

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

In the Matter of:

**WILLIE WHITAKER, d/b/a LEGACY
REALTY & CONSTRUCTION, LLC,
and CORNERSTONE CONSTRUCTION
OF THE CAROLINAS,**

License No. G-106882

Respondent.

Case No: 2004-0023

**FINAL ORDER
(Public)**

This matter came before the South Carolina Contractor's Licensing Board (the Board) for hearing on January 19, 2006, 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 and 40-11-90 (1976), as amended; and the provisions of the South Carolina 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 who conducted the evidentiary hearing on September 15, 2005. The State was represented by M. Kent Lesesne, Esquire. The Respondent did not appear and was not represented by counsel.

The Respondent was charged with violation of S.C. Code Ann. §§40-11-110(A)(2) and (3) (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. The Respondent is licensed by the South Carolina Contractor's Licensing Board as a general contractor, and was so licensed at all times relevant to the matters raised in the Complaint.
2. On or about September 5, 2003, the Respondent and Marvin Davila entered into a contract for the construction and landscaping of a residential dwelling at Lot #7, Edisto Ridge Subdivision in Pelion, South Carolina. The amount to be paid under the terms of the contract was one hundred/thirty-

six thousand (\$136,000.00) dollars, and the construction was to begin in January 2004 and be completed on May 24, 2004. At some point after the scheduled completion date, Mr. Davila discovered that although the home was not complete, Lexington County had issued the Certificate of Occupancy (CO) and the mortgage company disbursed proceeds from Mr. Davila's mortgage loan. The work on Mr. Davila's home was being supervised by an individual employed by the Respondent, and it was this individual who obtained the CO and the payment from the mortgage company without the knowledge of the Respondent or Mr. Davila. This finding is based upon the testimony of Mr. Davila and the Respondent.

3. An investigator for the SC Department of Labor, Licensing and Regulation (LLR) inspected the property on August 24, 2004, and he found the following construction defects:

- (A) There was no water leading to the home; the well did not have electrical service and there was no piping leading from the well to the home;
- (B) The septic tank installation had not been completed and there was no sewer pipe leading to the septic tank;
- (C) There were no footings underneath the porch columns or the porch slab as required by applicable building code;
- (D) The roofing was improperly installed in that the shingle overhang was inconsistent;
- (E) The attic access had not been completed;
- (F) The landscaping and grading had not been completed; and
- (G) The window screens had not been installed

This finding is based upon the testimony of the LLR inspector and several photographs that were placed into evidence.

4. Mr. Davila had a private home inspection done on August 16, 2004, and that inspection found several of the same defects noted in the LLR inspector's report. This finding is based upon the testimony of the private home inspector and the copy of the home inspection report that was placed into evidence.

5. During the construction of the Davila home, the Respondent was working on another job and visited the site approximately three times. Because of the favorable inspection reports and the issuance of the CO, the Respondent stated he assumed the workmanship was good. After being contacted by LLR, the Respondent, or someone acting on Respondent's behalf, visited the property on at least three occasions. The first time was to assess what work needed to be done, and on the second and third visits,

the Respondent encountered a locked gate on the property, and Mr. Davila would not allow the Respondent to do any work without first signing a document prepared by Mr. Davila's attorney. The document specified that the work would be completed in 30 days and required the Respondent to pay \$6,000 to Mr. Davila. This finding is based upon the testimony of the Respondent and Mr. Davila.

6. The Respondent does not deny the existence of the deficiencies noted in the LLR inspection report and states his desire to correct the problems, however, Mr. Davila had the work completed and the home is now occupied. Based upon the evidence presented, the Board finds that the work on the Davila home was substandard and the Respondent was negligent in failing to adequately supervise the project and his employees.

7. With respect to the charge that the Respondent abandoned the contract without legal excuse, the Board finds that the State presented insufficient evidence to prove this charge. The evidence shows that the Respondent attempted to return to complete the work, but was prevented from doing so because of the homeowner's refusal to allow access to the property.

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)(2) (1976), as amended, in that the Respondent is guilty of performing substandard work in the construction of the Davila home, and further, the Respondent was negligent in failing to properly supervise the project and his employees.

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 Respondent, but to protect the life, health and welfare of the people at large.

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

1. The Respondent shall be, and hereby is, issued a public reprimand.
2. The Respondent shall be required to pay a civil penalty in the amount of Five Thousand and No/100 (\$5,000.00) Dollars. Said penalty must be paid within sixty (60) days of the effective date of this final order, and shall not be deemed paid until received by the Board. The Respondent's failure to pay the penalty within the specified time period may result in the immediate temporary suspension of Respondent's license until further order of the Board.
3. This final order shall take effect ten (10) days 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

February 20th, 2006.