

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE CONTRACTOR'S LICENSING BOARD**

In the Matter of:

**BAC DIVERSIFIED SERVICES and,
BERNARD FRIPP,**

License No. G-104236

Respondents.

Case Nos: V-03/04-66

FINAL ORDER

This matter came before the South Carolina Contractor's Licensing Board (the Board) for hearing on October 21, 2004, as a result of the Notice of Final Hearing, which was served upon the Respondent and filed with the Board. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§40-1-90 (1976) and 40-11-90 (1976), as amended; and the provisions of the SC Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, et seq., (1976), as amended, to consider the Report and Recommendation of the hearing officer designated by the Board to conduct the evidentiary hearing in this matter. The State was represented by Geoffrey R. Bonham, Esquire. Although the Respondents were timely served with notice of the hearing, as evidenced by the affidavit of service placed into evidence by the State, the Respondents did not appear and were not represented by counsel.

The Respondent was charged with violation of S.C. Code Ann. §40-11-110(A)(1), (4), (5), (6), (9), (16) and (17) (1976), as amended.

FINDINGS OF FACT

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

1. Respondent, BAC Diversified Services, is licensed by the South Carolina Contractor's Licensing Board to practice as a general contractor in the State of South Carolina, and was so licensed at all times relevant to the issues raised in the Complaint. The application for licensing submitted to the Board list Respondent, Bernard Fripp, as the principal officer of BAC Diversified Services.

2. The State alleges that the Respondents obtained a license through fraudulent means by listing Clarence P. Hucks as the Qualifying Party for BAC Diversified on their initial licensing application as well as on their renewal application. As proof of the allegations, the State presented

testimony from Mr. Hucks and placed into evidence a copy of a hand-written affidavit signed by Mr. Hucks on September 19, 2003. In the affidavit, Mr. Hucks states that he was never a full time employee of BAC and did not give his approval to BAC for the submission of the renewal application. A second hand-written statement was placed into evidence by the Respondent. The second statement, which Mr. Hucks identified as being his statement, states that the statements in the affidavit are true. However, Mr. Hucks testified that the contents of the affidavit was dictated by an employee of the Department of Labor, Licensing and Regulation (LLR) and that he signed it after being promised that his license would be reinstated. The Respondent and Mr. Hucks testified that the initial application was completed with the assistance of a LLR employee, and that they were told that Mr. Hucks could serve as the qualifier for BAC Diversified. The employee identified by Respondent did not recall the encounter as relayed in the testimony of the Respondent and Mr. Hucks. Copies of the Respondent's initial application dated November 29, 2000, and renewal application dated October 30, 2001 were placed into evidence.

3. S.C. Code Ann. §40-11-240 (1976), as amended, states that for an entity to qualify for licensing, the entity must "have a certified qualifying party in full-time employment in a responsible management position... Mr. Hucks acknowledged in his testimony that he was never a full-time employee of BAC Diversified. Based upon this testimony, the Board finds that Mr. Hucks was never a full-time employee of BAC Diversified, and at the time of the initial license and at the time of the renewal, he did not meet the statutory requirement to serve as qualifier for BAC Diversified.

4. The State also alleges that the Respondents failed to maintain a business address accessible to the public. The Respondents' application listed "4712 Forest Drive, Ste 303, Columbia, South Carolina", as their business address. An investigator employed with LLR testified that he personally visited the address given in the application, and that there was no Ste 303. The Respondent testified that he relocated three blocks from that location to 4840 Forest Drive, and failed to notify the Board of the address change.

5. With respect to the State's allegation relative to the Respondents' financial statement, the Hearing Officer finds that the State's evidence was insufficient to prove the allegation. The Board also finds that the State's evidence was insufficient to prove that the Respondents aided and/or abetted the un-licensed practice of contracting or that the Respondents allowed their license to be used by an un-licensed entity.

6. Based upon the evidence presented, the Board finds that the Respondent has violated the Board's Practice Act as more fully set forth below.

CONCLUSIONS OF LAW

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

1. The Board has jurisdiction in this matter, and upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §§40-1-110 and 40-11-110 (1976), as amended,

may issue a public reprimand; 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, or a supervisory period, or of continuing education programs; and impose the reasonable costs of the investigation and prosecution of a case. Additionally, the Board may require a licensee, certificate holder, or other entity or individual to pay a civil penalty of up to five thousand dollars for each violation.

2. The Respondent has violated S.C. Code Ann. §40-11-110(A)(5) (1976), as amended, in that the Respondent violated the following provisions of the Board's Practice Act:

A. S.C. Code Ann. §40-11-110(A)(1) (1976), as amended, in that subsequent to the Respondents being issued a license, facts were discovered which if known at the time, would have been grounds to deny the license. Namely, it was discovered that the primary qualifying party did not meet the statutory requirements to serve as the qualifier for BAC Diversified Services.

B. S.C. Code Ann. §40-11-110(A)(6) (1976), as amended, in that the Respondent misrepresented a material fact in obtaining a license; specifically, the Respondents stated in the application that the individual listed as the primary qualifying party was a full-time employee of BAC Diversified Services. Mr. Hucks testified that he was never a full-time employee of BAC Diversified.

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 continuing services of qualified contractors against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the Respondents, but to protect the life, health and welfare of the people at large.

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

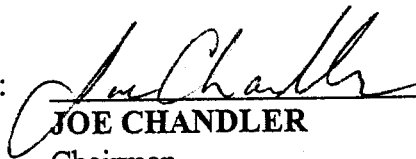
1. The Respondents' general contractor's license shall be, and hereby is, **revoked**.
2. The Respondents shall be, and hereby is, assessed a civil penalty in the amount of Two Thousand Five Hundred and No/100 (\$2,500.00) Dollars. Said amount must be paid within six (6) months of the date of this final order, and shall not be deemed paid until received by the Board. Additionally, the Respondents shall not be eligible for the re-issuance of a license until such time as the civil penalty that is assessed herein has been paid in full or the Board orders otherwise.
3. Should the Respondents apply to have their license reissued, prior to the issuance of a new license, the Respondents shall be required to submit a financial statement compiled by a licensed certified public accountant or licensed public accountant and prepared in accordance with generally accepted accounting principles with all required disclosures.

4. This final order shall take effect on the tenth (10th) day following service of the order upon the Respondent or Respondent's counsel.

AND IT IS SO ORDERED.

SC CONTRACTOR'S LICENSING BOARD

BY:



JOE CHANDLER

Chairman

November 9, 2004.