

BEFORE THE SOUTH CAROLINA RESIDENTIAL BUILDERS COMMISSION

In the Matter of:)
)
Marion C. Galphin, d/b/a)
C & M Amusement,)
License No. 17103,)
)
Respondent.)
)
Complaint of Ronnie Powell.)
Case #2004-773 (Patterson))
05-RBLD.0020)
_____)

FINAL ORDER

This matter came before the Residential Builders Commission (the Commission) for hearing on November 9, 2005, as a result of the Notice and Complaint dated July 28, 2005 which was served upon the Respondent and filed with the Commission. A quorum of the Commission was present. The hearing was held pursuant to S.C. Code Ann. §40-59-90, S.C. Code Ann. §40-1-70(6), and the provisions of the Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, et seq. (1976), as amended, to determine whether sanctions should be imposed upon the Respondent. The State was represented by M. Kent Lesesne, Esquire. The Respondent appeared without counsel.

The Respondent was charged with violation of S.C. Code Ann. §§40-59-110 and 40-1-110(g).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Commission finds the facts of the case to be as follows:

1. The Respondent is not currently licensed by the Commission to engage in the business of residential home building. The Respondent was duly licensed at all times relevant to the issues raised by the complaint in this matter.
2. The Respondent engaged in the business of residential building with respect to construction performed at the residence located at 106 Arbor Court in Greenwood, South Carolina, which the Respondent completed in 2004.

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3. The Respondent's inability to construct a house in compliance with applicable building codes and to comply with local building requirements was demonstrated by numerous calls for final inspection prior to the house being ready for a final inspection.

4. The Respondent allowed the purchaser of the home at 106 Arbor Court to move in prior to final inspection.

5. On at least one occasion during an inspection, the Respondent threatened physical harm to an inspector from the Greenwood County Codes Enforcement Department.

6. The numerous code violations and deficiencies on the homes constructed by the Respondent, in addition to the threat of physical harm, has caused the Greenwood County Codes Enforcement Department to send at least two inspectors on each inspection of the Respondent's work to efficiently handle inspections.

7. There was convincing testimony from local building officials that many homes built by the Respondent were so poorly constructed that an inordinate amount of time was required of the local inspectors to insure that safe homes were being constructed.

8. There was convincing testimony from local building officials that they were genuinely and reasonably concerned about the possibility of physical harm committed by the Respondent.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter and, upon finding that a licensee has violated the provisions of S.C. Code Ann. §§40-1-110 or 40-59-110, has the authority to impose a fine of not more than two thousand five hundred dollars per offense, revoke, suspend, or restrict the license of a residential builder or registration of a residential specialty contractor who, in the opinion of the Commission, has committed fraud or deceit in obtaining a license or in registering, or has engaged in misconduct in the practice of residential building or residential specialty contracting. Upon finding that grounds

for discipline exists, S.C. Code Ann. §40-1-120 provides that the Commission has the authority to: issue a public reprimand; impose a fine not to exceed five hundred dollars; place a licensee on probation or restrict, or suspend the individual's license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs; permanently revoke a license; and impose the reasonable costs of the investigation and prosecution of a case.

2. The Respondent has violated S.C. Code Ann. §40-1-110(g) and S.C. Code Ann. §40-59-110 in that he is guilty of professional and ethical incompetence and misconduct in the practice of residential home building, as evidenced by the conduct described above.

3. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continued services of qualified residential builders against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the Respondent, but to protect the welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

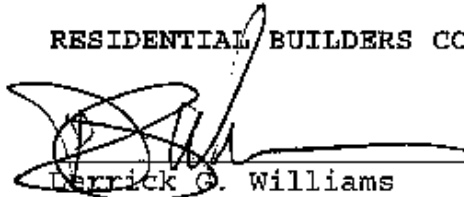
1. The Respondent shall pay a fine of Fifteen Hundred (\$1,500.00) Dollars within six months of the date of service of the final order upon him. This fine shall not be deemed paid until received by the Commission. Failure to pay the fine shall prevent the Respondent from being re-licensed.

2. The Respondent may not be licensed as a residential builder for a period of six months from the date of service of the final order upon him.

3. This order is to take effect upon the date of service of the final order upon the Respondent.

AND IT IS SO ORDERED,

RESIDENTIAL BUILDERS COMMISSION



Derrick G. Williams
Vice Chairman

Nov. 16, 2005.



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