

KENNY C. GUINN
Governor

STATE OF NEVADA

REPLY TO:

MEMBERS

KIM W. GREGORY
Chairman
DOUG CARSON
MARGARET CAVIN
DENNIS K. JOHNSON
RANDY SCHAEFER
DEBORAH WINNINGHAM SHELTRA
MICHAEL ZECH



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STATE CONTRACTORS' BOARD

**MINUTES OF THE MEETING
APRIL 4, 2000**

The meeting of the State Contractors' Board was called to order by Vice Chairman Mike Zech at 8:38 a.m., Tuesday, April 4, 2000, State Contractors' Board, Reno, Nevada. Exhibit A is the Meeting Agenda and Exhibit B is the Sign In Log.

BOARD MEMBERS PRESENT:

Mr. Mike Zech – Vice Chairman
Ms. Margaret Cavin
Mr. Dennis Johnson
Mr. Randy Schaefer
Ms. Deborah Sheltra

BOARD MEMBERS ABSENT:

Mr. Doug Carson
Mr. Kim Gregory

STAFF MEMBERS PRESENT:

Ms. Margi Grein, Executive Officer
Mr. David Reese, Legal Counsel (Cooke, Roberts & Reese)
Mr. Hal Taylor, Legal Counsel
Ms. Nancy Mathias, Licensing Administrator
Mr. George Lyford, Director of Special Investigations
Mr. Frank Torres, Deputy Director of Investigations
Ms. Kathy Stewart, Licensing Supervisor
Mr. Gary Hoid, Investigator
Ms. Betty Wills, Recording Secretary

OTHERS PRESENT:

Leslie Clarkson, Court Reporter, Sierra Nevada Reporters; Alex Flangas, Legal Counsel, Monty Getman Inc; Dwight Millard, Owner, Millard Realty & Construction Company; Linda Van Wyk, Owner, Vanco; Ronald Bighaus, Owner, Haus Plumbing & Mechanical; Michael Johnson, Owner, M J Roofing; Scott Spracklin, President, Spracklin Construction; Jeremy Gunther, Owner, Sign On; James Stone, Legal Counsel, Sign On; Dan Mills, Owner, Dan Mills Construction; Jim Spoo, Legal Counsel, Dan Mills Construction; Michelle Taylor, Complainant; John Byrne, Complainant; Edward Goss, General Manager, Ceramic Tile Center; Ginger Contacessi, Office Manager, Ceramic Tile Center; Paul Galaviz Pasillas, Owner, Paul Pasillas Tile Co.; David Malutich, Area Manager, Granite Construction Company; Bob Turner, Project Manager, Flyash Haulers Inc.; and Carl Sonier, Southern California Edison.

OTHERS PRESENT FOR THE DISCUSSION OF REGULATIONS:

John Breternitz, Vice President of Q and D Construction and President of the Associated General Contractors, Nevada Chapter; Paul Georgeson, Attorney for Associated General

Contractors; John Madole, Associated General Contractors; Norman Dianda, Q and D Construction; Jim Gardner, Gardner Engineering; Ron Deal, Krump Construction; Len Savage, Savage & Sons; Robert Noosley, J W Mcclenahan; Mike Scolari, Ray Heating Products; Ken Dillon, D & D Roof and Sheet Metal; Kathy Fralick, Sierra Nevada Construction; Mr. Dale Sanderson, Washoe County School District; Bruce Nipp, State Public Works Board; and Joffre Johnson, Counsel for Frehner Construction.

* * * * *

Ms. Grein stated that John Sapp had posted the agenda in compliance with the open meeting law on March 29, 2000 at the Washoe County Court House, Washoe County Library, and Reno City Hall. In addition, it had been posted in both offices of the Board, Las Vegas and Reno and on the Board's Internet web page.

It was learned there were 38 items on the amended agenda, each item of an emergency nature.

MR. JOHNSON MOVED TO HEAR THE AMENDED AGENDA.

MS. CAVIN SECONDED THE MOTION.

THE MOTION CARRIED.

Mr. Zech called for a motion to approve the minutes of March 21, 2000.

MS. CAVIN MOVED TO APPROVE THE MINUTES OF MARCH 21, 2000.

MR. SCHAEFER SECONDED THE MOTION.

THE MOTION CARRIED.

EXECUTIVE SESSION

REQUEST FOR REHEARING – Quail Construction #42823

Ms. Mathias explained the item had been heard in Reno in February 2000 and regarded financial responsibility. The Licensee was asking for a rehearing. New financial information had been provided. The general consensus was to rehear the matter.

APPLICATIONS

The following motion closed the meeting to the public.

MR. SCHAEFER MOVED TO CLOSE THE MEETING TO THE PUBLIC.

MS. SHELTRA SECONDED THE MOTION.

THE MOTION CARRIED.

The meeting was then closed to the public pursuant to NRS 241.030 to discuss financial and other data, which is confidential under NRS 624.110 (2).

MONTY GETMAN INC #41754 (C5 – Concrete Contracting) REQUESTING LATE RENEWAL

Alex Flangas, Legal Counsel, Monty Getman Inc, was present to represent the Licensee, Monty Getman, President, who was not present. The Board informed Mr. Flangas that the late renewal had been approved.

MILLARD REALTY & CONSTRUCTION COMPANY (B – General Building) NEW APPLICATION

Dwight Millard, Owner, Millard Realty & Construction Company, was present. The Board informed Mr. Millard that the license application had been approved with an unlimited amount and a \$5,000 bond.

VANCO #40422 (C10 – Landscape Contracting) RENEWAL OF EXPIRED LICENSE, RECONSIDERATION

Linda Van Wyk, Owner, Vanco, was present. The renewal application had been denied on February 23, 2000 for lack of financial responsibility.

Ms. Stewart stated Vanco had not received the request for a financial statement because the request had been returned, unclaimed, to the board office on February 17, 2000. Subsequently, on March 1, 2000, a complaint against the license had been resolved and closed.

Ms. Van Wyk explained she had not received the request for a financial statement, nor was she aware she needed one, as she had been out of town. The only thing she had been made aware of was that there was a question regarding her credit card debt. Once informed of that information, she had paid it off. Ms. Van Wyk then provided Ms. Stewart with proof of payment.

MR. JOHNSON MOVED TO APPROVE THE RENEWAL APPLICATION WITH A FINANCIAL REVIEW UPON RENEWAL IN SEPTEMBER 2000.

MS. CAVIN SECONDED THE MOTION.

THE MOTION CARRIED.

HAUS PLUMBING & MECHANICAL (C1 – Plumbing & Heating) NEW APPLICATION, RECONSIDERATION

The license application had been denied on March 21, 2000 for lack of financial responsibility. New financial information had since been provided.

Ronald Bighaus, Owner, Haus Plumbing & Mechanical, was present. He told the Board he did not need a \$500,000 limit. He was now requesting a limit of \$50,000.

Mr. Bighaus was informed the license application had been approved with a limit of \$100,000 and a \$10,000 bond.

M J ROOFING (C15A – Roofing) NEW APPLICATION

Michael Johnson, Owner, M J Roofing, was present. The Board questioned Mr. Johnson regarding outstanding medical bills. Mr. Johnson said board staff had informed him of two medical bills, which remained unpaid from a previous marriage. He immediately took care of them and provided staff with proof of payment. Ms. Stewart concurred that all credit issues had been resolved. Mr. Johnson said he had not provided staff with a bank statement, but he had funds to put into his company. He then told the Board what type of work he intended to perform, adding he had worked for Dean Roofing for the last 15 years.

Michael Johnson was informed the license application had been approved with a limit of \$200,000 and a \$10,000 bond, contingent upon providing verification of deposit of funds as represented.

SPRACKLIN CONSTRUCTION (B2 – Residential & Small Commercial) NEW APPLICATION, RECONSIDERATION

The license application had been denied on March 21, 2000 for lack of financial responsibility.

Scott Spracklin, President, Spracklin Construction, was present. He told the Board he was moving into the custom home market and needed a license limit of \$600,000. He then spoke to his license history and good character, adding he was debt free.

Mr. Spracklin was informed the license application had been approved with a limit of \$600,000 and a \$5,000 bond.

STINNETT CONSTRUCTION (B2 – Residential & Small Commercial) NEW APPLICATION, RECONSIDERATION

The license application had been denied on January 11, 2000 for lack of financial responsibility. New financial information had been provided.

Rob Stinnett, President, Stinnett Construction, was present. He was informed the license application had been approved with a limit of \$200,000 and a \$10,000 bond.

SIGN ON (C6 – Erecting Signs) NEW APPLICATION, RECONSIDERATION

The license application had been denied on January 21, 2000 for lack of financial responsibility. No new financial information had been provided, but the request for reconsideration was based on the request of the applicant's attorney, James Stone, who had provided a letter outlining the applicant's bonding capacity.

Jeremy Gunther, Owner, Sign On, was present with counsel, James Stone. The Board notified Mr. Gunther that the license application had been approved with a limit of \$50,000 and \$5,000 bond.

STATELINE PLUMBING CO #6673C (C1A, B, D, F – Boilers; Fire Sprinklers; Plumbing; Heating/Cooling) RAISE IN LIMIT

Neil Schultz, Owner, Stateline Plumbing Co, was present. He was notified that the raise in limit had been approved for \$1 million, no bond required.

HANDYMAN CONNECTION INC. (C3 – Carpentry) NEW APPLICATION

Dave Savas, Vice President, Handyman Connection Inc, was present. He was notified the license application had been approved with a limit of \$100,000 and a \$10,000 bond.

GARY M BROWN GENERAL CONTRACTOR #16726 (B2 – Residential & Small Commercial) ONE TIME RAISE IN LIMIT

Gary Brown, Owner, Gary M Brown General Contractor, was present. He was informed the one time raise in limit to perform interior remodeling for Shearing residence, Incline Village, had been approved for \$650,000, payment and performance bonds if required.

FOX EQUIPMENT AND INSTALLATION INC #35051 (C26 – Institutional Contracting) ONE TIME RAISE IN LIMIT, RECONSIDERATION

The one time raise in limit application had been denied on March 7, 2000 for lack of financial responsibility. The applicant was requesting reconsideration based on indemnification by Modernfold of Nevada LLC for only this project.

Rick Imbrecht, President, Fox Equipment and Installation Inc, and Louis Strike, President,

Modernfold Inc, were present. They were informed the one time raise in limit to perform the Las Vegas Convention Center South Expansion had been approved for \$3 million, payment and performance bonds if required.

The remainder of the applications on the agenda were reviewed and discussion occurred on the following: #1, 3, 17-21, 23-24, 32, 36, 39, 42, 45-46, 47-54, 56, 66, 68, 70, 75, 78-80, and 100; and on the amended agenda: #4-7, 9-15, 20, 22-23, 25-26, 29-30, 33-36, and 38.

MR. JOHNSON MOVED TO REOPEN THE MEETING TO THE PUBLIC.

MS. SHELTRA SECONDED THE MOTION.

THE MOTION CARRIED.

MR. JOHNSON MOVED TO APPROVE ALL APPLICATIONS NOT SPECIFICALLY DISCUSSED IN CLOSED SESSION PER STAFF RECOMMENDATION.

MS. CAVIN SECONDED THE MOTION.

THE MOTION CARRIED.

DISCIPLINARY HEARINGS

PAUL PASILLAS TILE CO. #38010 – DISCIPLINARY HEARING

Paul Pasillas, Owner, was delayed en route to the Board meeting, and the hearing was continued until later in the day.

DAN MILLS CONSTRUCTION #30758 - DISCIPLINARY HEARING

The notice of hearing, consisting of pages 1-30, had been sent certified mail on March 4, 2000. The return receipt was signed and dated March 7, 2000.

The hearing was for possible violation of NRS 624.3014 (2) (a), misuse of license: evasion of law with the intent to evade the provisions of this chapter by aiding or abetting an unlicensed person to evade the provisions of this chapter; NRS 624.3014 (2) (b), misuse of license: evasion of law with the intent to evade the provisions of this chapter by combining or conspiring with an unlicensed person to perform an unauthorized act; NRS 624.3014 (2) (c), misuse of license: evasion of law with the intent to evade the provisions of this chapter by allowing a license to be used by an unlicensed person; NRS 624.3014 (2) (d), misuse of license: evasion of law with the intent to evade the provisions of this chapter by acting as agent, partner or associate of an unlicensed person; NRS 624.3014 (3), misuse of license: evasion of law: any attempt by a licensee to assign, transfer or otherwise dispose of a license or permit the unauthorized use thereof; NRS 624.3015 (2), acting beyond scope of license by bidding to contract or contracting for a sum for one construction contract or project in excess of the limit placed on the license by the board; and NRS 624.3015 (3), contracting with unlicensed contractor: knowingly entering into a contract with a contractor while that contractor is not licensed, or bidding to contract or entering into a contract with a contractor for work in excess of his limit or beyond the scope of his license.

The notice of hearing was entered into the record as EXHIBIT 1.

Mr. Taylor explained that Dan Mills had been involved with a Developer, Solano Development. The Board had dealt with Solano in two areas, allegations and licensure. Dan Mills had been engaged to act as general contractor on the project for Solano Development.

Dan Mills, Owner, Dan Mills Construction, was sworn in. Jim Spoo, Legal Counsel, Dan Mills Construction, was identified.

Mr. Spoo stated his client was prepared to make a statement regarding a possible expeditious resolution to the matter.

The stipulation was signed.

Mr. Spoo stated the Dan Mills matter was an outgrowth of the Solano Development matter, which had been previously resolved by the Board. There were essentially 3 elements to the matter, which were inseparable to the Solano case: the issue of license limit, the issue of who was the general contractor, and who should be licensed. Mr. Spoo then spoke to each element. All issues with Solano Development had been resolved, and the imposed fines had been paid. Mr. Spoo pointed out that Mr. Mills had not been subject to any other disciplines, and he requested that the Board impose penalties commensurate to Solano Development.

Mr. Taylor asked if the Respondent was willing to stipulate that at the time the permits were pulled, the permits reflected a total evaluation of \$1,443,898, whereas the monetary license limit was only \$200,000. Mr. Spoo agreed. He also agreed that under the original contract, Solano Development was responsible to contract directly with subcontractors, and to pay them, but he pointed out that the contract also stated Dan Mills would do whatever was required by law, implying that supervision by Dan Mills Construction was appropriate. At the time Mr. Mills entered into the contract with Solano, Mr. Spoo stipulated that Mr. Mills understood Solano Development was not licensed to contract in the state of Nevada.

The evidentiary was closed.

MR. JOHNSON MOVED TO FIND LICENSE #30758, DAN MILLS CONSTRUCTION, IN VIOLATION OF NRS 624.3015 (2), AND TO DISMISS ALL OTHER CHARGES.

MS. CAVIN SECONDED THE MOTION.

THE MOTION CARRIED.

Penalty phase.

MR. JOHNSON MOVED TO IMPOSE AN ADMINISTRATIVE FINE OF \$500 ON LICENSE #30758, DAN MILLS CONSTRUCTION, AND TO RECOVER THE INVESTIGATIVE COSTS OF \$2,461.

MS. SHELTRA SECONDED THE MOTION.

THE MOTION CARRIED.

COULTER CONSTRUCTION #40033 - DISCIPLINARY HEARING

Debbie and Jerry Coulter, Partners, were not present. Neither legal counsel nor anyone else was present to represent the Licensee.

The notice of hearing, consisting of pages 1-10, had been sent certified mail on March 4, 2000, to the address of record. The hearing notice was returned stamped, "Moved, left no address." A second notice had been sent regular mail on March 29, 2000.

The hearing was for possible violation of NRS 624.3012 (2), willful or deliberate failure by any licensee or agent or officer thereof to pay any money when due for any materials or

services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient money therefor as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased, or the false denial of any such amount due or the validity of the claim thereof with intent to secure a discount upon such indebtedness or with intent to injure, delay or defraud the person to whom such indebtedness is due; NRS 624.3016 (1), any fraudulent or deceitful act committed in the capacity of a contractor; NRS 624.3013 (3), failure to establish financial responsibility as set forth in NRS 624.220 and 624.260 to 624.265, inclusive, at the time of renewal of the license or at any other time when required by the board; and NRS 624.3013 (5), if any change occurs in a licensee's address or personnel which affects the accuracy of the statements in the application upon which his license is based, he shall report the change in writing to the board within 30 days after the change occurs.

The notice of hearing was entered into the record as EXHIBIT 1.

NSCB Investigator Gary Hoid was sworn in.

Mr. Taylor verified that the notice of hearing had been sent to the address of record, and that the address of record had not been changed.

Mr. Taylor stated the license status was inactive, not renewed as of September 1, 1999.

Mr. Hoid testified he had investigated the matter. He said that there was an outstanding balance of \$664.41 owed to Truckee North Tahoe Materials (TNTM). The Respondent had given TNTM a check for the outstanding amount, which subsequently had been returned by the bank for insufficient funds. On October 29, 1999, a request had been made for documents to establish financial responsibility, but none had been received. The postal indication was the Respondent had left town as there was no new address on file for the Coulters as of September 27, 1999, and a change of address had not been submitted to the Board prior to the move.

The evidentiary was closed.

MR. JOHNSON MOVED TO FIND LICENSE #40033, COULTER CONSTRUCTION, IN VIOLATION OF ALL CHARGES.

MS. CAVIN SECONDED THE MOTION.

THE MOTION CARRIED.

Penalty phase.

MR. JOHNSON MOVED TO REVOKE LICENSE #40033, COULTER CONSTRUCTION, AND TO REQUIRE FULL RESTITUTION TO THE DAMAGED PARTIES AS WELL AS THE RECOVERY OF THE INVESTIGATIVE COSTS OF \$1,321 PRIOR TO FUTURE LICENSURE IN THE STATE OF NEVADA.

MS. CAVIN SECONDED THE MOTION.

In discussion of the motion, it was learned TNTM had not filed a lien against the homeowner.

THE MOTION CARRIED.

PAC WEST CONSTRUCTION SERVICES #46496 & #46497 - DISCIPLINARY HEARING

Walter Akin, President, Pac West Construction Services, was not present. Neither legal counsel nor anyone else was present to represent the Licensee.

The notice of hearing, consisting of pages 1-12, had been sent certified mail on March 4, 2000 to the address of record. The return receipt was signed and dated March 10, 2000. There was also a response from the Respondent dated March 18, 2000 included in the hearing file.

The hearing was for possible violation of NRS 624.302 (6), failure or refusal to comply with a written request by the board or its designee for information or records, or obstructing or delaying the providing of such information or records; NRS 624.3018 (2), the performance by any partnership, corporation, firm or association of any act or omission constituting a cause for disciplinary action likewise constitutes a cause for disciplinary action against any licensee who is a member, officer, director or associate of such partnership, corporation, firm or association, and who participated in such prohibited act or omission; NRS 624.3013 (3), failure to establish financial responsibility as set forth in NRS 624.220 and 624.260 to 624.265, inclusive, at the time of renewal of the license or at any other time when required by the board; NRS 624.3013 (5), failure to comply with rules and regulations of the Board as required in NRS 624.263 (3), a licensed contractor shall, as soon as it is reasonably practicable, notify the board in writing upon the filing of a petition or application relating to the contractor that initiates any proceeding, appointment or assignment set forth in paragraph (j) of subsection 2.

The notice of hearing was entered into the record as EXHIBIT 1, and Mr. Akin's letter dated March 18, 2000 was entered into the record as EXHIBIT 2. The letter reflected that the two active licenses, #46496 and #46497 had been surrendered.

NSCB Investigator Gary Hoid was sworn in.

Mr. Taylor stated that Pac West had filed bankruptcy, yet had failed to notify the Board of the bankruptcy and did not provide the requested documentation to establish financial responsibility. Page 7 of the hearing notice regarded an unpaid bill, but due to the bankruptcy, Mr. Taylor requested that the Board ignore the exhibit.

Mr. Taylor then questioned Mr. Hoid, who testified that the Respondent had filed a Chapter 7 bankruptcy, and that there had been no response to the request for financial documents.

The evidentiary was closed.

MR. JOHNSON MOVED TO FIND LICENSE #46496 AND #46497, PAC WEST CONSTRUCTION SERVICES, IN VIOLATION OF ALL CHARGES.

MS. SHELTRA SECONDED THE MOTION.

THE MOTION CARRIED.

Penalty phase.

MR. JOHNSON MOVED TO REVOKE LICENSE #46496 AND #46497, PAC WEST CONSTRUCTION SERVICES, AND TO RECOVER THE INVESTIGATIVE COSTS OF \$1,072 PRIOR TO FUTURE LICENSURE IN THE STATE OF NEVADA.

MS. CAVIN SECONDED THE MOTION.

THE MOTION CARRIED.

LUCKY & SONS CONSTRUCTION #36736 - DISCIPLINARY HEARING

John and Randy Lucky, Partners, were not present. Neither legal counsel nor anyone else was present to represent the Licensee.

The notice of hearing, consisting of pages 1-25, had been sent certified mail on March 4, 2000 to the address of record. The return receipt was signed and dated March 6, 2000.

The hearing was for possible violation of NRS 624.3017 (1), substandard workmanship: workmanship which is not commensurate with standards of the trade in general or which is below the standards in the building or construction codes adopted by the city or county in which the work is performed; NRS 624.3013 (5), failure to comply with the rules or regulations of the Board as set forth in NAC 624.700 (3) (a), by failing to comply with the corrective order; NRS 624.3015 (2), bidding to contract or contracting for a sum for one construction contract or project in excess of the limit placed on the license by the board; NRS 624.3013 (5), failure to comply with the rules or regulations of the Board as required by NAC 624.640 (5), each licensee shall include in all bids he submits or contracts he enters into for construction work within this state, the number of his license and any monetary limit placed upon his license.

The notice of hearing was entered into the record as EXHIBIT 1.

Michelle Taylor, Complainant, and NSCB Investigator Gary Hoid were sworn in.

Mr. Taylor stated the license was active. There was a workmanship complaint, which Ms. Taylor would testify to. The final notice to correct had been served to the Respondent, but it had not been responded to adequately. The Respondent performed the project in excess of the monetary limit of the license. The signed contract itself did not contain the monetary limit.

Ms. Taylor said she had entered into a contract with the Respondent for the construction of an attached garage and a new roof on a mobile home. The total contract price was over \$15,000. Ms. Taylor described the problems she and her husband had with the roof, which leaked as if it were raining inside the garage. During the first high wind, more than half of the shingles blew off the mobile and the garage. Many letters had been sent, and many phone calls had been made. To date, the leaks had not been corrected, and there were leaks inside the mobile home as well. A painter had been sent out, and rather than perform a water test he painted the over the spots with a different color paint than the rest of the ceiling, saying it wouldn't leak anymore. Subsequently, a second roofer had reviewed the work and said the whole roof needed to be replaced.

Mr. Hoid testified he had validated the workmanship issues, verifying a former Investigator's findings. Final notices to correct had been sent but they had not been responded to, and the monetary limit had not been included on the contract.

The evidentiary was closed.

MR. JOHNSON MOVED TO REFER THE MATTER TO FORMAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND TO SUMMARILY SUSPEND LICENSE #36736, LUCKY & SONS CONSTRUCTION, FOR THE SERIOUSNESS OF THE VIOLATION AND FOR FAILURE TO RESPOND TO THE HEARING NOTICE.

MS. SHELTRA SECONDED THE MOTION.

THE MOTION CARRIED.

Ms. Taylor was advised to file against the contractors' surety bond.

PROFESSIONAL HOME DEVELOPERS #32754 – FINDINGS OF FACT, CONCLUSIONS OF LAW

Mike Fritz, Owner, Professional Home Developers, was not present. Neither legal counsel nor anyone else was present to represent the Licensee.

John Byrne, Complainant, was present. He read Secretary's EXHIBIT C, his prepared statement, into the record.

MS. SHELTRA MOVED TO ACCEPT THE FINDINGS OF FACT, CONCLUSIONS OF LAW.

MR. JOHNSON SECONDED THE MOTION.

THE MOTION CARRIED.

Penalty phase.

MS. SHELTRA MOVED TO RECOVER THE INVESTIGATIVE COSTS OF \$6,049, TO BE PAID WITHIN 30 DAYS OR THE LICENSE WOULD BE AUTOMATICALLY SUSPENDED.

MR. JOHNSON SECONDED THE MOTION.

THE MOTION CARRIED.

MS. SHELTRA MOVED TO IMPOSE AN ADMINISTRATIVE FINE OF \$500 PER VIOLATION, FOR A TOTAL OF \$9,000, ON LICENSE #32754, PROFESSIONAL HOME DEVELOPERS.

MR. JOHNSON SECONDED THE MOTION.

THE MOTION CARRIED.

PAUL PASILLAS TILE CO. #38010 – DISCIPLINARY HEARING

When the hearing commenced, Paul Galaviz Pasillas, Owner, Paul Pasillas Tile Co., was not present. Neither legal counsel nor anyone else was present to represent the Licensee.

The notice of hearing, consisting of pages 1-10, was sent certified mail on March 4, 2000. The return receipt was signed and dated March 8, 2000.

The hearing was for possible violation of NRS 624.3012 (2), diversion of money, specifically, willful or deliberate failure by any licensee or agent or officer thereof to pay any money when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient money therefor as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased, or the false denial of any such amount due or the validity of the claim thereof with intent to secure a discount upon such indebtedness or with intent to injure, delay or defraud the person to whom such indebtedness is due; NRS 624.3013 (3), failure to establish financial responsibility as set forth in NRS 624.220 and 624.260 to 624.265, inclusive, at the time of renewal of the license or at any other time when required by the board; NRS 624.302 (5), failure or refusal to respond to or comply with written requests of board or its designee to cooperate in the investigation of a complaint; NRS 624.302 (6), failure or refusal to respond to or comply with written requests of board for information or records, or obstructing or delaying the providing of such information or records.

The notice of hearing was entered into the record as EXHIBIT 1.

Edward Goss, General Manager, Ceramic Tile Center; Ginger Contacessi, Office Manager, Ceramic Tile Center; and NSCB Investigator Gary Hoid, were sworn in.

Mr. Taylor informed the Board that the status of the license was inactive, not renewed, as

of February 1, 2000. The matter regarded failure to pay. Financial documents had been requested, which had not been responded to. Additionally, the Respondent failed to attend the Administrative Meeting that had been held.

Originally, the outstanding amount owed to Ceramic Tile Center amounted to \$2,671.19, but some payments had been made, leaving a remaining outstanding amount of \$671.03. Mr. Goss confirmed the outstanding amount, and testified that the period when the debt had been incurred was from December 7, 1998 to December 12, 1998. Mr. Goss said the last payment had been made in October 1999. There had been no further contact since then.

Mr. Hoid testified that a request to establish financial responsibility had been made on October 27, 1999. The request had not been responded to. An Administrative Meeting had been scheduled for February 7, 2000, but, again, there had been no response.

The evidentiary was closed.

MR. JOHNSON MOVED TO REFER THE MATTER TO FINDINGS OF FACT, CONCLUSIONS OF LAW.

MS. SHELTRA SECONDED THE MOTION.

THE MOTION CARRIED.

The complainant was advised to file against the contractor's surety bond.

The Respondent, Paul Pasillas, made his appearance at 1:30 p.m.

The hearing was reopened, and Mr. Taylor recapped what had occurred earlier.

Mr. Pasillas requested that the evidentiary be reopened to allow him to address the Board. He said he had been stuck in traffic in Sacramento, and had been unable to reach the Board hearing at the scheduled time.

The stipulation was signed.

Mr. Pasillas stated he had gotten a divorce 3 years ago. Prior to the divorce, the business was running very well. He apologized to the Board and said the outstanding amount of \$671.03 would be paid today if it had not already been paid. Mr. Pasillas requested more time to take care of the outstanding bill. When questioned about the financial statement request, Mr. Pasillas stated he had not had the time to have a CPA prepare one. He said the reason he did not attend the Administrative Meeting was because he could not pay the amount owed to Ceramic Tile Center. When asked if he had contacted the Investigator to explain that he would not be there, Mr. Pasillas replied he did not talk to Gary Hoid. More discussion followed regarding why Mr. Pasillas ignored the board without communicating with anyone, and his attempts to approach the supplier. In closing, Mr. Pasillas requested another month to address the Ceramic Tile Center money owing complaint.

MR. JOHNSON MOVED TO RESCIND THE ACTION TAKEN EARLIER BY THE BOARD.

MS. SHELTRA SECONDED THE MOTION.

THE MOTION CARRIED.

MR. JOHNSON MOVED TO CONTINUE THE MATTER FOR 30 DAYS TO ALLOW MR. PASILLAS TIME TO PROVIDE ALL REQUESTED DOCUMENTATION.

MS. SHELTRA SECONDED THE MOTION.**THE MOTION CARRIED.**

The Board now learned that in addition to the license expiring as of January 31, 2000, the bond had expired on February 1, 2000. Mr. Pasillas was advised he could renew the license if the financial statement was provided.

Ms. Cavin asked staff for confirmation that Ceramic Tile Center had been paid.

ADVISORY OPINIONS

1. **DAVE BLACK ELECTRIC** #32881 – David Black, Owner
Sierra Pacific Power Company, Elko, Nevada – Bid #20-20317-5 – Installation of Underground Conduit and Above Ground Pads

No one was present for the advisory opinion.

Ms. Mathias stated the Licensee currently held a full C2 electrical license. It was the Licensee's desire to install underground electrical conduit in the public utility easement for the local power company.

The Board opined that the project could be performed with the Licensee's C2 license.

2. **GRANITE CONSTRUCTION COMPANY** #8079 – Mark Boitano, Vice President
Las Vegas Monorail Project

David Malutich, Area Manager, Granite Construction Company, was present. He explained Granite Construction Company would be applying for a joint venture license with Bombardier Transit Corporation, an equipment supplier. Mr. Malutich said the contract was a design build equipment contract on a turnkey basis to design, furnish, and install a complete transit system. Granite would be performing all the civil work on the project. Bombardier was manufacturing the vehicles and the operating systems. They were also responsible for the on-site installation of the trains and the control systems governing the transportation system.

The Board opined that if a new joint venture was being created for the project, it should apply for an AB license to perform the work represented.

3. **SOUTHERN CALIFORNIA EDISON** – Nevada Regional Council of Carpenters, Tim Carlton, Representative – Erecting Scaffolds – Mohave Generating Station

Tim Carlton was not present for the advisory opinion.

Bob Turner, Project Manager, Flyash Haulers Inc., explained his company had a long contractual relationship with Southern California Edison to provide manpower, and in this case, to support Edison's scaffold crew on station. Mr. Turner was not sure why the item was before the Board, he had only been requested to appear for the advisory opinion. Flyash Haulers Inc. held two classifications, an A and a B license.

The Board opined the work could be performed with the full A license classification.

Carl Sonier, Southern California Edison, said the company performed scaffold work themselves, but for a turnaround outage, they were unable to support all of the scaffolding needs. On that basis, Flyash had been asked to supply supplemental labor.

PUBLIC HEARING**DISCUSSION OF REGULATIONS CONCERNING BIDDERS PREFERENCE; FINGERPRINT CARDS; INACTIVE STATUS; AND ASSOCIATED FEES.**

The Board had under discussion the adoption of regulations concerning preference in bidding for public works projects; fingerprint cards; inactive status and associated fees.

Mr. Zech indicated that public comment would be taken; however, there would be no final vote on the regulation.

John Breternitz, Vice President of Q and D Construction and President of the Associated General Contractors, (AGC) Nevada Chapter, was the first individual to address the Board. Mr. Breternitz explained that the AGC had supported the legislation but that the law was not clearly written. He requested the Contractors' Board to define the term contractor to allow Prime Contractors to participate in bidders preference. He indicated that the AGC's legal counsel had expressed an opinion that Prime Contractor could be defined in the regulation.

Paul Georgeson, Attorney for Associated General Contractors, indicated that his review of the legislative history did not find anything to support taking away bidders preference from Prime Contractors. In response to questions from Board Counsel and Mr. Zech, Mr. Georgeson stated that he had not seen the Legislative Counsel's letter to Senator Ann O'Connell dated January 19 which outlined the intent of NRS 338.1389 and NRS 338.147, until the Board's Legal Counsel, Hal Taylor, had provided him with a copy on March 31, 2000. In addition, he stated he did not place much significance in either the Attorney General's response which stated: "Awarding public bodies have no authority to adopt regulations or procedures to allow specialty contractors or subcontractors acting in the capacity of a prime contractor to qualify to bidders preference on public works projects" or in Senator James testimony before the Legislature on April 15, 1999. Mr. Zech indicated that although the Board was sympathetic to the dilemma of the specialty contractors, the appropriate forum to address the issue was in the next session of the Nevada Legislature.

John Madole, Associated General Contractors, was the next speaker. He indicated that the AGC supported the legislation and accepted responsibility for the fact that specialty contractors had been excluded in the legislation. However, he was asking the Board to support the AGC in accordance with Mr. Georgeson's recommendations. He requested the Board to allow further comment at its next regularly scheduled meeting.

Several specialty contractors and two representatives of public entities spoke in favor of allowing prime contractors the privilege of participating in bidders preference. Speakers included Norman Dianda, Q and D Construction; Jim Gardner, Gardner Engineering; Ron Deal, Krump Construction; Len Savage, Savage & Sons; Robert Noosley, J W Mcclenahan; Mike Scolari, Ray Heating Products; Ken Dillon, D & D Roof and Sheet Metal; and Kathy Fralick, Sierra Nevada Construction, on behalf of the specialty contractors. Mr. Dale Sanderson, Washoe County School District, and Bruce Nipp, State Public Works Board, also commented.

Hal Taylor, Board Counsel, asked Mr. Georgeson if any consideration had been given to taking the issue to the Legislative Commission since the Legislative Commission had recently corrected an error regarding the exclusion of Nevada Department of Transportation (NDOT) contracts from bidders preference. Joffre Johnson, Counsel for Frehner Construction, indicated that the Legislative Commission was an avenue available to correct clerical errors. Mr. Madole interjected that he did not think that the Legislative Commission would entertain the issue of bidders preference because there was not a clear legislative history.

Letters were read into the record from three general contractors, Precision Construction, Inc., Pace Contracting Co., and Tibesar Construction. Each expressed the view that the law was clearly written and the intent of the bidders preference law was to give preference

to General Engineering and General Building Contractors.

Three letters were read into the record from companies protesting the fee the Board charges for Certificates of Eligibility.

Mr. Zech stated that he supported the efforts of those present, however, the Board had to be very cautious due to the advice it had received from the Office of the Attorney General and the Legislative Counsel Bureau.

David Reese, Counsel for the Board, indicated that the Board was in a difficult position because it had received two opinions stating that a contractor must be a general contractor to qualify for bidders preference. He also stated that rules could not be promulgated that would be in excess of the legislative authority granted to the Board.

Mr. Georgeson responded that the Attorney General did not issue an opinion; that the Board had received one non-opinion from the Legislative Counsel Bureau and his (Mr. Georgeson's) opinion.

Ms. Grein, Executive Officer for the Board, stated that the Attorney General had in fact opined to all of the Board's questions except one. The question relative to the general contractor being licensed for a period of five years was currently the subject of pending litigation. The Attorney General's office has a policy not to opine on issues that are in pending or ongoing litigation.

There being no further discussion on the matter of the regulations, the Board moved to the next item on the agenda.

PUBLIC COMMENT

No one from the general public was present to speak for or against any items on the agenda.

There being no further business to come before the Board, the meeting was adjourned by Vice Chairman Zech at 2:22 p.m.

Respectfully Submitted,

Betty Wills, Recording Secretary

APPROVED:

Margi Grein, Executive Officer

Mike Zech, Vice Chairman