homeowners before an anticipated storm. – to inform the residents of Collier County exactly what they should be looking for in a potential contractor before hiring anyone to do work.

Chairman Joslin agreed there have been new stories about this issue, but only after-the-fact.

Terry Jerulle pointed out there are large numbers of part-time residents who live in Collier County for only four or six months during the years and they may not know they should only hire licensed contractors.

It was noted that during an emergency people who were desperate to have repairs made might unwittingly hire an unlicensed contractor – especially if the price was right.

Patrick White stated those were the reasons why he wanted the Board to be informed about the process utilized by the County during the Hurricane Irma emergency and if it worked. He wanted to know if the pre-planning discussed during the emergency meeting held in September were implemented and if they worked, as well as any anticipated follow-up.

Everildo Ybaceta: The process itself worked fairly well. It was difficult to get things started immediately after the event, i.e., Hurricane Irma hit Florida. There were “hiccups” due to the lack of power.

Patrick White agreed there were serious challenges, including staffing – people had problems trying to get to work. He stated his belief was that, under the circumstances, to have managed to license approximately 200 sets of contractors for the most critical type of immediate needs – post event – that the County’s service was admirable. He hoped the community would understand the extreme effort made by Staff. He further stated he knew many individuals committed themselves to go “above and beyond” without any expectation of acknowledgement. He extended kudos to them.

B. Citations issued after Hurricane Irma

Chairman Joslin noted the number of citations that had been issued. He stated it appeared that Joseph Nourse and Reggie Smith were “beating the doors down.”

Everildo Ybaceta: That was primarily Marco Island and the City of Naples.

Patrick White: Most people would acknowledge those areas were, generally, some of the hardest hit and, therefore, were the places where lawful contracting was needed most – and where most of the unlawful contracting was done. The fact that the data points were highest for those areas makes sense.

Terry Jerulle noted that he saw several names with repeated offenses on the list of Citations that had been issued. He stated if these had been Collier County-licensed contractors – with that many citations, they would have had to come before the board.

Patrick White stated for a 3rd offense, a contractor would be taking to a Judge.

Terry Jerulle further stated some of the contractors were cited three or four times. He asked what would happen if another storm event hit and these same contractors would try to apply for a temporary license.

Everildo Ybaceta: We have compiled a database with their names. We can look up their history and we can determine if we want to issue a license again or not.

Terry Jerulle asked if a contractor had been cited three or four times, would the County would issue a temporary license again in the future?

Everildo Ybaceta: Yes.

Terry Jerulle: I’m not trying to make policy – I am trying to find out what the policy is.

Patrick White: That was the reason for my previous question – can we find out about it before it “hits the books” – so to speak. From my perspective, we should not be rewarding people who scoffed the law but, on the other hand, in order to ...

Everildo Ybaceta: I do have a few names but again – I cannot really discuss ...

Patrick White: That’s fine.

Everildo Ybaceta: I can say I will be no issuing licenses to them. I would like to see them again to see if we can recoup some of the money they took.

Chairman Joslin noted there were several contractors named who had not paid any fines. He asked if any action could be taken against these contractors.

Patrick White stated many of those contractors were to have appeared before the Board at today’s meeting but only one was present. He asked what was the plan for those contractors who were to appear and did not.

Kevin Noell, Assistant County Attorney: I think we touched on this issue a little bit at the last meeting. If a contractor made the decision to contest a Citation and does not appear at the scheduled meeting, the County will consider that they waived their

ability to contest the Citation. Down the road, after three months, the fine will be entered as a lien against their property pursuant to our Ordinance. If someone comes in from out of state and is given a Citation for \$1,000, at what point are we still good stewards of the taxpayers' dollars if we still pursue the collection of a \$1,000 fine if we do asset searches and other things in an attempt to collect? That's just the real-world practicality of what we run into. We do have a process where we are able to send the citations to a collection agency.

Kyle Lantz: We might not get the money, but it will be a ding on their credit.

Chairman Joslin: So what you are saying is to collect the \$1,000 is not worth the time or effort required to track these people and do whatever has to be done legally.

Assistant County Attorney Noell: It depends. It's on a case by case basis. It's not like we want to give them a free pass – we take this very seriously. We look at the options that we have and then we will make a determination.

Kyle Lantz: Of the ten or twenty people who said they were “going to CLB on December 20th” but they are not on our Agenda – does that mean they have paid by now or it is just an oversight or ... what am I missing?

(Mr. Lantz read the names of some of the twelve Contractors who indicated under the “Comments” section that they would attend the December 20th meeting but were not present.)

He again asked if the contractors had paid the fines or if someone forgot to include them on the Agenda.

Patrick White asked if they would appear on the Agenda for the next meeting so that the required process that would lead up to filing lien would take place? In other words, they are given due process – the opportunity to appear and be heard. By failing to do so, is it a Notice problem from the County's perspective or not. In any event, to get to the lien phase, I think they at least must be included on an Agenda – if I understand the process.

Everildo Ybaceta concurred and stated he would check into the issue.

Patrick White: We understand it is a dynamic and changing circumstance. We are assuring you that we are not only interested but interested in any way that we can to make it the best and most efficient process possible. We know we're not going to get them all.

(Note: Gary McNally joined the Board's members on the dais as a Citizen Observer. He was not a voting member of the Board.)

VIII. NEW BUSINESS:

A. Orders of the Board:

Patrick White moved to approve authorizing the Chairman to sign the Orders of the Board. Terry Jerulle offered a Second in support of the motion.

Carried unanimously, 6– 0.

(Note: The individuals who testified in the following cases under Item VIII, “New Business,” were first sworn in by the Hearing Reporter who is a Notary Public.)

B. Victoria Maloney – Contesting Citation #10992

(d/b/a “A New Creation Interiors by Victoria, Inc.”)

Citation: #10992

Cited for: *Unlicensed General Contracting*

Date Issued: October 16, 2017

Amount of Fine: \$1,000

Violation:

Engage in the business or act in the capacity of a Contractor, or advertise self or business organization as available to engage in the business or act in the capacity of a Contractor without being duly registered or certified.

Ms. Maloney approached the podium with additional documents that were not part of the information packet previously provided to the Board.

As she began to speak, she was repeatedly cautioned that she must first be sworn in and to speak directly into the microphone.

Chairman Joslin: Ms. Maloney, you are here today because of a Citation that you received.

Victoria Maloney: Yes. I have all the documentation there and I have copies of it. I would like to review that with you. It’s more than what they have [pointing to County Staff.]

Patrick White: I don’t want to interrupt or delay this. In fact, I’d like to conclude this as quickly as possible. In reviewing the packet, I think it would help us all to understand exactly what’s before us for consideration – okay? I understand that she is contesting the Citation. How the case is going to be proven is the concern that I have. If we are going to be asked to look at information today that could have been provided beforehand, I don’t know that it isn’t more appropriate to continue the case to a point in time where we would have the time to look at what she wants us to review.

Chairman Joslin: Agreed.

Patrick White: Ma’am, I don’t know how much you have but there’s no way that I can read through all the information sitting here today and multiply it times six ...

Victoria Maloney: If you could just look at – I have them all numbered – and there are photos of the house and I also have all the text messages from the Contractor who was doing the job. I was not the General Contractor – I never claimed to be the General Contractor – and I have text messages which I believe that you have from Ms. Kamin who has made a false accusation about me. Her complaint to Collier County was that I did not give her an itemized breakdown of all the numbers and that she filed a false complaint against me that was a lie because I had notified her that it was ready for her. And then on the very first email when we started speaking and she asked me to help her in the middle of June of 2017. The first text message that I have on record from her – I have all the text messages here --- “Kathy, I just contacted two of my contractors to see

their availability ...” because I knew all the contractors. Her contractor did not -- she did not know whether he was -- most of these contractors, I want you to know, that 90% of them do not know what they’re doing. Okay? They know how to do ...

Chairman Joslin: Ma’am, I’m going to have to stop you there. You are not here today to explain how many contractors you have or how many contractors you didn’t have. Your violation was because you were contracting out of the scope of what you are qualified to do, number one. We have a contract in front of us that clearly states that you signed the contract for “x” amount of dollars as a General Contractor and you are not licensed to do it.

Victoria Maloney: I was not -- I did not act as a General Contractor.

Chairman Joslin: Did you not sign a contract on August 12, 2017?

Victoria Maloney: I have the Contractor’s license here and I have his emails, text messages, and his cancelled check for he was pulling the permit. So that’s all right here.

Patrick White: Ma’am ...

Victoria Maloney: Can you at least look at this?

Patrick White: ... the scope of services that your General Contractor -- Building Contractor -- was performing under your contract and specifically with the contract that you had with Mr. Pascal, did not include all the types of services that otherwise require licensure to be made ...

May I finish please, Ma’am? Thank you.

... between those contractors and the owner, or the subcontractors as you call them, and the Building Contractor. You were I believe -- and I think the record shows -- and this is why I’m telling you this ... so you understand what the issue is for us. You can give us a lot of information about something else but unless it deals with this issue, it’s not going to change the outcome. We’re not going to be able to do anything about the Citation. So, the Violation, if you will, is the fact that you were acting as if you were the General Contractor by engaging the services of these other subcontractors beyond the scope of what Mr. Pascal was engaged to do. In order to do those things, you need to be a G.C.

Victoria Maloney: I don’t agree with that, okay?

Patrick White: Okay -- then that’s your defense.

Victoria Maloney: I don’t agree with that, okay? I was not acting as a General Contractor because he was pulling the permit for everything -- for the whole job -- he was pulling the permit for the whole job.

Chairman Joslin: Then the contract should have been in his name as the General Contractor. That’s how it should have been. It wasn’t -- it was in your name.

Victoria Maloney: He was pulling the ...

Chairman Joslin: It makes no difference.

Victoria Maloney: He was pulling ...

Chairman Joslin: Ma’am, it makes no difference.

Patrick White: May I, Mr. Chairman? Thank you.

Victoria Maloney: I was not acting as a General Contractor, okay?

Patrick White: Ma’am ...

Victoria Maloney: Her ... her ... umm, the amount of money she had to spend was not enough to cover the project. Brian [Pascal] said that he would help and that he would pull the permit -- he would -- everybody would be working under him. They would be working under him, but I had to go find other people who would work with the numbers

that we had. Another contractor that I spoke to ... his price to me was \$85,000 and it only gave us a \$6,000 budget for the kitchen cabinets. My price alone for the kitchen cabinets was over \$10,000 – just my price alone. Her budget was \$80 to \$85,000. There was no way there was enough money in the budget to do that. I had to go ... and I have cabinet lines that I could have used – but the thing is, I did not use those cabinet lines because they are high end and they would not fit in her budget. I had to go find other cabinet lines that would work, and they would be all wood. We were expanding the kitchen. Brian was overseeing the whole thing. He was – I went over everything with him right from Day One ... from Day One ... and he knew, and he was willing to work, and he was willing to let me talk to some other people ... to bring them in and let them work within the budget. Okay? But I was never ... I was ...

Patrick White: Ma'am, if I may ...

Chairman Joslin: I'm going to have to stop you again, Ma'am. Again, you are telling us that you are acting on the behalf of ... acting as a contractor ... because you are dictating what's going to happen and how much it is going to be and what things are going to be done. As a licensed contractor to perform this job, you need to have a Building Contractor license. You do not ...

Patrick White: You cannot hire ...

Chairman Joslin: ... and that was what the Citation was for.

Patrick White: Ma'am, you cannot ...

Victoria Maloney: Okay, then I should have been advised by Mr. Gumph ... I should have been advised by Mr. Gumph that I was doing something wrong. Okay? Because Mr. Gumph called me in and we talked. We had several ... several meetings – I went through all the plans with him and so if there was a problem, then he should have met with Brian and myself and we should have taken care of it at that time. But I was not given that opportunity. I was not given that opportunity.

Patrick White: Did you sign the contracts with Mr. Pascal and the owner prior to your conversations with Mr. Gumph?

Victoria Maloney: Yes.

Patrick White: Well, okay, so the dye was cast.

Victoria Maloney: Mr. Gumph was going to ... he said ... well ... he was recommending that we work ... that Kathy Kamin work with us ... and he said ... then he said that we were going to take care of that – in other words, he was going to talk to me about that. Now I have no idea ... okay ... I have been in this business ... this is a friend of mine and she is a Pastor ... okay?

(Ms. Maloney turned and pointed to a member of the audience.)

And we have been friends for years. She's known me in this business for over fifteen years, okay? I have never, nor would I *want* to do anything dishonest. Okay? Nor would I want to. And I don't like being accused of something ... of doing something that I did not do when I should have been advised separately and differently. I'm sorry but that's wrong. That's wrong.

Chairman Joslin: Ma'am, we don't run your business. We don't run the license you carry for that business. We expect you to look at the rules, follow the rules, and do them according to what every other Collier County contractor has.

Victoria Maloney: Before ... and

Chairman Joslin: It doesn't take an Investigator to tell you how to run and what to do. That's the bottom line, okay?

Patrick White: It's not their job to advise you.

Chairman Joslin: Not their job to advise you and tell you how to run your business.

Victoria Maloney: I have a hearing problem right now, and when I get upset, it's worse so ...

Chairman Joslin: I'm sorry.

Kyle Lantz: Ma'am, I'm pretty sure you had the best of intent on this and your goal was to help the homeowner get whatever her dream place was.

Victoria Maloney: Yes, her place ...

Kyle Lantz: And to try ...

Victoria Maloney: Her home ...

Kyle Lantz: Can I please talk for a minute?

Victoria Maloney: Can I please give you ... okay.

Kyle Lantz: So I think you had the best of intent that you were trying to get her a better place ...

Victoria Maloney: Okay.

Kyle Lantz: ... and a better budget. I think what you don't understand is – you don't understand the laws in Florida or Collier County, and although you had very good intent, you weren't following the law. It's not the Board's ...

Victoria Maloney: May I say something?

Kyle Lantz: ... or Mr. Gumph's job to teach you the law. That's your job to follow the law.

Victoria Maloney: Okay.

Kyle Lantz: And it's not anybody's ...

Victoria Maloney: I have done ...

Kyle Lantz: ... that you're not following the law and I guess you've been doing it for twenty years, but you know what – it's damned time you got caught because you should have done it right twenty years ago. And you haven't done it right for the last twenty.

Victoria Maloney: Everything's been changed here in Collier County. Okay? Now I haven't done any of these jobs in at least ... more than five to eight years. Okay? So, when I was called in ... she was frustrated, she didn't know what to do, and she was already taken advantaged [of] by another contractor and I told her, "I'm just a designer, but I can help you redesign the space and I know contractors that we can bring in." I said I could talk to them and I could find people we can count on and trust. But I never presented myself as a General Contractor --- not from Day One, never.

Chairman Joslin: You presented a contract to her that she signed, and you signed.

Victoria Maloney: What?

Chairman Joslin: You presented a contract to her that you signed, and she signed.

Victoria Maloney: Yes, the contractor's name ...

Chairman Joslin: That tells me that you are or were acting as a General Contractor.

Victoria Maloney: Her General Contractor was in there ...

Chairman Joslin: Also one of the things, Ms. Maloney, on your letterhead for "A-N-C-I" – A New Creations Interiors – I assume that's you?

Victoria Maloney: What?

Chairman Joslin: Is that you – “A-N-C-I” – contract with Kathy Kamin ... a general remodeling contract ... is that what it says? Is that your contract that you signed?

Victoria Maloney: What?

Patrick White: It’s this document, Ma’am? [Holding it.]

(Ms. Maloney left the podium and approached the dais to retrieve the document from Patrick White.)

Chairman Joslin: Right. There’s a document in our packet that shows the designer as Victoria Maloney. That is your contract, correct?

Victoria Maloney: Yes.

Chairman Joslin: It shows that A New Creation Interiors is your remodeling corporation.

(Ms. Maloney directed off-microphone comments to Patrick White. She was directed to return to the podium.)

Patrick White: We understand that Mr. Pascal’s name was on the contract but as I was trying to explain to you before, regardless of the fact that he was going to pull the permit, not all the work that was being done under this contract requires a permit, number one. Okay? So, the work that doesn’t need a permit and is work that is performed by a subcontractor who was not hired by and as part of your contract with the owner – was not going to be hired by Mr. Pascal – is what is wrong here. That is in violation of law. I don’t know what licensure you may have as an interior designer – whether it’s residential, commercial, whatever – but I don’t believe that it authorizes you to go out and, in a sense, hire specialty trades other than the Building Contractor to perform those other tasks that are listed in this contract. Those are things that only a General Contractor can do. And there are reasons for that.

Victoria Maloney: I’ve been in this industry a long time ...

Patrick White: Yes, Ma’am.

Victoria Maloney: Okay. And obviously things have gotten to be interesting here in, in, ... and I want to present a couple of other things to you if you don’t mind.

Chairman Joslin: I really don’t think we need to see anything else to tell you the truth.

Victoria Maloney: Please, if you don’t mind. *(Searching through her files.)*

Chairman Joslin: I want to change the mode here ... I want to see Mr. Gumph.

Patrick White: I’d be interested in seeing one of the things you’d like us to see – to see if it has any relevance, Ma’am.

(Ms. Maloney left the podium and approached the dais with more documents.)

You need to be at the microphone after you hand it to me to talk to us.

(Ms. Maloney again made off-microphone comments directly to Mr. White.)

Ma’am, you must be at the microphone. If you want to hand it to me and describe what that are – you must be at the podium. We are making a recording – go back to the podium so you are on the microphone, please.

(Ms. Maloney continued her off-microphone comments to Mr. White and then returned to the podium.)

Kyle Lantz: Are you a licensed designer or are you a decorator?

Victoria Maloney: Umm, I have something else here, too.

Patrick White: Could you specifically answer Mr. Lantz’s question?

Victoria Maloney: What is it?

Kyle Lantz: Are you a licensed designer or are you a decorator?

Victoria Maloney: I have all my degrees.

Kyle Lantz: I'm only worried about ...

Victoria Maloney: Please – just wait – please, if you don't mind.

(The proceeding paused as she searched through her files.)

Patrick White: The items that I have reviewed, Mr. Chairman, are called "File #2" and "File #3" – they are a series of photos of the subject residence. I don't know that they have any relevance. If others are interested in seeing the photos, that's fine.

Chairman Joslin: Only photos there?

Patrick White: Those are all I have ...

Victoria Maloney: This is a

(Ms. Maloney again left the podium, approaching the dais, continuing her commentary off-microphone. She was returned to the podium as requested by the Hearing Reporter.)

There are regulations of the State of Florida for the ... I can do this type of work ... and redesign the space as long as I am working under a General Contractor.

Chairman Joslin: Right.

Patrick White: That's absolutely not the issue ...

Chairman Joslin: But you cannot sign a contract as a General Contractor – you cannot sign a contract with anyone. You can go in and help that General Contractor design whatever he likes to do. But you – as a designer – cannot sign the contract because you are not a General Contractor. He can. He can handle all the money. He can pay you as an interior designer, but you can't do that. See, that's where you are missing the boat. What you're saying is -- you did it correctly as far as what was happening, as far as the job got done – you did the interior design correctly because the lady was in trouble.

Victoria Maloney: That's all I did was do the interior design work.

Chairman Joslin: Correct. If the man would have put his contract and his name – Mr. Pascal if he was the General Contractor – then you would have been fine. There would have been no issue. But the problem is that you acted as a General Contractor because you put the contract in your name. That's the only thing you would have done wrong and this wouldn't be here today.

Victoria Maloney: Okay, well ...

Chairman Joslin: Understand the law ... understand how it is ... understand how this Board is going to handle this case because this is what you did wrong. We do not care about how the job came out – we do not care about what happened to the job – who did the job or what subs that's you hired or did not hire. We're concerned that you signed the contract as a General Contractor. Period.

Victoria Maloney: Okay, well ...

Chairman Joslin: And you are not licensed to do that.

Victoria Maloney: Okay. But I did not sign it as ... if that's how this appears, I did not sign it as a General Contractor, nor did I intend to sign as a General Contractor. It says there that – I don't have it with me – but it says there that I was the designer only. And my part was where the designer was going to be doing all that work, and that Brian was going to be the General Contractor. So, if I signed something ... and this is the first problem that I've had in over thirty years ... and I have never had any problems with anybody ... I've been a very honest person. *(Voice trembling)* And if this is – I'm telling you – if this is how it gets *(pointing her finger at the Board and yelling)* I will ... NO!

Chairman Joslin: We are not questioning your credibility, Ma'am, we're only telling you the law as far as ...

Victoria Maloney: (*Shouting*) I'm sorry but this is wrong!

Chairman Joslin: I'm sorry you feel that way.

Victoria Maloney: (*Shouting*) I'm sorry that I tried to help this stupid woman.

Patrick White: Ma'am, I'd be interested in seeing the document that you have from the State about what it allows you to do – the one-page printout that you had.

Victoria Maloney: I'm sorry?

(The Hearing Reporter asked Ms. Maloney for the document to hand to Mr. White. Ms. Maloney was searching through her documents.)

Patrick White: Just put it in her hand, please.

Victoria Maloney: Yes, it's in File #12.

Chairman Joslin: Ma'am, meanwhile ...

Kyle Lantz: Who paid Brian or Brian's company? Did you pay him or did the homeowner pay him directly?

Victoria Maloney: No, I was paying him because ... I haven't done any type of this work before ... I was ... the woman called me basically almost crying because she was taken advantaged of ... (*wiping her eyes*)

Kyle Lantz: So she paid you and then you distributed the money between the different subcontractors as well as ...

Victoria Maloney: No, Brian always ... I haven't done any of this kind of work in maybe five years, maybe six.

Kyle Lantz: I'm not ...

Victoria Maloney: Let me ... let me finish. You asked me a question – let me answer it. Okay? So, I haven't done any of this type of work when she ... a Pastor from another church that I was going to called ... told her to call me because she was so frustrated ... this Kathy Kamin had her house done once before by another contractor and the pictures of her house the way they are now is what the other contractor did and it's a mess. She called me and said can I help her. In other words, ... and I ... with our conversations were yes, I can ... I can definitely help you. I am fabulous at redesigning space and I said I know other General Contractors that I know who are honest and they can do the work. Okay? So, that was ... so she came to me. I had every intention of helping her. And I had to finish up another job – I've been doing mostly design jobs ... I've been doing mostly design jobs for all this time and so when she asked me if I could help her and this Pastor from this other church said I'm the one who recommended you so, you know, can you ... and I said yes, I can help her. I can help her. I went to her house. Her bathroom is loaded with mold. It's falling apart. The house is in deplorable condition and I walked in and ... it's ... it's horrible.

Kyle Lantz: But what you're ... you're not answering my question. I asked you a very simple question: who paid Brian? The homeowner or ...

Victoria Maloney: No, I did. I did. But I didn't know ... okay ... so ... in five or six years, I had no idea that it was wrong to do that.

Kyle Lantz: Okay.

Victoria Maloney: I had no idea.

Kyle Lantz: Now you do know that's wrong.

Victoria Maloney: Okay. Well, I don't think things should be held against me because I ...

Kyle Lantz: Who paid all the other subcontractors?

Victoria Maloney: What?

Kyle Lantz: If the project had progressed where the granite guys, the tile guys, the electricians all had come, who would have paid them? You or the homeowner?

Victoria Maloney: Well, she ... she requested that she should be paying them and we ... and I said, I don't know about that, and we didn't have a chance to talk about it because then she filed the false complaint against me with Collier County. So, we were ... so that ... that could have been changed. We could have talked about that and that could have been changed.

Kyle Lantz: But your original intention – your contract with her – was for her to pay you and for you to be a good steward of her money and distribute it to the other subs or General Contractor on the job.

Victoria Maloney: Yes, but I didn't know it was wrong.

Kyle Lantz: I'm not asking you if you knew it was wrong or not ... I'm just trying to find out what you did and what you didn't do.

Victoria Maloney: Yes.

Chairman Joslin: Now this is apparent – what I see ... I'm going to have to say that this Kathy Kamin, the client ... I think she did her homework ... is what it comes down to.

Victoria Maloney: She what?

Chairman Joslin: I think she did her homework. Because she entered into a contract with you – according to the information that I have from the Investigator – and she gave you a check for thirty-five thousand dollars.

Victoria Maloney: Right.

Chairman Joslin: Correct? Then she started looking into to you a little more thoroughly because she didn't find where there was any activity on the permit, number one. And, number two, then found out that you weren't a licensed contractor to do the work.

Victoria Maloney: No, that

Chairman Joslin: She filed a complaint against you. That's what is listed in our packet.

Victoria Maloney: Okay, but that's not true ...

Chairman Joslin: What's true or what's false ... it's what is listed in our packet. I'm sorry – you can deny it all day long but ...

Victoria Maloney: Okay, but that's not true ...

Kyle Lantz: The law in Florida is ... just because you have a General Contractor working underneath you, does not make you a ...

Victoria Maloney: No, I was working underneath him.

Kyle Lantz: I know but the letterhead has your company – not his company. Even though he's pulling the permit ... if you read the definition of a contractor it is the person who writes the contract, not the person who does the work. There are a million General Contractors in Florida who don't do a lick of work – physical labor work – what they do is they “contract.” They sell a job to a homeowner and then they contract out different pieces to the plumber, electrician, carpenter, framer, and drywall guy. That is the

definition of a “contractor” in Florida and is what you were doing ... you were acting as a contractor. You’re confusing the definition of a contractor as the guy swinging a hammer. That’s not how it is defined by Florida law. You must understand that, by Florida law, you were acting as a contractor by writing a contract and taking the money.

Victoria Maloney: Well, if I haven’t done any of this work in so long, I feel that the Citation ... first of all ... I should have been more informed about that and that there should have been a change ... that Mr. Gumph said he was going to ... you know, then we should have had the change. We should have had the change then and that would have all been taken care of. But the thing is ... Kathy Kamin ... I’m not the first victim she’s caused ... she’s done this to. She did it to somebody ... I found out later, she did it to somebody at Hadinger Carpeting where she went to this person, and this person who is the husband of ... Hadinger Carpeting does cabinetry ... kitchen cabinets and all that now.

Chairman Joslin: Ma’am, you’re doing hearsay and I really don’t need to hear that. I don’t want to hear this. What I do want to hear is from Mr. Gumph. Okay. I’m going to silence you for a minute and hear Mr. Gumph’s response to this.

Chairman Joslin questioned Jack Gumph, Licensing Compliance Officer:

Q. You indicated that you gave a Citation to Victoria Maloney?

A. Yes. *For the record*, Jack Gumph from Collier County Licensing. Mr. Chairman I’d like to submit the packet that you all have to the Board for evidence. And your question was: was I the person who issued the Citation – is that correct?

Q. Correct.

A. I was.

Q. What did you find and the reason why you issued the Citation?

A. In the most simple terms ...

Patrick White: Mr. Gumph, were you sworn?

Jack Gumph: I was not, sir.

(The oath was administered.)

Patrick White: And has your testimony up to this point been truthful and accurate?

Jack Gumph: It has.

A. In the most simple terms, there was a contract that was made between Ms. Maloney and the homeowner, Ms. Kamin, for the remodeling work at her single-family residence. In my investigation, the contract that was signed with Ms. Maloney had certain scopes of work. Subsequently, I was able to obtain a contract of Mr. Pascal with Ms. Maloney which involved lesser scopes of work and which proved evidence that Ms. Maloney was providing the contract for the work, basically subcontracting to the G.C. and I had a subsequent conversation with Mr. Pascal, the contractor, who confirmed that he was not going to be involved in the other scopes that were listed in Ms. Maloney’s contract.

Patrick White questioned Jack Gumph:

Q. Was it his statement to you that he was going obtain those subcontractors even if he was not going to pay them?

A. No, sir. He confirmed that he was going to do a lesser amount of scope that was signified only on his contract with Ms. Maloney.

Q. Less than the general remodeling contract?

A. The contract that was with ...

Q. A-N-C-I

A. A-N-C-I with Brian Pascal.

Kyle Lantz questioned Jack Gumph:

Q. So, he confirmed that he was hired not by the homeowner, but he was hired by the decorator?

A. Correct. I specifically asked him, 'Were you paid any monies?' 'Yes, I was.' 'Who paid you and how much?' He was paid by Victoria Maloney to pull a permit and do the scope of work only for which he had his own contract with her. And, again, I specifically asked him about the other scopes of work detailed in the contract between Ms. Maloney and Ms. Kamin, and he said he had nothing to do with those scopes of work – that Ms. Maloney was taking care of that.

Victoria Maloney: Can I say something, please?

Chairman Joslin: One second, Ma'am, one second.

Chairman Joslin questioned Jack Gumph:

Q. Can you refer to Page E-23 in our packet. The contract as it is written says it is between Build All, Inc. and A New Creation Interiors by Victoria, Inc. Is this the contract we are talking about?

A. Correct, sir.

Q. Okay.

A. This is the contract that had much less scope of work involved than in the original contract.

Patrick White questioned Jack Gumph:

Q. The general remodeling contract?

A. Correct.

Q. To your knowledge, did Ms. Maloney ever indicate that she had signed that contract?

A. She did not.

Q. Do you see her signature appearing anywhere on that contract?

A. I do not.

Q. So, it's essentially only what's in the record that we have before us that's been submitted by the County and the testimony today that we're relying upon to reach the conclusion that there was unlicensed contracting?

A. There was a signature by ...

Q. By the homeowner but the point of that is ... if we're going to try to enforce a Citation against someone, she has to have signed the contract because you have to sign the document in order for it to be enforced against you. My point is that the contract in and of itself wouldn't be sufficient evidence in my mind. Instead, I'm

indicating that it's the other document that is in the record and the testimony of Ms. Maloney which indicates to me that the unlicensed contracting took place.

Assistant County Attorney Noell: We also have Ms. Kamin here.

Patrick White: Is she intended to be presented as a witness?

Terry Jerulle: If I may, Mr. White. There's a definition of a contractor and I believe a part of that definition includes a proposal – whether it's signed or unsigned – is that correct?

Jack Gumph: That is correct. We used that information in our investigations.

Patrick White: The distinction is that's the definition of "contracting." And all I'm saying is ... in proving the case that there was unlawful contracting, you can't use the unsigned contract as evidence per se. You can use it as evidence of a proposal or attempting to contract. We have prosecuted and enforced those cases dozens of times. What I'm simply trying to do is to put on the record that distinction and clarification. I don't see that there's any question about there being the weight of evidence today both in other parts of the record, as well as in the testimony of Ms. Maloney. Without anything from Ms. Kamin indicating substantial evidence ... competent substantial evidence ... the violation has occurred. The Citation was properly issued.

Chairman Joslin: Correct. And that ties back to E-18 and E-19 ... the other contract which was given and signed by Ms. Maloney.

Patrick White: The only thing I see, Mr. Chairman, in defense would be if the licensure that Ms. Maloney has allows her to perform the things that she has testified to and that the record shows. And that's why I asked to have presented to us what it is that she printed off from the State's website and goes, I think, to Mr. Lantz's question earlier about are you an interior designer or a decorator. That distinction isn't as relevant in a residential circumstance – you are not required to be an interior designer to do those design services. You can be a decorator and perform those design services but, based on prior client work, that distinction is not pertinent here because the scope of what was done weren't design services. They were contracting services. And that's the point, I think, that Ms. Maloney is challenging and having a hard time accepting. While I empathize with her position but, strictly from the County's perspective in looking to prosecute the case in issuing the Citation and looking to us to have it upheld against the defense that Ms. Maloney is raising, I'm sorry, Ma'am. I empathize with you – I understand your perspective – I know what you're trying to say to us – that you didn't have the intent, but I don't know that that acts as a defense.

Victoria Maloney: I had no intention – I reached out to help this woman – and I spent over two months and I told her that I was just going to be doing ... if you read all the text messages ... I was just going to be ... taking care of her. That's all I was going to do was take care of her ... for two months, that's all I did. She became the most difficult person to deal with because everything that she wanted ... she wanted more and more changes.

(The Board's Attorney, Jed Schenck, arrived.)

She wanted, she wanted ... the other contractors that I talked to – one wanted \$85,000 but only giving her \$6,000 worth of kitchen cabinets, and other things were way below cost. Another one who I talked to really wanted to do the job also, but he wanted a

minimum of \$125,000. To stay in her budget ... to be able to do that ... to be able to help her, I asked Brian if he would please work with me on the numbers, so we could work in her budget. And that's what he agreed to do. He was pulling the permit for the entire job. That was our agreement – he was pulling the permit and I would be bringing people to do the work who would work in the budget. I would negotiate with all these people ...

Patrick White: Do you understand what you have just said? What you have just said proves the County's case. Do you understand that?

Victoria Maloney: No.

Patrick White: That's the truth – that's the reality here. You cannot do those things. You cannot hire trades people, pay the trades people, take money from the owner to pay the trades people unless you are a contractor.

Victoria Maloney: Ms. Kamin ... Ms. Kamin wanted to pay the contractors directly.

Patrick White: You should have let her.

Victoria Maloney: Huh?

Patrick White: You should have let her do so.

Victoria Maloney: She didn't talk to me after that because I said I don't think so ... I said that's not going to work because I don't know if I would get paid. So, so I ... I told ... but we were going to talk ... we were still going to talk, and she wanted a breakdown of everything and she accused me falsely by saying that I did not give her a budget breakdown when I emailed her on the first of December ... I'm sorry ... the first of ... I can't remember what month it was ... September ... or the second ... I texted her to let her know that everything was ready for her review. We would have gone over all of that then, but, and the holiday was on the fifth. I finished it on the first to give her all the numbers and she had the list of all the numbers and then she ... so then I texted her ... I finished on the first on Friday and I texted her on Saturday to let her know it was ready for her and that I would like to meet with her after the holiday to go over everything and to see ... and we were going to talk about all these other things.

Chairman Joslin: Okay.

Victoria Maloney: But then she made ...

Chairman Joslin: Whoa.

Victoria Maloney: Let me just finish ...

Chairman Joslin: No, I'm going to shut you off here.

Victoria Maloney: Then she made ...

Chairman Joslin: We don't need to hear about how you did the job. I'm telling you – you are not helping yourself at all because you are not a General Contractor. Now I'm going to have to cut you off because I don't need to hear any more of this. Okay? I know your intentions – I know you had good intentions – you just did it the wrong way. Now I would like to hear from Ms. Kamin.

Assistant County Attorney Noell mentioned that if Ms. Maloney had any questions of the County's Investigator, she should be allowed to ask them.

Chairman Joslin: Do you have any questions for Mr. Gumph that you can ask now? Direct your questions to him.

Victoria Maloney: Yes. Okay. You had recommended that Ms. Kamin work with us and then I asked you ... and ... and then you wanted to meet with us. I was happy about

that because I wanted to help her with her house because I was doing it for probably ... I was able to help her for at least \$40,000 under what other people were giving me for that ... to do the work we were doing ... at least \$40,000. And so ... when I showed you all the plans and everything, you said that's ... you know ... I said, 'What do you think?' and he said, 'No, that's great.' And then I ... and I said, 'She's getting a good deal – she's getting a very good deal.' And then when you talked to her, you said that you recommended that she ... that we work with her ... that she work with us and that you wanted to get together. And ... but I had to finish up another job – I told you about that. And I had to finish up something, and then I had to put together all my papers to get ready, and she didn't want to meet with me. And I was ... I thought there was going to be a meeting ... for us to meet to talk.

Assistant County Attorney Noell: Ma'am, ma'am ... Mr. Chairman, I don't know if she has a question but that's just more testimony. If she has a question for the Investigator, now would be the time to ask.

Victoria Maloney: That ... this is all part of the question.

Chairman Joslin: Okay then ask the question please.

Victoria Maloney: So ... and then all of a sudden ...

Chairman Joslin: The question, please.

Victoria Maloney: I was never ... I was never notified that Kathy Kamin all of a sudden changed her mind. So, we were going to ... the house would have been done by now. Everything would have been changed the right way ...

Chairman Joslin: Ma'am ... this is the last time I'm going to ask you: Do you have a question for Mr. Gumph that you can ask him that he can respond to?

Victoria Maloney: Yes. Why did you tell me all that and then, you know, and not tell me ... no, I'm very upset about that because I thought Mr. Gumph was supposed to be there to help ... to help us work together? So that's what I thought. That's what I was told.

Patrick White: Is your question: Did you tell me, Mr. Gumph, that we were going to work together? Yes or no?

Victoria Maloney: Yes, that was ...

Patrick White: No, no – I'm trying to help you to understand how this process works. You are at the point in our process, Ma'am, where you either ask this gentleman a question that he can answer, or you don't. If the question that I was suggesting is one that you don't understand or do not want to ask him, then we are going to move on. If you have a question for him, would you please ask him what it is.

Victoria Maloney: I have asked him ... why ... why did you say you were going to help us and work together and then all of a sudden, not let me know why she wasn't even going to show up?

Patrick White: Ma'am, where's the question mark in that?

Victoria Maloney: Huh?

Patrick White: Where is the question mark?

Victoria Maloney: Right now ... that's the question mark. Why? I thought you were supposed to be ...

Patrick White: Ma'am, you must let him answer.

Victoria Maloney: Okay.

Patrick White: Do you understand the question, Mr. Gumph?

Jack Gumph: I do. We were having conversations about the fact that the Complainant, Ms. Kamin, provided a check for \$35,000 for work that was not commenced. Ms. Kamin had enlisted my services to assist in possibly having Ms. Maloney refund all or part of this money for the work. That's why we had the meetings. We tried to discuss with Ms. Maloney the reasons why, or not, that she should refund all or any amounts of the \$35,000 that the homeowner paid her that there was no work completed.

Chairman Joslin: At that time, was there no General Contractor or permit issued to complete the work?

Victoria Maloney: All ...

Jack Gumph: There was not.

Chairman Joslin: Okay.

Victoria Maloney: All the design work was taken care of ... all ...

Chairman Joslin: Ma'am ... one at a time, one at a time please, thank you.

Terry Jerulle: Has any money been returned?

Jack Gumph: There has not.

Terry Jerulle: Has any work been commenced?

Jack Gumph: There has not.

Patrick White: Other than the design work?

Victoria Maloney: Ms. Kamin herself ...

Patrick White: Ma'am, you need to respect the process, please.

Jack Gumph: No construction work, other than design work.

Matthew Nolton: Has the permit been applied for?

Jack Gumph: No.

Chairman Joslin: So, at this moment, nothing has been done?

Jack Gumph: No.

Chairman Joslin: And the \$35,000 is still out there somewhere?

Jack Gumph: Correct.

Matthew Nolton: In your conversations with Mr. Pascal, was there any questioning about if he was going to permit the full scope of work including the plumbing and electrical or was he only going to permit the work on the contract that's in our packet?

Jack Gumph: He was going to permit the work per his own contract with Build All, Incorporated. Also, he had informed me that he had received payments via a check from Ms. Maloney that he would be willing to refund to the homeowner because he has done nothing on the project. But he has not done that yet.

Patrick White: And what dollar amount would those be, do you know, roughly?

Jack Gumph: I believe there were two checks: one in the amount of \$2,000 and one – it's in the packet – for \$3,400 or \$3,500.

Patrick White: Just wanted it on the record.

Chairman Joslin: When Ms. Maloney came in to see you and you had this meeting to try to work things out with her, this was after this project had already began – started—and the money was already issued? Then she came before you for some kind of guidance?

Jack Gumph: Yes, she did. The contract was signed on August 12th. The check was paid to Ms. Maloney for \$35,000 on August 12th and the contract was signed by Ms. Kamin.

Patrick White: And the complaint was made when?

Jack Gumph: The complaint was dated August 31st – I got it on September 1st I think.

Patrick White: In your experience, Mr. Gumph, would it be unusual for that period of time to pass before a permit was applied for?

Jack Gumph: Not necessarily.

Patrick White: Would you, in your opinion, believe that it may take a designer or decorator at least that period of time to perform the design functions and services prior to requesting permits to a G.C.?

Jack Gumph: On some occasions, yes. I believe though – and I'd want to put into the record – that the initiation of this project was in June of that year. That's when this whole thing started.

Patrick White: There were conversations between ...

Jack Gumph: Between Ms. Maloney and Ms. Kamin, the homeowner, yes.

Patrick White: Can you drill down on when various services and conversations took place, if we need to? My point in pursuing this, Mr. Chairman, is – I understand that there was a violation of law, and I understand that there was a lack of intent. In many instances we have properly recognized that it is not relevant to our determination. I'm just trying to give the Respondent here every opportunity to present her case in the best way possible. I don't think we can get there without hearing from Ms. Kamin. At some point if we can wrap-up the cross-examination of Mr. Gumph, I'd like to move on.

Chairman Joslin: Are there any other questions?

Matthew Nolton: Yes, I have one more question. Mr. Gumph, are there any plans created, prepared, designed that would have been required for permitting? Is there any product?

Jack Gumph: Not that I know of.

Patrick White: I'm not sure if I understood whether the question was would those plans be required to obtain the permit, or do you know whether there are any plans?

Matthew Nolton: In my opinion, plans would be required to obtain a permit. I was questioning are there any plans? There has been work completed but I don't know if there is any work product.

Patrick White: Design work.

Jack Gumph: Ms. Maloney has many plans and designs. It's beyond the scope of my knowledge if they would be submitted for a building permit or not.

Chairman Joslin: From what I can see on the contracts, the majority of the items listed aren't things that you would see a blueprint for ... other than the wall ... as long as a licensed contractor is doing the work.

Kyle Lantz: There's a law in Florida – and I don't know the specifics – but there's a law that when you get a deposit for a construction job, depending on the amount of the deposit, I don't know the number amount or percentage but I'm sure \$35,000 qualifies, the contractor must apply for a permit within a certain amount of time. I was under the impression that it was thirty days.

Patrick White: It hasn't happened yet given the fact that the complaint was filed and received by the County on September 1st, notwithstanding Mr. Gumph's best efforts, it seems it got to the point where the concerns of the homeowner were such that value was not being derived from the check that was provided, and the evidence of the absence of value was the fact that the permit was not pulled. I was just trying to understand as much as possible the timing and the typical circumstances that one would expect to take

place ... after a contract is signed and after a check is paid ... how much time is reasonable before a permit is pulled. To me, expecting everything to be done in twenty days seemed a bit unreasonable.

Chairman Joslin: Any other questions?

Chairman Joslin asked Ms. Maloney if she had any other questions for Mr. Gumph.

Victoria Maloney: No, but I really wish that we could have followed through with the project because we would have made it beautiful ... and I wish that Mr. Gumph would have ... we would have had our meeting ...

Chairman Joslin: Okay. I understand what you're saying ...

Victoria Maloney: You asked me if I had anything to say.

Patrick White: He asked you if you had any questions for Mr. Gumph.

Victoria Maloney: I was hoping that he would work with us, so we could follow through and get it done.

Chairman Joslin: Okay.

Victoria Maloney: Because that's what we were going to do.

Chairman Joslin: Okay, thank you. Any rebuttal? Okay. I would like to call Ms. Kamin to the stand, please, as a witness.

Patrick White: You can ask the County if they would like to call her.

(Ms. Kamin was sworn in by the Attorney for the Board.

Ms. Kamin and Mr. Gumph were asked to speak into the microphone.)

Ms. Kamin stated her name for the record: Kathy Kamin.

Terry Jerulle: I just have a point to make: we may not be the end-all here. This case may proceed further through other avenues ... clients and whomever may take this case further, I just wanted to be sure that the Board was made aware of that.

Chairman Joslin questioned Kathy Kamin, witness for the County:

Q. Did you enter into a contract with Ms. Maloney as A New Creation Interiors by Victoria, Inc.?

A. I did.

Q. Did you give a \$35,000 check to Ms. Maloney?

A. \$35,200.

Q. And that was for remodeling work that was to take place in your home?

A. Yes, sir.

Q. Has it commenced?

A. No, sir.

Patrick White questioned Kathy Kamin:

Q. Was the \$200 from the \$35,200 for design services?

A. The \$200 check that I gave her first was for the design.

Q. Was it for consultation or design?

A. I think I wrote on my check, consultation, but it was for the design – that was what she asked me to give her for doing the original work.

- Q.** Was it your understanding that it would be the complete payment for all her design services?
- A.** No.
- Q.** Did you ever discuss what portion of the \$35,000 may have been intended for design services?
- A.** Not per se. She knew my budget and we discussed the budget and that was included.
- Q.** Understood.
- A.** When we first met, it was a total design and the contracting as well was included.

Chairman Joslin questioned Kathy Kamin:

- Q.** In the packet on E-18, E-19, and E-20, there's a contract from Victoria Maloney with several items totaling a budget range of \$75,000 to \$85,000. Did you sign it on August 12, 2017 – is that your signature on the bottom of the contract?
- A.** It is.
- Q.** This is the reason why you gave her the \$35,000?
- A.** Correct.
- Q.** Which was also to include beginning the project and including the permit, Contractor, and purchasing the necessary materials?
- A.** That's correct.
- Q.** Were you under the assumption that the company Ms. Maloney represents was a General Contractor who could perform the work in the contract?
- A.** It wasn't until after I signed the contract that I learned she was out of her scope. Somebody suggested that I check on that. I checked other things but I ...

Victoria Maloney: Excuse me but I can't hear her ... can she talk into the speaker more? (Ms. Kamin was asked to stand closer to the microphone.)

- Q.** Basically, you signed the contract assuming that when she originally presented the contract she was qualified to do the work as a contractor? She presented this contract to you as a General Contractor or someone who could perform the work and then you agree to it?
- A.** Yes.
- Q.** After you found this out, after you realized that she was not a contractor, if she would have returned the money, the \$35,000, to you – would everyone had gone on with their business and this probably wouldn't have gone any further?
- A.** Yes, sir, absolutely.
- Q.** Did she refuse to pay the money back?
- A.** Yes, sir.
- Q.** Was there a reason why?
- A.** She had done "all of this work" and she needed to be paid. We had discussed what she said earlier that I wanted to pay the contractors directly – I found all of this out post giving her the big check. I did ask for a breakdown all along and she didn't provide it. That's why when I talked to Mr. Gumph, I was frustrated because I had a big project – not just the kitchen. I needed to know that my money was going to be stretched for the entire project and not just one area. Does that answer your question?

Q. I believe it does, yes.

Patrick White questioned Kathy Kamin:

Q. On Page E-19 which is the second page of the general remodeling contract, under number eight, it says “Designer’s Services.” Are you following me?

A. Yes, sir.

Q. Did you have any sense in the follow-up conversations after September 1st as to what may be a reasonable compensation for that portion of the contracted services?

A. At that point, I was frustrated because I wasn’t getting any of the detailed information that I needed. So, “no” would be the answer to your question.

Q. Based on the fact that you didn’t have a reasonable estimate that -- in your mind -- of what those services may have been valued for, was there ever any proffer made to Ms. Maloney that if she returned all but that portion, things would have been resolved?

A. When I paid her the \$200 for the plans, first – I got no paperwork from her until after this whole situation was ... when the ball was rolling already. She didn’t provide the breakdown, any plans to me, I had “zero” paperwork as of September 1st.

Q. And going back to the comment that was made earlier I believe from Mr. Gumph that a discussion about the elements of the contract and the scope of work had taken place in the beginning of June, can you add a little information about what took place in June, July, and up to the middle of August when the contract was signed by you?

A. I met with Ms. Maloney several times – I can’t tell you how many – perhaps once a week – she was very convincing when we first met and she kind of took control. She sounded like she knew what she was doing and everything kind of flowed. I wanted to go to the store with her, without her, to pick some materials but she kept insisting on bringing me materials. When I wanted to – I reached out and asked her for a line-by-line item, so I would know when am I going to pay for tiles so I could go to the store and pick something that, perhaps, I would like better ... that’s where things started to get a little shaky. And I had some concerns about the whole process and that’s when I started asking questions when I wasn’t getting clean and concise answers. I knew my project was big and I knew what my budget was, but I didn’t have anything exact. I just had her saying, ‘We can do this. Brian is awesome. I’m great at design – I can do it.’ And I said, ‘Let me pay the contractors. Let me pay for the materials. I’ll pay you a flat fee, whatever it is.’ She didn’t want that. I mentioned that several times.

Vice Chairman Michael Boyd questioned Kathy Kamin:

Q. Do you have any actual drawings?

A. I believe that on November 7th, a FedEx package was delivered by somebody to my home. It was not from FedEx because my son said a person had dropped it off. In that box were probably some of the drawings and it was the first that I had ever seen of them. So, “yes” but they were just renderings. They weren’t

Chairman Joslin questioned Kathy Kamin:

Q. ... plans. Was there a name on the box of who was submitting this to you? Not who dropped it off but what was inside the box --- whose signature was on it?

A. I believe it came from Ms. Maloney, ultimately.

Q. Okay.

A. (directing her comment to Ms. Maloney) I believe it came from you – the FedEx package that was delivered to my home.

Victoria Maloney: Right, right, I sent it. Can I speak?

Patrick White: Ma'am, you are allowed to ask her *questions* [emphasis added].

Victoria Maloney: Okay, okay.

Chairman Joslin questioned Victoria Maloney:

Q. I will ask a question. Did you drop off the package to her with something in it?

A. When I ... Mr. Gumph ...

Q. Just “yes” or “no,” please.

A. Please.

Q. Please -- “yes” or “no.” Did you drop off that package to her – that box – or whatever she’s talking about?

A. I sent it to her.

Q. Okay.

A. I sent her – I sent her – because she ... Mr. Gumph told me that she no longer wanted to proceed so I had already spent over two months ... and the two months should have taken maybe four weeks, maybe not even, but she kept making continual changes.

Q. Okay. I understand.

A. So, then I ...

Q. I totally understand what you’re saying. I’m just checking to see if that was you who dropped off the box. That’s all I wanted to know.

A. Yes. So, I ...

Q. Thank you very much for your answer.

A. She wanted to pay me \$1,000 ...

Q. Okay ...

A. for all the plans.

Q. My dear, please.

Patrick White questioned Kathy Kamin:

Q. When I asked you earlier if you thought that there was some value you believed was reasonable for the services provided, you told me you didn’t have a number. Can you please tell me where – what Ms. Maloney has said – the \$1,000 figure, if that actually came from you?

A. When I spoke with Mr. Gumph, I said, ‘If this will make it go away, pay her \$1,000 and I’m done.’ Whatever her time is worth – I’m done.

Q. Okay. I understand the distinction between what you think might have been reasonable and what you were offering to resolve the matter.

A. We didn’t meet that many times. We didn’t meet 250 hours’ worth at \$9.00 an hour.

Chairman Joslin: Okay. I think we're ready to move on, I believe.

Patrick White asked Ms. Maloney if she had anything she would like to ask of Ms. Kamin.

Victoria Maloney: I want to know why she strung me along for over ... close to three months. Wanting ... all the text messages show that she wanted me to continue getting the work done. She was so excited about getting it done. She wanted me to keep doing this, so I kept working for her and did not charge her any design fee. It got to the point where I told her I could not do anything more for her. I said I had not been paid for two months and I said we needed to have a contract to get something going. Brian was willing to work with us and the budget, and where I was willing ... I was willing to find people to help us to stay on the budget, and I asked her ... you know ... and I said, 'I'm sorry but I cannot go any further. I cannot do this. I have spent over two months and I've not been paid one dime.' And, finally ... she had a friend, Janet Cohen ... okay ...

Patrick White: Ma'am, where is the question?

Victoria Maloney: ... and Janet Cohen was a witness. And Janet Cohen and I have spoken ... so Janet Cohen is a witness and I ... uh, you know ... she wanted to review the contract and I said that's fine.

Assistant County Attorney Noell: Ma'am, ma'am ... if I can just help a little bit in this process. You will have one last time to provide testimony to the Board. Can you hear me okay?

Victoria Maloney: Yes. But I've been taken

Assistant County Attorney Noell: Okay, ma'am. Can I just explain? You're going to have an opportunity to provide further testimony to the Board before the hearing is closed. Right now, in this stage of the hearing, you are limited to asking specific questions of this witness. If you have none, that's fine and the Board just needs to hear that. If you have specific questions, now is your time to ask those and when you want to provide further testimony, you will be given an opportunity to do that. Okay? Do you understand?

Victoria Maloney: Yes.

Assistant County Attorney Noell: Do you have any specific questions for this witness?

Kyle Lantz: It seems to me that we are treating this as a Public Hearing when it is just a challenge of a citation. How did we move to Civil Court from just challenging a citation? We've been beating dead horse for an hour and a half

Assistant County Attorney Noell: If the question is if we have witnesses before this Board, they have the opportunity – and understanding that it's not an administrative hearing – but it is a challenge to a citation. So, with due process of law, if we have witnesses that we have put forward for this Board to rebut her contesting of the citation, she has the lawful right to question those witnesses. That's what I'm trying to do – to get to the point to where she questions the witness and when she's done with the questions, the Board can deliberate and reach a decision. I think part of the challenge here is that we are potentially mixing deliberations with questions and everything else.

If she doesn't have any other questions, we can be done with our witness and close it out from our end.

Chairman Joslin: Any other questions? I'll give you one more opportunity.

Victoria Maloney: I really thought, Kathy, that you were a woman of integrity.

Patrick White: Ma'am, you don't get to make a statement. You must ask a question. There must be a question mark at the end.

Victoria Maloney: Okay. Why did you continue to string me along for over two months?

Patrick White: Which two-month period are you talking about, Ma'am? Beginning in June or beginning in September?

Victoria Maloney: June – the middle of June, July, August ... to the signing of the contract. She continued to want me to

Patrick White: Ma'am, do not make a statement. You only get to ask a question.

Victoria Maloney: The question is why?

Kathy Kamin: I was giving you ample time to provide the documents to make me feel comfortable and you didn't. And you were in violation of the law.

Patrick White: Ma'am, you don't get to make a statement either. Okay? You just get to answer the question. Thank you.

Chairman Joslin: Okay.

Kathy Kamin: I just want – may I?

Chairman Joslin: You may.

Kathy Kamin: E-19 (holding up the document) ... the little squiggles underneath my name are her initials. And earlier you were talking about a signature on the contract ...

Patrick White: So your testimony is, even though it's not in response to any question but providing us with information, that the squiggles below your signature – your testimony is that it's the sign of Ms. Maloney? You saw her sign it?

Kathy Kamin: Yes.

Patrick White: On August 12th?

Kathy Kamin: Yes.

Patrick White: Thank you.

Chairman Joslin: Thanks. We're going to close now for deliberations on this case. I don't think there's anything else we need to hear.

Patrick White: Mr. Chairman, I know it's not an administrative hearing, but you heard Mr. Noell indicate that the Respondent was going to be given an opportunity to make any remarks she would like to put to the Board before we, in a sense, begin our deliberation.

Chairman Joslin: I went to both sides, Mr. White. Ms. Maloney had no more questions and Ms. Kamin has no more questions.

Patrick White: Ms. Maloney has no more questions of Ms. Kamin.

Chairman Joslin: Of the witness?

Patrick White: Correct.

Chairman Joslin: So the witnesses are done.

Patrick White: You did not ask either the County or the Respondent if they had anything further to say. I just don't want to close out any opportunity for people to make their remarks. I think we've gone this far down the path, it would be reasonable

to just spend a little more time, so we are assured that due process is fully afforded. I would ask if our Board Attorney has any opinion in that regard, that he share and provide counsel to us.

Jed Schenck, Attorney for the Board: I agree with that recommendation ...

Victoria Maloney: Excuse me but since Ms. Kamin has all of this on her side, I have somebody who has known me for years. I'd like her to speak on my behalf if you don't mind.

Patrick White: Are you calling her as a character witness, Ma'am?

Victoria Maloney: Yes. Yes.

Patrick White: Your character is not in question here. Your intentions are not in question.

Victoria Maloney: She ... I ...

Patrick White: Does she know anything specifically about your communications, correspondence, or conversations between you and Ms. Kamin or you and Mr. Pascal? Was she a witness to those?

Victoria Maloney: No, but we've ...

Patrick White: Then her testimony would be considered hearsay and it really wouldn't carry much weight. We understand that you're a good person.

Victoria Maloney: Well, I'm telling you that I have been taken advantage of and I don't appreciate it.

Patrick White: Are there any other things that you want to say now before we consider all that we've heard and read so far?

Victoria Maloney: Yes.

Patrick White: Please do.

Victoria Maloney: Yes. All the plans are done. I have gone over everything. Her house is in deplorable condition. I have gone over everything with her, over and over and over again. She loved everything except she certain things that she wanted to have done – extra cabinet drawers and extra things – and I kept telling her that we only have so much in the budget. The tile – she has Pergo flooring on her floor which is like a vinyl and I was willing to use that Pergo flooring and that would have added more to the budget or lowered the budget. She decided she wanted to go with the porcelain tile wood-look flooring. So then, to lay that, you have to have somebody ... most tile setters do not know how to lay that – they set tile with a quarter-inch grout line. I had to find somebody who was going to lay it like a wood-plank floor ... with a pencil thin grout line. So, I finally ... he ... he gave me a higher price and I finally asked him ... could you please ... is there anyway ... this is all we have in the budget ... is there any way we can please get this price down? And he said, yes, I'll come down for you. So, we were able ... that was the last thing that she wanted. The itemized list ... that was the last price I needed. The painter – he wanted two or three thousand dollars more and I said we just don't have it in the budget – will you please come down? And he said yes. Everybody came down in the budget to be able to meet her budget. Everybody came down. And everybody was going to do ... and, and ... then she wanted extra things in the drawers and everything. She wanted extra pull outs and everything. I redesigned the kitchen several times for her because every time I presented it to her she wanted different things and more and more. I'd go back and redesign it. All of this should have taken just a

short time, but it took much longer because – first of all – the budget was inadequate for all that she wanted done. Now if she just submitted to use her Pergo floor and just fill in the spaces where we were going to be doing things, we could have saved a lot of money. And that would have been fine, we could have worked with that. And her bathroom ... her bathroom was full of mold ... the walls are full of mold. And I said we have just removed and ... she wanted the tub out completely, she wanted a shower in there, she wanted a closet, she wanted the bathroom completely remodeled. But I said if we just change the vanities out, put new drywall in, and leave everything the way it was ... we ... we ... the budget could have been much, much lower. But because she kept wanting more and more and more, that I tried to keep This is the cabinet line (holding up a photo)

Chairman Joslin: That's enough, that's enough.

Victoria Maloney: Well you said I could ...

Terry Jerulle: It's not about her – it's about you contracting without a contractor's license.

Victoria Maloney: What?

Terry Jerulle: It's about you contracting without a contractor's license.

Victoria Maloney: They were ...

Terry Jerulle: It's not about her house ...

Victoria Maloney: I was talking to these people ...

Terry Jerulle: It's about you contracting without a contractor's license.

Chairman Joslin: Again, we've heard this ...

Victoria Maloney: Okay. I'm going to say I wasn't

Terry Jerulle: You should focus ...

Victoria Maloney: Brian was going to ...

Terry Jerulle: Here's advice ... free advice ... focus on your citation, about contracting without a contractor's license.

Victoria Maloney: Okay.

Terry Jerulle: We don't care about tile – the tile is not helping you. Your citation is for contracting without a contractor's license.

Victoria Maloney: Okay. I disagree. Okay.

Chairman Joslin: That's why we are here today.

Victoria Maloney: I'm sorry?

Chairman Joslin: That's why we are here today because you disagree with the Citation.

Victoria Maloney: I don't agree and if I was doing something wrong, then I should have been advised. And I wasn't.

Terry Jerulle: It's like speeding in an area – you didn't know what the speed limit was, and the officer gives you a ticket, he says you should know what the speed limit is. You should know that you need a contractor's license to contract.

Victoria Maloney: If I haven't done anything ... any of this type of work in more than five years ... things have changed. Okay. Before you could hire a General Contractor – before – you could do that.

Chairman Joslin: No, Ma'am, you could not, no.

Patrick White: You can hire a General Contractor – the owner can hire a General Contractor. You, as a decorator/designer, cannot engage or offer to engage in obtaining subcontractors such as plumbing, electrical, painting – that is unlawful.

Kyle Lantz: She can't hire a contractor, either.

Chairman Joslin: No, she cannot.

Terry Jerulle: Not as a decorator ... as a homeowner, she could.

Kyle Lantz: As a decorator or a designer, it is clearly stated. A decorator is unregulated and a designer, which she is not, it clearly states you cannot act as a contractor in those Statutes.

Chairman Joslin: Exactly.

Kyle Lantz: She can't hire a contractor to do work. There's a declaratory statement to the Construction Industry Licensing Board, 2016-97, which this particular topic addresses, where if a contractor is hired by a decorator or a designer, they are guilty of aiding or abetting unlicensed contracting. That is something that I have been pursuing since I have been on the Board and I have yet to see anyone get in trouble for it. I've been told we would look into it and here's a fine example of it. Maybe if more contractors got in trouble, maybe we wouldn't be in situations as much as we have been. We wouldn't have decorators saying, 'gee, I've been doing it forever,' because contractors should say, 'I'm not going to work for you because I don't want to get in trouble.' But we don't enforce that Statute. We don't enforce that law. Maybe we're starting to and I'm mistaken, but I have been bringing this up since I have been on the Board.

Patrick White: That's why the Building Contractor is more than happy to give back whatever funds he received.

Kyle Lantz: I'll bet.

Patrick White: You know, there seems to me to be

Chairman Joslin: Come on – that's enough.

Patrick White: ... it's not my job to do this, but we've invested almost two hours of time here. Ma'am, I'm going to encourage you to talk to that young lady and make her an offer of what monies you think you can reasonably return to her and ask her if she would withdraw this case.

Patrick White requested convening for a break.

Chairman White asked Staff for the County's position.

Everildo Ybaceta stated the County would not object to a recess.

Assistant County Attorney Noell: There are other avenues are being explored actively right now between the homeowner for resolution. And I think that is a great idea. I would ask that since we're still in the process of the citation if we could close out taking any further testimony.

Patrick White: I'd be fine with that.

Assistant County Attorney Noell: And then if the Board wants to come back and obviously ...

Chairman White: Make a decision then. Does the County have a closing statement or thoughts? How are we going to end this because this is acting like it's a full-blown case and I'm a little confused. Let's see if the County has a closing statement.

Jack Gumph: We do not.

Patrick White: Mr. Chairman, could we please have a five-minute recess?

Chairman Joslin: We can. I just want to make sure that this is closed out right now.

RECESS: 10:54 AM

RECONVENED: 11:03 AM

Chairman Joslin called the meeting to order.

Assistant County Attorney Noell stated the County had nothing further.

Kyle Lantz moved to approve upholding Citation #10992 as issued to Victoria Maloney for unlicensed general contracting. Patrick White offered a Second in support of the motion.

Chairman Joslin asked if there was any discussion. There was none.
Motion carried unanimously, 6 – 0.

Victoria Maloney: I didn't understand what you said.

Chairman Joslin: We came back and there was no further discussion on the topic of your Citation.

Victoria Maloney: I was going to negotiate with her and we didn't get a chance to do that.

Chairman Joslin: You can still do that – it's not a problem. Something else may occur down the road. But what we are dealing with now is the Citation that was issued to you for working without a license. The Board has heard all the testimony, all the evidence from all the parties including your testimony and has found that you were in violation of that particular Citation. Since you have been found guilty, there is a \$1,000 fine that will be issued to you and that you must pay. If there is any further option that goes on between you and Ms. Kamin, you are able to do that later.

Patrick White: Ma'am, you were given a Citation for a \$1,000 fine. You came here today to try to challenge that. You were not successful. We upheld the Citation and the fine. You owe the County one thousand dollars. Is that understood?

Victoria Maloney: Okay, so ...

Patrick White: Do you understand that, Ma'am? Because we need to move on.

Victoria Maloney: No, I don't understand ... no, I don't understand ... no, I don't understand.

Patrick White: Then I'll ask you to have a conversation with the Contractors' Licensing Office Supervisor after this hearing, when he is available, so he can explain it in more detail.

Victoria Maloney: No, I feel ... I feel that this is wrong.

Patrick White: Duly noted.

Victoria Maloney: I feel this is wrong.

Chairman Joslin: We respect how you feel. However, the Citation clearly stands, and we have found you to be guilty. You can discuss options with the homeowner and you can do that away from here.

Victoria Maloney: I feel that ... you don't have to ... I feel that you are wrong, and I feel that the way that this has been handled is wrong, and I'm very, very disappointed.

There is a lot of information here that wasn't even reviewed. It wasn't even reviewed. It wasn't even reviewed. Okay? There was a lot of information that wasn't reviewed. A lot. No ... now none of this was considered ... none of this was considered.

Patrick White: Ma'am, that's an unfair and untrue statement. And regardless of what's there, everything that was needed for us to be able to uphold the Citation is in the packet that we were provided by the County and was confirmed by what your testimony was. Your own words, in my mind, made it appropriate for me to second this motion and vote in favor of it to uphold the Citation. You contracted without a license. End of story.

Victoria Maloney: Okay ... I did not.

Patrick White: Thank you for your opinion.

C. Elizabeth Greeson – Comparison of Examination Requirements

Everildo Ybaceta: Ms. Greeson is not here. She is out of state. Ms. Greeson applied for a license with Collier County in September prior to the hurricane.

Terry Jerulle: License for what?

Everildo Ybaceta: Flooring. The previous Administrative Supervisor did a comparison of the test that she had taken versus what we have and issued a Certificate of Competency without bringing it up.

Patrick White: Bringing up to whom?

Everildo Ybaceta: To the Board.

Chairman Joslin: Does she not meet the qualifications?

Everildo Ybaceta: She does meet the qualifications, but we should have brought the comparisons first to you for you to make a ruling on it before issuing the Certificate. I am back-tracking a little bit and making sure that we do everything correctly by bringing her test scores and the other states where she is licensed where the tests are similar to our testing. It is comparable in my opinion. They do meet the same standards and it is my opinion that we should issue a Certificate.

Chairman Joslin: A second one?

Everildo Ybaceta: Validate it.

Terry Jerulle: We've already given her ...

Everildo Ybaceta: We have it on hold right now. It was issued in error. But we do have it on hold right now, pending this hearing.

Patrick White: Has any work been contracted for under the license to the County's knowledge?

Everildo Ybaceta: Yes.

Patrick White: Are the jobs "Stop Work"?

Everildo Ybaceta: Yes.

Patrick White: Thank you. I have a question about the application. The pages aren't numbered but at the point where the actual application begins – which is about four or five pages in – there is an affidavit on what would be page two and on page four of the application, and I'm not sure that those affidavits are lawful in the sense that there seems to be a misunderstanding as to who the person was that was acknowledging. It seems to have been the understanding of the Notary that they were the one who was acknowledging. Therefore, I would suggest that we might want to consider revising the application and I would be happy to conditionally approve the comparison with the

understanding that the application would be brought up to the County's standards which out to include on the page between the two affidavits, the answers to questions #1, 3, 4 and 5. In an effort to move expeditiously, I will make a motion.

Patrick White moved that the Board find that the evidence presented by the County of comparative examinations in other jurisdictions is adequate and sufficient and that the issuance of the license should be affirmed, allowing the County to remove the "Stop Work" subject to the condition that the application will be completed to the satisfaction of the Licensing Supervisor addressing the issues raised by the Board.

Vice Chairman Michael Boyd offered a Second in support of the motion.

Discussion:

Kyle Lantz: This is the business portion of the law, not the trades portion of the form. In my experience, people get in trouble because they don't understand Florida specific laws. They don't understand the lien law, they don't understand Florida licensing laws, it always seems to be with a Florida specific law. Although she has passed the Business Law portion in many other states, I think Florida licensing laws and Collier County licensing laws are totally different than they may be in Virginia or Oregon. I don't know if they are or not, but I think they are very specific to our State and I know Florida Construction Lien Law is very specific to Florida. So, if there is a trade test I would have no problem saying a trade is a trade no matter where you are but, as far as the business portion of it, I am very adamant that Florida Business Law is Florida Business Law which is not Oregon or Virginia Business Law.

Patrick White: Or Tennessee. Is that the point?

Kyle Lantz: Yes.

Chairman Joslin: Or Georgia or Delaware – I mean, she's all over.

Kyle Lantz: Which I applaud her for doing that, but I think she needs to learn the specifics to Florida.

Chairman Joslin: Let me ask a question. I see the company is listed as Mohawk Carpet Distribution, Inc. – is this the manufacturer of Mohawk Carpet – is that who she is licensing?

Everildo Ybaceta: Yes.

Chairman Joslin: So it's not just a simple little put carpet in a house, Mom and Pop business?

Everildo Ybaceta: No.

Chairman Joslin: It's for a major, major industry.

Patrick White: Do you have an opinion as to the scope of the Business Law questions in the other jurisdictions, relative to those questions in the Florida Business Law [test] and whether they are sufficiently similar that you are comfortable issuing a license? I think the answer is "yes" based on what you said before, but I don't want to put words in your mouth.

Everildo Ybaceta: That is correct.

Patrick White: I'm satisfied, Mr. Chairman, and I stand by my motion as made.

Terry Jerulle: Kyle, I agree wholeheartedly. In hiring subcontractors from out of state, it's not that they don't know how to put down carpet – they don't know how to contract correctly in the State of Florida because of the lien laws.

Chairman Joslin: And that's the only way to recover money if something happens.

Patrick White: And who is the only who doesn't recover the money?

Kyle Lantz: The contractor.

Patrick White: Okay. So, the contractor – in a sense – is running the risk of not knowing the law. In this circumstance, given that they are a commercial operation – multi-state – I believe that there is a slim chance that they are going to operate in a manner that will cause them to not be able to enforce a lien. I don't believe that they are so unsophisticated as an individual may be that they are going to run afoul of the law. And believe me, I understand each of your points very clearly. That's why I asked the question of the Supervisor and, other than the issues I saw with the application itself, I was pretty confident that they will stay out of trouble.

Terry Jerulle: It is my job is to protect the citizens of Collier County, not Mohawk Carpet. If I'm going to err, I'm going to err on the side of Collier County.

Kyle Lantz: What about Tommy Smith who also happens to have a license in Oregon who comes in to operate "Tommy Smith Carpeting Style" and he just got an almost brand-new 1976 stretch Chevy van and a kicker and he's going to install carpet. He's going to say, 'Why are you not accepting my license test in my case but you're accepting it in her case?'

Vice Chairman Boyd: I would find it hard to believe that Mohawk Carpeting doesn't have licenses in other counties in the State of Florida. I don't think there's a state license for flooring, is there not?

Everildo Ybaceta: No, there isn't.

Vice Chairman Boyd: Right, so they've got to pull licenses all over the state.

Everildo Ybaceta: Correct.

Kyle Lantz: A lot of counties don't ...

Terry Jerulle: Why don't they show that

Kyle Lantz: In Lee County, you can install carpet without being a licensed contractor. Collier County is one of the few where you have to be a licensed contractor to install carpet.

Chairman Joslin: If that's the case, do they have any other counties where they are licensed in Florida?

Everildo Ybaceta: That I am aware of, no. But they have entered into a contract with the State. There are several contracts with the State.

Kyle Lantz: A company that big can pay somebody for two hours to take a test, or for four hours to study for the test and take it. Obviously, being big – in my mind – is not a benefit in this case because the little guy would have taken the test by now and passed it.

Terry Jerulle: Have you met her?

Everildo Ybaceta: I have spoken to her.

Terry Jerulle: The question was: have you met her?

Everildo Ybaceta: No.

Patrick White: Residence is not a requirement.

Terry Jerulle: I'm just asking information for my own benefit. So, she's never been in Collier County – she's just been on the phone with you and made an application?

Everildo Ybaceta: Yes.

Kyle Lantz: Can she take the test outside of Florida?

Everildo Ybaceta: No.

Kyle Lantz: She has to come to Florida?

Everildo Ybaceta: Yes.

Chairman Joslin: Also on the information packet, there are parts of it that are not filled in. Other Certificates of Competency which I will assume are foreign, no telephone numbers ...

Patrick White: Those were the points that I raised, Mr. Chairman.

Chairman Joslin: Okay – good.

Patrick White: There is an "x" on the bottom of the first page of the application – specialty trade - \$205.00 fee and it's for flooring and installation.

Terry Jerulle: If they were here, my inclination would be to give a temporary license and pass the test within so many days. But she's not here and I don't know if that's something that we can do.

Everildo Ybaceta: Why not?

Patrick White: Here's what I see: You have a highly qualified, very experienced, multi-state operation that does large scale commercial jobs who, for them, it is not economically viable to send somebody down here to take a test that they otherwise by means of an application can, from outside of the state, fill out the information, ask for a comparison, bring it to the Board, and verify that it is equivalent. The decree of risk that I see is near zero, in particular as to consumers. And given the unique circumstances, in my experience of what I just described, from a business perspective, it doesn't make sense to pay somebody to come down here to take an exam for all intents and purposes, they have demonstrated over the history of the operation of the corporation to the best of our knowledge. And not only are the exams equivalent, I bet the practices that the business itself is going to follow will be ones that comply with the law, specifically to liens.

Terry Jerulle: So the next carpet guy who comes in front of me who has the experience and we say, 'no, you need to take the test,' he's going to say, 'you are making me take the test, but this corporation that you've never met and who doesn't live or work in Collier County doesn't have to take the test?'

Patrick White: Correct because they demonstrated they had taken the test in multiple other jurisdictions.

Terry Jerulle: I disagree. We can agree to disagree.

Patrick White: We certainly can.

Kyle Lantz: How far is Calhoun, Georgia from Florida? She lives in Georgia. She wouldn't have far to drive.

Terry Jerulle: If they want to work and make money here, they have to show up. They can show up here and take the test.

Patrick White: Or they are entitled to ask the County ... it doesn't mean you have to. If you want to use the fact that they aren't willing to come here as the reason why you want to find that they aren't comparative, that's your prerogative.

Kyle Lantz: My reason to find they are not comparative is because I feel that they are not Florida-specific laws.

Patrick White: I asked a specific question of the Licensing Supervisor about the comparatives of the test.

Kyle Lantz: I get it. They both say Business Law, they both say lien law. You know as well as I do, lien law in every state is different.

Patrick White: There are procedural technicalities, different time frames ...

Kyle Lantz: It's the procedural technicalities!

Patrick White: My point is this: these people aren't stupid. If they were smart enough to understand that they could use this administrator and hearing process to avoid having to spend money to come here to take a test for a couple of hours, that makes sense to me in a business context. It makes sense to me that they have guys like me, and Jed, and Kevin – gals, too – who are going to review the Florida lien law.

Terry Jerulle: They took the time to go to Oregon, they took the time to go to Tennessee, they took the time to go to Virginia.

Patrick White: Maybe they had to go there.

Chairman Joslin: They can take the test in Gainesville, can't they?

Everildo Ybaceta: Yes, they can.

Chairman Joslin: Georgia is not that far from Florida. They don't have to come here.

Patrick White: I have a motion and a second, Mr. Chairman.

Chairman Joslin: Any discussion.

Terry Jerulle: I would approve it if we make it conditional upon taking the test within so many days/weeks/months.

Patrick White: Do you want to pick a time frame?

Kyle Lantz: Terry, you are suggesting that we modify the motion to give a temporary license.

Patrick White: I asked if you had a specific time frame – sixty days?

Terry Jerulle: Sixty days.

Patrick White: I'll amend my motion.

Kyle Lantz: I'll be honest with you – I'd be happy with ninety days – it's the holidays.

Patrick White: I'll amend my motion to ninety days if Mr. Jerulle accepts it.

Kyle Lantz: As long as somebody takes the test.

Patrick White: That's the amendment to the motion.

Terry Jerulle: Who was the second?

Patrick White: Mr. Boyd.

Terry Jerulle: Mr. Boyd, is that okay?

Vice Chairman Boyd: That's fine with me.

Patrick White: Mr. Chairman, we have an amended motion and a second.

Chairman Joslin: Now that we have a motion and a second to allow this company, Mohawk Carpet Distribution, Inc., Elizabeth Greeson, to have a carpet license, but must pass the test within sixty – ninety days – it's a probationary license until then.

All in favor, signify by saying "aye." Motion carries unanimously, 6 – 0.

D. (This case was withdrawn by the County, per Amended Agenda.)

IX. OLD BUSINESS:

(None)

X. PUBLIC HEARING:

(None)

Chairman Joslin wished the members of the Board as well as County Staff a very Merry Christmas, Happy Holidays, and a Happy New Year.

Patrick White thanked outgoing Chairman Joslin for his leadership of the Board during the past year. He stated: We certainly know that it's a job that is "volunteer" but also one that requires a little bit of extra fortitude. Thank you for exhibiting that throughout your term.

NEXT MEETING DATE:

WEDNESDAY, JANUARY 17, 2018

BCC Chambers, 3rd Floor – Administrative Building "F",
Government Complex, 3301 E. Tamiami Trail, Naples, FL

There being no further business for the good of the County, the meeting was adjourned by order of the Chairman at 12:30 PM.

**COLLIER COUNTY CONTRACTORS'
LICENSING BOARD**

MICHAEL BOYD, *Chairman*

The Minutes were approved by the Chairman of the Contractors' Licensing Board on _____, 2018, "*as submitted*" [] - OR - "*as amended*" []