

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

June 20, 2018
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: Michael Boyd

Vice Chair: Kyle Lantz

Members: Terry Jerulle
Richard Joslin
Robert Meister
Matthew Nolton

Excused: Gerald Shannon
Patrick White

ALSO PRESENT:

Everildo Ybaceta – Supervisor, Contractors' Licensing Office
Kevin Noell, Esq. – Assistant Collier County Attorney
Jed Schneck, Esq. – Attorney for the Contractors' Licensing Board
Reggie Smith – Contractors' Licensing Compliance Officer
Joe Nourse – Contractors' Licensing Compliance Officer

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 Michael Boyd opened the meeting at 9:00 AM and read the procedures to be followed to appeal a decision of the Board.

Roll Call was taken; a quorum was established; **six (6) voting members** were present.

Everildo Ybaceta, Supervisor - Contractors' Licensing Board Office, noted the newest member of the Board, *Gerald Shannon*, was not present and had been excused from attending this meeting. Mr. Shannon is a businessman who will represent Marco Island.

II. AGENDA- ADDITIONS, CHANGES, OR DELETIONS:

(None)

III. APPROVAL OF AGENDA:

Richard Joslin moved to approve the Agenda as submitted. Vice Chairman Kyle Lantz offered a Second in support of the motion. Carried unanimously, 6 – 0.

IV. APPROVAL OF MINUTES – MAY 16, 2018:

Richard Joslin moved to approve the Minutes of the May 16, 2018 Meeting as presented. Matthew Nolton offered a Second in support of the motion. Carried unanimously, 6 – 0.

V. PUBLIC COMMENT:

(None)

VI. DISCUSSION:

(None)

VII. REPORTS:

(None)

VIII. NEW BUSINESS:

A. Orders of the Board:

Richard Joslin 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 Attorney for the Board.)

**B. Kevin Murphy – Approval of Experience
(d/b/a K&B Murphy Residential Building Solutions)**

Chairman Boyd called Mr. Kevin Murphy to the podium and noted he was appearing before the Board to obtain approval of his prior work experience to obtain a Residential Contractor’s License. He noted Everildo Ybaceta provided the Board with an Affidavit from the Applicant which was not part of his application package.

Richard Joslin moved to approve accepting the Affidavit of the Applicant and to include it in his application package. Robert Meister offered a Second in support of the motion. Carried unanimously, 6 – 0.

Richard Joslin requested an opportunity to review the contents of the Affidavit. **Kevin Murphy** apologized for the last-minute submission of the Affidavit. He stated his attorney had been on vacation for the past two weeks and she wanted to review the document before it was submitted to the Board.

(The proceedings paused while the Members reviewed the Affidavit.)

Richard Joslin: It seems as though this is a synopsis of your experience?

Kevin Murphy: Yes, it is – it’s a time line.

Terry Jerulle: Sorry, remind me – why is he here?

Everildo Ybaceta: Per the Code, Mr. Murphy is required to show a minimum of forty-eight months of experience. The experience can be verified by other individuals in the same industry or by Building Officials in the area where he worked. Mr. Murphy’s prior experience was in Connecticut and the way the licenses were structured there: a “home improvement contractor,” and a “new home building contractor.”

He explained: The home improvement contractor was a registration of a person equivalent to Business Tax Receipt (usually given to a handyman). A person pays a \$200 fee – no exams are taken – this “home improvement contractor” does not comply with any of the requirements that we have. Even with the experience that he gave, I was not comfortable signing off on his license application which is why Mr. Murphy is here. He did provide information concerning other contractors that he worked for in Connecticut. In talking to a big developer there who owns a large chunk of land, he was building the homes himself – almost like an “Owner/Builder” – and selling them as he built them. Again, my comfort level wasn’t there so that’s why we’re here.

Terry Jerulle: Okay, he fills out an application to be a Residential Contractor in Collier County – and you’re uncomfortable with it, so he’s here. And if we approve this, that means he’ll be a Contractor.

Everildo Ybaceta: He’ll be a Residential Contractor – yes.

Terry Jerulle: Okay.

Everildo Ybaceta: He did pass the tests – his scores ...

Terry Jerulle: Everything else checks out except ...

Everildo Ybaceta: Everything checked out ...

Terry Jerulle: ... for you were uncomfortable with his experience?

Everildo Ybaceta: Yes.

Terry Jerulle: Okay.

Vice Chairman Kyle Lantz questioned the Applicant:

Q. In reading through your packet, it seems like you have a ton of framing experience.

A. I've got both framing and new home experience. When I was ... in 1972, I started working with my father at the age of 13. We did from roofing all the way up to new homes. Back in the state of New York where I was born, there was no such thing as a "Building Code," no licensing. So, in the testing procedures up north – yes, there is none. I learned the hard way ... by my father's hand. If you didn't do it right, you were told to do it right -- the way it was supposed to be done. But I have built new homes, I've pulled building permits. In the packet you'll see where my name is on building permits with some of the companies that I represented. My father moved into Connecticut when I was 18 and I followed behind. That's where ... I've always been in the building industry. My father would run the new construction division and I ran the remodeling/contracting part of it, and we crisscrossed. It wasn't that I just did the remodeling and he did the framing or new homes. We would actually – if I was slow in remodeling, I would be other there in the industry working ... putting in new homes. I've actually had to pour foundations up north – one time – and I told my father, "Never again, that's not for me." That's why you have concrete contractors to handle the concrete forms.

Q. One of the things here, as far as being a Residential Contractor, is they want you to have structural experience.

A. Yes.

Q. What kind of structural experience would you say you have? You said you have framing. Do you have structural framing?

A. Yes – I have structural framing. If noted in the packet, we had to do ... we build a ... in Groton, Connecticut, my father was in charge – we built a four-story Marine officer base at the Groton Submarine base. Working with the U.S. government – the Navy – you don't work the same as you do in a normal contracting individual. We built the whole property... I forgot how many units ... it was just huge, we were there for months. So, yes, I've done a lot of constructing ... structural contracts ... I'm the one who usually did blueprint reading, laying out – making sure that everything worked from the footings right straight up to making sure the roof lines could carry the snow loads up there. You don't have to worry about that down here I know and that's part of the reason why I moved here – I wanted to get out of the snow. Did that answer your question – what you're looking for?

Q. I'm just curious – so you have framing experience? You have framing walls, beams, trusses ...

A. Everything ... new homes ... top to bottom.

Chairman Boyd questioned the Applicant:

Q. And how many new homes were constructed where you were the person in charge?

A. Personally in charge of?

Q. Yes.

A. About six that I can think of ... right off the top of my head. Most of the time, my father's name was on the building permit, but I would say I was in charge. He would drive by and say, "Kevin do you need anything?" Okay, I could legitimately say there were hundreds – not just six. There were six that I signed the building permits on.

Terry Jerulle questioned the Applicant:

Q. A lot of the homes up north are wood-framed?

A. Yes.

Q. And most of the homes down here are concrete?

A. Correct.

Q. Masonry with tie-beams?

A. Yes.

Q. And even some homes with a deep foundation system?

A. Yes.

Q. Are you familiar with deep foundation systems?

A. Yes, I am. I actually drove around – some of the complexes that are being put up as we speak – I was up at Plazio and checked out two of their footing systems going in. It looks like they are using more of a floating system – there's no footing – it's a structural poured floor, so the re-rod starts from the bottom out and then gets tied up through the cement blocks.

Q. That's not what I'm speaking of ... I'm talking about a deep foundation system.

A. A "deep" foundation system ... no ... to be honest with you, I'd have to look that one up.

Richard Joslin questioned the Applicant:

Q. How about pylons ... are you familiar with pylons?

A. I understand the principle with pylons, yes. That was even on the exam ... where they push them down in and its done by an individual machine – I'm hoping not to get into a pylon situation – that's more of dock work. I don't know if you use them on homes to be honest with you, so I can't answer that question.

Terry Jerulle questioned the Applicant:

Q. And that's what I meant by a deep foundation system.

A. Okay, all right.

Q. Mr. Murphy, what is the purpose of you getting a license? Do you have a contract to build a home?

A. No, I don't have a contract. I just want – basically, what I'm looking to do is remodeling. If somebody comes to me and says, "I'd like you to build a home," I'd have an engineer and an architect, and we'd sit down and draw up the house, and I'd build it by the architectural design as well as the engineer program. I mean, everything has to be engineered down here. I understand that.

Terry Jerulle directed his question to Staff: Evy, is there – this is a Residential Contractor’s License that he is applying for?

Everildo Ybaceta: Right.

Terry Jerulle: What is the next step down?

Everildo Ybaceta: There isn’t one.

Terry Jerulle: There isn’t?

Everildo Ybaceta: No.

Terry Jerulle: This is the lowest license for contracting in Collier County?

Everildo Ybaceta: Correct.

Richard Joslin: Just two stories, though?

Everildo Ybaceta: Single family home.

Vice Chairman Lantz: And two or three-family, not just single family.

Richard Joslin: Right.

Terry Jerulle questioned the Applicant:

Q. I’m just thinking aloud, Mr. Murphy. If you are looking to do just remodeling of homes, we could limit this license just to that until you do develop some more experience ...

A. That would be fine.

Q. ... until we give you a full-blown license.

A. That was never offered to me until this point. Do I think that I’ll ever build a home here in Collier County? I doubt it. I’m getting too old to go out there and do that game. I prefer doing small jobs. The reason that I’m here, gentlemen, is in 2016, I was operated on for throat cancer – and that’s also in my packet. I just don’t want to be up north and fight the weather. I’m down here, semi-retired. If I say home, my wife is going to go crazy.

Richard Joslin: What is the purpose of the license?

Terry Jerulle: For remodeling.

Richard Joslin: Remodeling?

Kevin Murphy: Yeah. Basically, remodeling – I’m not looking to build new homes. You know, most new home builders down here – yes, it is concrete. You do have – it’s different than what we did up north. Would I ever build a wood structure down here – no, there’s no way. I know it can be done with the proper tie-in system, but I believe it should be done out of concrete and block.

Vice Chairman Lantz: Personally, I have no problem at all with his experience. I understand it’s not local and it’s not Florida experience and it’s not Florida-type systems, but construction is construction and he can always learn if he’s been doing it for years. It’s not like he’s never – like he just barely makes his four years of experience. You know, he’s got 20 – 30 years throughout the different trades in construction. I’m pretty sure that he can learn the Florida-specific systems, and especially as a Contractor – you know – I mean, we can’t scratch our butt without getting an engineer’s letter first anyway. It’s not like he can do – he’s got enough

experience to understand the structural loads and structural issues that may come about. He can't design a system anyway.

Terry Jerulle: It's not a matter of designing a system. I think once a structure is up, I think he has the experience. It's just doing the homes today with some of the foundation systems that I don't think he has the experience in.

Kevin Murphy: Can I interject one thing for you? As a Residential Contractor, I would be the over-seer. My experience would lie in making sure that I hire the right contractors to do the right job for the right positions. If I'm hiring an excavator, I want to make sure the excavator understands the compaction ratios of the ground and how to make sure that everything is in place. The same way goes with the concrete -- if I'm going to have somebody put in a concrete footing for me -- up north, we always put in a 12 x 24-inch concrete footing to start with. Down here ... I've been driving around ... they don't do that. It's more of a system where it's all laid in and if that's the way the concrete is done down here, I'd hire a concrete man and say, "this is the way it's done." And then he's reputation -- he has to make sure that it is passed with the Building Department. I know I'm the overseer and I'm the one who is responsible for that. But I will rely on my subs to make sure they are doing a proper job -- not that I'm going to go out there and pour the concrete. The subcontractors that I hire better be fully licensed and insured to do that job.

Terry Jerulle: To have the license, you must be responsible -- that you should ultimately know ...

Kevin Murphy: ... Yes ...

Terry Jerulle: ... know the Codes and know how to build it correctly ... and not the Subs.

Kevin Murphy: And I agree with you.

Richard Joslin: My issue only that he mentioned he wants to do basically renovations and not build new homes. He's going to be taking apart or I guess estimating jobs or whatever -- homes that have additions added or things added to the home or taken out of the home ... he's going to have to know how to look at that home and know what it's going to take in order to get to do that, aside from an Engineer's plan. That I have a ... I'm not really sure he has the experience to do that. If he doesn't know some of the areas that we have here in Florida as far as the cement blocks since I'm sure he's used to doing wood. I have some reservations on how to do this for him. If it was just new homes, I wouldn't have a problem but when you're talking about renovations -- you're talking about a whole different animal. Because now he's got to be able to analyze how he's going to renovate that home and bring it to the same Codes that he's not aware of here.

Matthew Nolton: I deal with Contractors all the time and, from what I'm hearing, he's as experienced as a lot of the Contractors that I deal with and he's got that experience. We have the Building Codes in place that he has to go by -- we have an engineered plans and architectural plans that he has to go by -- it's not up to him. It's up to him to be able to read the plans and read the Code ... just like we do when we have a question and may not understand it. This is about experience and about being able to be the business man

and the contractor in charge. Frankly, I think he's as experienced as most of them that I deal with.

Kevin Murphy: To answer your question on loads when you're working on a remodel job ... once you get into the remodel, most homes – if you're looking on the inside of them – then you check for your bearing loads – bearing walls – bearing loads – on any of the interior walls. Down here, most of the homes I have noticed have been built with trusses so that means most of the load bearing goes on the outside, unless some of the walls are built inside and then you have to get up into the attic and physically check for the load-bearing points. Once you find your load-bearing points, then you can determine what to take apart and what not to take apart, and to make sure that you have an engineered beam or system in place to carry the load when you're completely done, and it's tied down to the "Cat 5" recommendations.

Chairman Boyd asked the members if there were any more questions for the Applicant.

Richard Joslin: I have one last question and it's not really part of the application as far as the ... I'm looking at the credit report ...

Kevin Murphy: Yup.

Richard Joslin: ... and I'm seeing on it that, in 2018, there was a bankruptcy.

Kevin Murphy: Yes, there was.

Richard Joslin: Can you touch on that?

Kevin Murphy: I tried to hold my business together out of the crash of 2007. In 2007, I employed 20 men and 4 foremen – I had three different crews running at one time – so, yeah, I had to rely on some bigger parts of the company. I was the president and owner of the company. At that point when it fell, I had most of my eggs in two baskets – and those two baskets were the residential industry. And when it fell, I was one of the casualties. It took me until 2018 to finalize my bankruptcy and not by choice.

Richard Joslin: I'm also seeing a ton of collections.

Kevin Murphy: There's four, yes – and it's all part of the bankruptcy. They were discharged – sometimes they show up and sometimes they don't.

Vice Chairman Kyle Lantz moved to approve the application of Kevin Murphy for a Residential Contractor's License. Matthew Nolton offered a Second in support of the motion.

Motion carried, 5 – "Yes"/1 – "No." Richard Joslin was opposed.

Chairman Boyd informed Mr. Murphy he could complete his paperwork at the Contractors' Licensing Office.

**C. Len Ciarrocchi – Contesting Citations #10361 and #10362
(Southwestern Signs of Florida, d/b/a Signarama of Naples)**

Citation Number: 10361 (*Unlicensed Contracting – Electrical Sign*)

Date Issued: May 1, 2018

Amount of Fine: \$1,000.00

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

Citation Number: 10362 (*Unlicensed Contracting – Electrical Sign*)

Date Issued: May 1, 2018

Amount of Fine: \$1,000.00

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

Everildo Ybaceta noted Mr. Ciarrocchi was not present.

Reggie Smith, Contractors' Licensing Compliance Officer, stated: He thought Mr. Ciarrocchi had notified the office that he would attend. He asked if the case could be heard later in the hearing.

Chairman Boyd agreed and asked for a motion to table the case.

Vice Chairman Lantz moved to approve tabling the case until later in the hearing. Terry Jerulle offered a Second in support of the motion. Carried unanimously, 6 – 0.

D. Claudio Bifaretti – Application for Reinstatement of License and Request for Waiver of Exam (d/b/a *Elite Stucco Systems, Inc.*)

Mr. Bifaretti was present and was sworn in.

Everildo Ybaceta provided background information:

- The Applicant is requesting a reinstatement of his Plastering and Stucco Contractor's License;
- His previous license was active until September 30, 2014;
- He is currently licensed in the City of Punta Gorda, Charlotte County and Lee County;
- Per the Code, if his license was not renewed for a three-year period, he must re-test before a new license can be issued.
- The Applicant is also asking for a waiver of exam.

Vice Chairman Lantz: If he never had a Collier County license in his past and he came before this Board – however, he has licenses in other counties and had taken the test more than three years ago – would we be here?

Everildo Ybaceta: No, sir.

Vice Chairman Lantz: So, he is being penalized for doing work in Collier County and saying, “I don’t have enough business in Collier County to continue to work in Collier County,” and now he wants to extend his business back.

Everildo Ybaceta: I don’t want to say he is being penalized for it – unfortunately, it’s the way the Ordinance is written.

Vice Chairman Lantz: I understand the way the Code is written.

Everildo Ybaceta: I would be more than happy to reinstate his license if the Board says so.

Richard Joslin: Are fees involved?

Everildo Ybaceta: For a reinstatement, yes.

Richard Joslin: Past fees?

Everildo Ybaceta: Yes, there are.

Richard Joslin: Is this a state license or a county license that you have?

Claudio Bifaretti: It’s a State license – I register the license in the County where I work. It’s an out-of-state license.

Terry Jerulle: When Mr. Joslin asked about past fees, as of 2014, were there any fees?

Everildo Ybaceta: He has late fees for October, November and December – they must be paid. And the re-application fee.

Terry Jerulle: Were there any previous fines?

Everildo Ybaceta: No, sir.

Terry Jerulle: Citations?

Everildo Ybaceta: No, sir.

Chairman Lantz questioned the Applicant:

Q. You have been active in the trade?

A. I have been active in the trade since 2005.

Q. Why was your license expired in Collier County?

A. What happened -- in 2014, I started my company in Port Charlotte. The people that I’m sharing a building since I stated my business were going through a lot of financial issues and family issues, and it got to a point where I had to move out of the building. So, when that happened, I had to hire a person – she came on in 2014, I had to train her – she trained with me for six months. We moved into a new location and we had to start over. The person who was doing my paperwork before – all the licenses had to be in one folder – so I knew when it was time for renewal. At the end of the year when I was going through my financials, I found out that my Collier County license was not renewed.

Q. What I’m trying to get at is – I’m trying to see if there’s a pattern that shows you had been actively working as a Stucco Contractor.

A. Yes, I have been since 2005 – all the time.

Q. Just in other counties?

A. Just in other counties, yes.

Q. So, you still understand how stucco works and ...?

A. Oh, of course, yes. I do a lot of commercial work and I do residential work also – I’ve been active the whole time.

Q. Do you have a payroll company or do you ...

- A. I use a payroll/leasing company.
Q. And they make sure all your employees have Workers' Comp.?
A. Yeah, they do that. I never had a problem with somebody not being on payroll. I usually have over 30 employees and I've never had a claim for that, never had any citations for any work in any county, you know, without a license – never had any issues with any person or with business.
Q. Aside from not paying your renewal fee in Collier County, everything has been pretty darn good, business-wise?
A. Yes, yes.

Richard Joslin: What name were you going to go under this time?

Claudio Bifaretti: When I moved out in 2014, I had to change the name – that was part of the process. I didn't want to use somebody else's last name. It's Elite Stucco Systems, Inc. The last work I did here in Collier County was in 2014.

Vice Chairman Lantz: *Unless anyone has any issues, I'll make a motion to approve his license.*

Chairman Boyd: We have a motion to approve. Do we have a Second?

Richard Joslin offered a Second in support of the motion to reinstate the license of Claudio Bifaretti as a Plaster/Stucco Contractor and waive the requirement to take the exams again. Carried unanimously, 6 – 0.

**E. Robert Abney – Contesting Citations #11072, #11073, and #11074
(d/b/a *Robert Abney's Maintenance and Repairs*)**

Citation Number: 11072 (*Unlicensed Contracting - Roofing*)

Date Issued: November 20, 2017

Amount of Fine: \$1,000.00

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

Citation Number: 11073 (*Unlicensed Contracting - Roofing*)

Date Issued: November 20, 2017

Amount of Fine: \$1,000.00

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

Citation Number: 11074 (*Unlicensed Contracting - Roofing*)

Date Issued: November 20, 2017

Amount of Fine: \$1,000.00

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

Everildo Ybaceta: Mr. Abney – I don't know if you recognize the name – has come before the Board a couple of times. At this point, I believe that Mr. Abney is still in North Carolina somewhere. We don't know if he's still incarcerated or not. We did go through last-ditch measures to make sure that he received proper Notice – it is in your packet.

Vice Chairman Lantz: That's the ad in the newspaper?

Everildo Ybaceta: Yes, sir.

Chairman Boyd: Obviously, he isn't going to appear.

Everildo Ybaceta: No, sir.

Chairman Boyd: There's no sense in continuing this any further.

Vice Chairman Lantz: I, for one, have read this packet – I would say four times – and it angers me each time I must read it again, so if we could do something to get it off the books – that would be a pretty good thing.

Assistant County Attorney Kevin Noell: If I could just weigh in, Mr. Chairman. Yes, Mr. Abney is contesting the Citations. He was given an original Notice of the hearing date and then we found out that he was subsequently incarcerated. We had to continue the case because we wanted to give him due process – the ability to be heard if he wanted to be here. Then we had to go through some other hoops, i.e., Notice by Publication. And so, he does have proper Notice to be here. For whatever reasons, he has waived that right. As far as contesting the Citations, the *Burden of Proof* would be on him to show the Board through evidence how the Citations would be invalid. The County's position is that he has now waived that right. We would ask that the Board upholds the Citations.

Vice Chairman Lantz: I personally have some issues – some pretty strong issues concerning the Citations and I would speak in his defense on two out of the three.

Assistant County Attorney Noell: I guess I would defer to the Board's Attorney. Certainly, from the County's position, the Board is free to discuss the evidence packet and things of that nature. Our issue is if he is contesting the Citations, he would have the *Burden of Proof* to show the invalidity of the Citations. That would be the County's position – if the Board's attorney would want to weigh in on that issue.

Richard Joslin: Isn't there a time element? After the Citations are issued, doesn't he have a certain amount of time to be able to come before the Board to contest the Citations?

Assistant County Attorney Noell: Yes, and that is a hard and fast rule. It's a strictly construed rule. That time is continued, though, because the deadline is to follow the Notice of contesting within that time, and then it kicks in Notice provisions and things like that to bring him before the Board or given Notice of the hearing so that he can make it. It doesn't have to be heard in the deadline in which he has to file his Notice of Appeal.

Chairman Boyd: What I'm gathering is – we should move forward with this and dispose of it?

Assistant County Attorney Noell: The County's position is he would have the burden to show the invalidity of the Citations. And the Citations are presumed – they start off with the presumption of being correct. He was given Notice of the hearing; the opportunity to be here on a few occasions, and so – under the Code provisions in *Florida Statutes*, essentially this is considered a waiver by him of his Appeal.

Jed Schneck, Attorney for the Board: Mr. Chairman, if I may? I would recommend that you swear in the witness and have him request to enter the packet into evidence for consideration of the Board, but what Mr. Noell said is accurate. However, we are at a Hearing and it has been noticed. The violator has not shown up. In an abundance of caution, I would recommend that you hear the testimony and consider the evidence and make your conclusions afterward.

Chairman Boyd: Thank you.

Richard Joslin: I just have one question. On a contested Citation – this is not a formal hearing, correct?

Attorney Schneck: It is a hearing under Chapter 489, Section 127, of the *Florida Statutes*. It's referred to in the *Statutes* as an "appeal" of the Citation and they are entitled to an Administrative Hearing.

Chairman Boyd: But if he doesn't show up for the Appeal, it would seem like the Citation would just uphold itself without us doing anything. Correct?

Assistant County Attorney Noell: That's the County's position – that it is the appeal of a Citation. It's his appeal – he's been noticed of the hearing – for whatever reason, he has failed to appear and so we have – the County – it's our position under 489 – that we have no *Burden of Proof* for anything. The *Burden of Proof* is on the violator to bring forward evidence to the Board – and argument – on why this is an invalid Citation or Citations. He's standing silent essentially. I would have no issue as far as if the Board would want to swear in our Investigator and even though under the Ordinance, we do not have to show that proper notice was given. But we can still do that and let the Board know about the publication in the Collier County newspaper. Notice was clearly given, but I think that's also in the evidence packets. So, to answer the question, we have no evidence – no *Burden of Proof* to carry.

Vice Chairman Lantz: Basically, he's guilty until proven innocent.

Assistant County Attorney Noell: He has appealed the decision so it's his burden to come and show why he is correct. The way the Ordinance is written, we are – the Code – with the presumption that the Citations are correct.

Richard Joslin: So, if we do find him guilty of the three violations – the three Citations that he has, can we increase the amount of the penalty if it applies – even though he's not here?

Attorney Schneck: Yes, you may increase the penalty, I believe, not to exceed \$2,000.

Assistant County Attorney Noell: If I can just weigh in on that – I think one of the issues before the Board is that he has filed an appeal contesting the Citations. Since he is not here, there is no "hearing" to be had. The Citations are, I think, essentially – legally – upheld as written with the fines imposed as written. And if he were to decide to appeal this procedure in another venue, that would be in the Circuit Court. I think

there is really no action for the Board to take – other than, he’s not here and the Citations are upheld.

Matthew Nolton: Or simply deny the appeal because he’s not here and there’s no evidence.

Assistant County Attorney Noell: Correct.

Chairman Boyd: Can we get Joe sworn in?

Joe Nourse identified himself as a Collier County Contractors’ Licensing Compliance Officer and requested to enter the information packet provided to the Board Members concerning Robert Abney into evidence on behalf of Collier County.

Terry Jerulle moved to approve entering into the evidence packet provided to the Board concerning Robert Abney who is contesting Citations #11072, 11073, and 11074 which were issued to him. Richard Joslin offered a Second in support of the motion. Carried unanimously, 6 – 0.

Chairman Boyd requested that Officer Nourse present an abbreviated version of his written report.

Joe Nourse stated:

- The three Citations resulted from complaints received from residents at the Imperial Wilderness Mobile Home Park.
- He performed a site inspection and found two “employees” who claimed to be working for *Robert Abney’s Maintenance and Repairs*. They had roofed (re-roof) approximately one dozen mobile homes in the park and were in the process of roofing another one when he arrived.
- Approximately thirty homeowners had circled the property where the work was taking place and each person had similar complaints, i.e., Mr. Abney took their money and promised to re-roof their mobile homes, but he never did.
- When he asked if anyone knew where Mr. Abney’s was, he was informed that Robert Abney had been incarcerated in Collier County’s jail in Immokalee.
- He proceeded with his investigation of the three filed complaints and issued Citations which he took to the Collier County Detention Center in Immokalee where they were signed by Mr. Abney.
- Mr. Abney immediately contested the Citations.
- Mr. Abney was later released from jail and then left the state of Florida. He was subsequently arrested in North Carolina on charges not related to the hearing, i.e., on drug charges. Mr. Abney spent several months in jail.
- He was able to monitor Mr. Abney through the jail’s website; he was released from the North Carolina jail on March 2, 2018.

Vice Chairman Lantz questioned Investigator Nourse:

Q. I know nobody [on the Board] appreciates that I am sticking up for a deadbeat, but I am. My first question is: How did you determine that he was acting as a Contractor?

A. Because he contracted with the homeowners – he took money to roof their properties.

Q. I would argue, and I think the owner – Linda Gray – would argue that he was not a contractor ... he was an employee. And the way I would argue that is they have an Owner/Builder permit that they applied for and Linda Grey signed. I understand State law requires construction to be done by a licensed contractor, but a homeowner may apply for an Owner/Builder Permit under an exemption from the law.

Vice Chairman Lantz read the following into the record:

DISCLOSURE STATEMENT

1. I understand that state law requires construction to be done by a licensed contractor and have applied for an owner-builder permit under an exemption from the law. The exemption specifies that I, as the owner of the property listed, may act as my own contractor with certain restrictions even though I do not have a license.
2. I understand that building permits are not required to be signed by a property owner unless he or she is responsible for the construction and is not hiring a licensed contractor to assume responsibility.
3. I understand that, as an owner-builder, I am the responsible party of record on a permit. I understand that I may protect myself from potential financial risk by hiring a licensed contractor and having the permit filed in his or her name instead of my own name. I also understand that a contractor is required by law to be licensed in Florida and to list his or her license numbers on permits and contracts.
4. I understand that I may build or improve a one-family or two-family residence or a farm outbuilding. I may also build or improve a commercial building if the costs do not exceed \$75,000. The building or residence must be for my own use or occupancy. It may not be built or substantially improved for sale or lease. If a building or residence that I have built or substantially improved myself is sold or leased within 1 year after the construction is complete, the law will presume that I built or substantially improved it for sale or lease, which violates the exemption.
5. I understand that, as the owner-builder, I must provide direct, onsite supervision of the construction.
6. I understand that I may not hire an unlicensed person to act as my contractor or to supervise persons working on my building or residence. It is my responsibility to ensure that the persons whom I employ have the licenses required by law and by county or municipal ordinance.
7. I understand that it is a frequent practice of unlicensed persons is to have the property owner obtain an owner-builder permit that erroneously implies that the property owner is providing his or her own labor and materials. I, as an owner-builder, may be held liable and subjected to serious financial risk for any injuries sustained by an unlicensed person or his or her employees while working on my property. My homeowner's insurance may not provide coverage for those injuries. I am willfully acting as an owner-builder and am aware of the limits of my insurance coverage for injuries to workers on my property.
8. I understand that I may not delegate the responsibility for supervising work to a licensed work to a licensed contractor who is not licensed to perform the work being done. Any person working on my building who is not licensed must work under my

direct supervision and must be employed by me, which means that I must comply with laws requiring the withholding of federal income tax and social security contributions under the Federal Insurance Contributions Act (FICA) and must provide Workers' Compensation for the employee. I understand that my failure to follow these laws may subject me to serious financial risk.

9. I agree that, as the party legally and financially responsible for this proposed construction activity, I will abide by all applicable laws and requirements that govern owner-builders as well as employers. I also understand that the construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.

10. I understand that I may obtain more information regarding my obligations as an employer from the Internal Revenue Service, the United States Small Business Administration, the Florida Department of Financial Services, and the Florida Department of Revenue. I also understand that I may contact the Florida Construction Industry Licensing Board at 850-487-1395 or visit <http://www.myfloridalicense.com/dbpr/pro/cilb/forms.html> for more information about licensed contractors.

11. I am aware of, and consent to, an owner-builder building permit applied for in my name and understand that I am the party legally and financially responsible for the proposed construction activity at the following address: 506 Cheetah Drive, Naples, Florida 34114.

12. I agree to notify the Building Department immediately of any additions, deletions, or changes to any of the information that I have provided on this disclosure.

Licensed contractors are regulated by laws designed to protect the public. If you contract with a person who does not have a license, the Construction Industry Licensing Board and Department of Business and Professional Regulation may be unable to assist you with any financial loss that you sustain as a result of a complaint. Your only remedy against an unlicensed contractor may be in civil court. It is also important for you to understand that, if an unlicensed contractor or employee of an individual or firm is injured while working on your property, you may be held liable for damages. If you obtain an owner-builder permit and wish to hire a licensed contractor, you will be responsible for verifying whether the contractor is properly licensed and the status of the contractor's workers' compensation coverage.

Before a building permit can be issued, this disclosure statement must be completed and signed by the property owner and returned to the local permitting agency responsible for issuing the permit. A copy of the property owner's driver license, the notarized signature of the property owner, or other type of verification acceptable to the local permitting agency is required when the permit is issued.

“Signed – Linda Gray”

Vice Chairman Lantz continued: So, Linda Gray has put her name on the record saying, “I’m not hiring an unlicensed contractor, I’m hiring employees.” Linda Gray wrote a check to Robert Abney, not to a company. In my opinion, Linda Gray is a

contractor, and Robert Abney is an employee – albeit, a pretty crappy employee. I’ve had pretty crappy employees but that doesn’t mean I’m going to try to ...

Terry Jerulle: You are making assumptions. There’s nobody here to dispute the County and for all we know, he may have given her false documents saying that he is a roofing contractor and there was a “roof deposit” on the check – so you’re making an assumption. My assumption is that he is a roofing sub-contractor because she gave him a deposit for the roof, and he may have given her false documents. As a Contractor, you know, if somebody gives me false documents, it’s not my fault that I received false documents – it’s the [fault of] the person who gave me the false documents. I’m inclined to side with the County on this – that she is acting as her own General Contractor and Mr. Abney gave her documentation that he is a roofing contractor as he has done for – as the County has stated – thirty other individuals. Twelve – you said there are twelve other roofs that he has done?

Joe Nourse: More than a dozen complaints – only three were filed on this day and after this day, I lost track of him.

Terry Jerulle: Yes. What you’re doing is making an assumption to one way, and I’m listening to the evidence and saying that Mr. Abney is a roofing subcontractor ... and acting in that capacity.

Richard Joslin: And also, I agree because I’m seeing in the packet on Page 29 where there’s a Bid Memo from Mr. Abney which clearly shows he gave he an estimate to do the job and it is listed as a “roof.” And on the day afterward – the Bid was dated November 11, 2017 and the receipt for the check that Norma Weil wrote was dated November 12, 2017. That pretty much tells me that a Bid was presented, and a contract deposit was issued for that work to be done. I’m quite certain he was acting in the capacity as a roofer. Not so much as Linda Gray ... but I understand your ...

Vice Chairman Lantz: At what point do we hold the homeowner responsible? They’re beating the system by hiring an unlicensed contractor. You can’t tell me that the 30 people in this mobile home park – nobody knew he was not licensed. You can’t tell me that – you can’t ... in your right mind ... sit here and say nobody knew he was unlicensed but they all got Owner/Builder permits anyway ... just to save him time to do it. You know ... at what point when the owners beat the system do we say, “you’re trying to beat the system but you’re responsible for your actions.” If you want to beat the system, fine. Beat the system. But don’t now ask the system to save you because you screwed up and got burned.

Terry Jerulle: I agree with you, Kyle, but what we’re doing here has nothing to do with the homeowners. We’re not saving them. We’re not getting them out of trouble. If they lost money then, so be it, they lost money. What we’re here to do – as I understand it – is to punish Mr. Abney for being an unlicensed roofing contractor.

Chairman Boyd: We’re here because of the Citations that the County gave him.

Terry Jerulle: That’s correct. And I agree with what you’re saying with some of the owners. I think that some of them probably knew or found out what he was doing was wrong. But there’s nothing that we can do with that. And as frustrating as it is, I agree with you, but I don’t think there’s anything that we can do. The testimony

given today was that Mr. Abney acted as a roofing contractor – as an unlicensed roofing contractor and three Citations were given and he’s not here to object to the Citations, so, in my opinion, we should uphold them.

Chairman Boyd: He has no license at all – correct, Joe? He’s not even a handyman or anything?

Joe Nourse: He’s a handyman in Pensacola, Escambia County.

Chairman Boyd: But he’s not licensed here?

Joe Nourse: No.

Richard Joslin moved to approve upholding Citations #11072, 11073, and 11074 issued to Robert Abney for Unlicensed Roofing Contracting. Matthew Nolton offered a Second in support of the motion.

Discussion:

- **Robert Meister** asked if any administrative costs had been incurred by the County.
- **Chairman Boyd** stated he was not sure that administrative costs could be added to a Citation. He asked the Board’s Attorney for his opinion.
- **Attorney Schneck** acknowledged administrative costs could not added to the Citation.
- **Richard Joslin** noted the Board’s function was to uphold the Citations.

Chairman Boyd called for a vote on the motion.

Motion carried, 5 – “Yes”/ 1 – “No.” Vice Chairman Lantz was opposed.

(THE FOLLOWING CASE HAD BEEN TABLED AND WAS RECALLED BY THE CHAIRMAN.)

**C. Len Ciarrocchi – Contesting Citations #10361 and #10362
(Southwestern Signs of Florida, d/b/a Signarama of Naples)**

Citation Number: 10361 (*Unlicensed Contracting – Electrical Sign*)

Date Issued: May 1, 2018

Amount of Fine: \$1,000.00

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.

Citation Number: 10362 (*Unlicensed Contracting – Electrical Sign*)

Date Issued: May 1, 2018

Amount of Fine: \$1,000.00

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.

Chairman Boyd recalled the case and asked if Len Ciarrocchi was present. It was noted that Mr. Ciarrocchi was not present.

Chairman Boyd stated the case would be handled in the same manner as the previous case, i.e., Robert Abney. He acknowledged that Contracting Licensing Compliance Officer, Reggie Smith, has been sworn in previously.

Reggie Smith requested to enter the information packet provided to the Board Members concerning Len Ciarrocchi into evidence on behalf of Collier County.

Richard Joslin moved to approve entering into the evidence packet provided to the Board concerning Len Ciarrocchi who is contesting Citations #10361 and #10362 which were issued to him. Chairman Boyd offered a Second in support of the motion. Carried unanimously, 6 – 0.

Chairman Boyd: I don't know whether I need to bring this up, but I am in the same business as Mr. Ciarrocchi. I am a State-certified Contractor. I'm putting this on the record because I don't know if I should recuse myself. I've never met the gentleman, but I know who he is.

Richard Joslin: Is it going to change your thoughts or judgment or your ability to make your own decision?

Chairman Boyd: If Kyle was upset with the last case, I am extremely upset with this one. I don't think I can vote on this objectively.

Attorney Schneck: Mr. Chairman, given what we have just heard, I would suggest that you recuse yourself from participating in this hearing. We will give you a form to complete – an official conflict form – that's how I would recommend proceeding.

Richard Joslin moved to approve allowing Vice Chairman Lantz to conduct the remainder of the meeting for the Board. Terry Jerulle offered a Second in support of the motion. Carried unanimously, 5 – 0.

Vice Chairman Lantz asked Reggie Smith to provide background information.

Reggie Smith reference his Case Summary which was contained in the evidence packet.

- Two complaints were received concerning electrical signs installed for two businesses at the same location (shared the same structure) – Wholesome Hound and Dr. Sterling Sigmond, DVM, d/b/a Coastal Veterinarian Clinic.
- The businesses had contracted with and paid Signarama of Naples to install backlit, channel letters sign on the front of each business facing US 41.
- The signs were installed but never worked properly.
- Several calls were placed to Signarama but none were returned.
- Len Ciarrocchi owns Southwestern Signs of Florida, LLC, which does business as Signarama of Naples. He also owns a second company, The Municipal Supply and Sign Company.
- Sign*A*Rama, Inc. is a franchise business.

- The Sign*A*Rama website states, “Sign*A*Rama, Inc., does not perform or offer to perform electrical sign work in any state. All sign centers are independently owned and operated. It is the responsibility of each Signarama sign center to comply with the licensing and regulation code requirements regarding electrical work and sign installation in their city, county and/or state.”
- Len Ciarrocchi is the sole officer of Southwestern Signs of Florida, LLC, and the company holds no current licensing to contract for electrical sign installation in Collier County.
- Complaints were filed after the owners of Wholesome House and Coastal Veterinarian Clinic found that permits had not been obtained for the work and that the work had been done by another company, Capitol Signs, d/b/a Capital Signs Co.
- The business owners contracted solely with Len Ciarrocchi to install their signs. (Copies of each contract are included in the packet on Pages 25 and 26.)
- When he met with Len Ciarrocchi, Mr. Ciarrocchi stated he subcontracted the work to Capitol Signs because the company is a State-certified electrical contractor and did not understand why that was a problem.
- Mr. Ciarrocchi claimed he “might” be qualified by someone who worked with him at one point. He was unable to provide any proof that his company had been qualified by anyone.
- The Citations were issued to Mr. Ciarrocchi and his option were explained to him: to pay the fines; to apply for a license in Collier County prior to the hearing which would reduce the fines to \$300.00; or to contest the Citations.
- He chose to contest the Citations. His letter to the County is on Page 52 of the packet.
- Pages 44 and 45 are copies of the contracts between Capitol Sign, Inc. and Signarama to “furnish materials and perform the labor necessary and to provide engineering and staff time to file permits” for Wholesome Hound and Coastal Veterinarian Clinic at a cost of \$750.00 for each installation.
- If the permits had not been obtained, Mr. Ciarrocchi would have received two additional Citations.
- Page 50 of the packet is a copy of Collier County Ordinance No. 2006-46, which stated it is “Unlawful to Contract without a Certificate of Competency.” and Page 51 provides the definition and qualifications of a Contractor.
- He reiterated that Mr. Ciarrocchi is not licensed to provide any services nor was he able to subcontract out for the work to be performed.

Vice Chairman Lantz questioned Officer Smith:

Q. Signarama sold the jobs – the two signs – as an installed product?

A. Correct.

Q. The signs were installed, then the people had some issues with the signs because they didn’t work. Was a permit issued before the installation or after?

A. After.

Q. After the complaints were made?

- A. Right around that time, I believe. The permits are on Pages 27 and 28 – on Page 28, the date shown is March 26, 2018. The contracts were dated August 21, 2017. And the installation was around November 2017. Definitely, the permits were not “in the works” until well after the signs were installed.

Terry Jerulle: So, Capital Signs installed the signage without a permit?

Reggie Smith: Yes, sir.

Terry Jerulle: I don’t know the timeline, so this is not a criticism – it is just a question, but why didn’t you cite Capital Signs?

Reggie Smith: Sir, I also want to point out that ...

Terry Jerulle: The question is – we did not give Capital Signs a Citation?

Reggie Smith: Yes – about it – what’s the question?

Terry Jerulle: Did we give them a Citation?

Reggie Smith: No, they would not receive a Citation ... they would receive a Notice of Noncompliance. They are a licensed Contractor and they have a Building Code violation. They would not receive a Citation for that.

Vice Chairman Lantz: Not for installing a sign without a permit?

Reggie Smith: No, they would not receive a Citation for that. We have a different way of approaching that violation and the penalty is receiving a Notice of Noncompliance. Typically, what happens is before the permit is issued, the Building Department – the Chief Building Official – this is in the City of Naples – would add additional fees to the permit before it is issued. However, all this was basically done before I was involved. The permit was issued before I arrived on the scene. They kind of got away with that one. I can create additional cases to basically go after Capitol Signs and issue Notices of Noncompliance for these violations. It would not involve these cases – it would be totally separate.

Terry Jerulle: So, to answer my question, you were involved after the permit was issued?

Reggie Smith: Yes, sir. On Page 52 is Len Ciarrocchi’s letter contesting the Citations. On the last page, Mr. Ciarrocchi signed the letter from Lilla Davis notifying him of today’s hearing. He knew he had to be here and I think we followed up with him at least once to make sure he was going to be here today.

Terry Jerulle: Is all the work complete now and signed off?

Reggie Smith: One of the permits has been finalized and the other one I would have to look into – they started having a few issues with it.

Richard Joslin: With the permit, the signage, or the installation?

Reggie Smith: The inspections – I guess they had some issues and they have to call in additional inspections after they correct the work.

Richard Joslin: Basically, our job now is to find whether Mr. Ciarrocchi is in violation of the Citations – correct?

Terry Jerulle: Whether to uphold the Citations since he is not here to contest it.

Richard Joslin: Right.

Reggie Smith: I would like to add one other thing: throughout all this, Mr. Ciarrocchi has said he didn’t understand or know that he couldn’t do this. If you look at Page 42, the Sign*A*Rama web page states: “Sign*A*Rama, Inc. does not perform or offer to perform electrical sign work in any state. All sign centers are

independently owned and operated. It is the responsibility of each Signarama sign center to comply with the licensing and regulation code requirements regarding electrical work and sign installation in their city, county and/or state.”

This is from Len Ciarrocchi’s account with Sign*A*Rama: www.signarama.com/fl-naples/services/creative-services.

I have reason to believe that Mr. Ciarrocchi does know or should have known that he needed a license to contract for the electrical signs.

Vice Chairman Lantz: In your opinion, Mr. Ciarrocchi would be totally legal if he were to sell signs and tell whoever is buying a sign ... “you handle the installation – you have to hire someone – this is my friend, you can hire him directly, but you can’t hire me” – correct?

Reggie Smith: I explained that – not one but twice – in both of our meetings. He can still run his sign business – he can manufacture them, he can design them – he just can’t subcontract to have them installed or permitted. He can refer customers directly to contractors who will install and permit – that is totally legal.

Vice Chairman Lantz: But as soon as he gets his hand in the middle ...?

Reggie Smith: As soon as it puts it on his contract and represents himself for the entire project – as our Ordinance states – and which he has shown in his contract – he is acting as a contractor but without a license.

Richard Joslin moved to approve upholding Citation #10361 and Citation #10362 which were issued to Lennard Ciarrocchi for the violation of Unlicensed Contracting. Terry Jerulle offered a Second in support of the motion. Carried unanimously, 5 – 0.

It was noted that Chairman Boyd did not vote because he had recused himself from participating as a member of the Board for this case.

Richard Joslin directed a question to Staff: Last month, the Chairman did not have the written instructions which are to be read before starting a Public Hearing. Has that been provided to him?

Chairman Boyd: Yes, it has.

Richard Joslin: So, you have it?

Everildo Ybaceta: Yes, sir, you do.

IX. OLD BUSINESS:

(None)

X. PUBLIC HEARING:

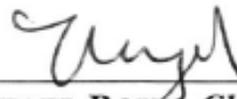
(None)

NEXT MEETING DATE: WEDNESDAY, JULY 18, 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 or Vice Chairman of the Contractors’ Licensing Board on AUGUST 15 , 2018, “*as submitted*” [] - OR - “*as amended*” []