

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

Naples, Florida, March 16, 2011

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: Kyle Lantz
Vice Chair: Lee Horn
Michael Boyd (Excused)
Terry Jerulle
Richard Joslin
Thomas Lykos
Robert Meister
Jon Walker
Patrick White

ALSO PRESENT:

Jamie French, Director – Operations & Regulatory Management, GMD
Michael Ossorio, Contractors' Licensing Supervisor
Rob Ganguli, Licensing Compliance Officer
Patrick Neale, Esq., Attorney for the Board
Steve Williams, Esq., Assistant County Attorney

Any person who decides to appeal a decision of this Board will need a record of the proceedings pertaining thereto, and therefore may need to ensure that a verbatim record of the proceedings is made, which record includes that testimony and evidence upon which the Appeal is to be based.

I. ROLL CALL:

Chairman Lantz called the meeting to order at 9:05 AM and read the procedures to be followed to appeal a decision.
Roll call was taken and a quorum was established.

II. ADDITIONS OR DELETIONS:

Changes:

- Item VIII, “Public Hearings” –
 - under (A), Case #2011-06 – Stephen J. Scott, was *withdrawn*

III. APPROVAL OF AGENDA:

Richard Joslin moved to approve the Agenda as amended. Second by Jon Walker. Carried unanimously, 7 – 0.

IV. APPROVAL OF MINUTES – February 16, 2011:

Thomas Lykos moved to approve the Minutes of the February 16, 2011 meeting as submitted. Second by Terry Jerulle. Carried unanimously, 7 – 0.

(Patrick White arrived at 9:08 AM.)

V. DISCUSSION:

Michael Ossorio introduced Jamie French, Director of Operations and Regulatory Management for the County’s Growth Management Division.

He also introduced Assistant County Attorney Steve Williams who will be attending the Hearings on the County’s behalf. Mr. Williams replaced Assistant County Attorney Robert Zachary who accepted a promotion and moved to Marion County.

VI. NEW BUSINESS:

(Note: In each of the cases heard under this Section and Section VIII, as follows, the individuals to testify were sworn in.)

(A) Piotr Banski – Qualify 2nd Entity

Michael Ossorio provided background information:

- Mr. Banski is the Qualifier for Banski, Inc., d/b/a “Classic Stone”
- He has applied to qualify a second company, “Marc’s Flooring, LLC,” under his tile and marble license

Thomas Lykos noted for the record that he has known Mr. Banski and his

family for several years and has conducted business with Mr. Banski. He recused himself from discussion and voting.

Patrick White stated he would appreciate participation by Mr. Lykos if he had relevant information to contribute, but agreed he should not vote on the matter.

Attorney Neale concurred with Mr. White's statement and suggested to swear in Mr. Lykos since he would not be offering testimony as a Board Member.

Mr. Banski stated:

- He has a tile and marble license, as well as a flooring license
- He is the owner of Banski, Inc., d/b/a "Classic Stone" in Naples
- He is applying to qualify a second company, "Marc's Flooring" for tile and marble
- "Marc's Flooring" is already qualified for floor covering

Michael Ossorio noted there have been no complaints against either company and recommended approval.

Patrick White moved to approve Piotr Banski's application to qualify "Marc's Flooring, LLC" as a second entity. Second by Robert Meister. Motion carried, 7 – "Yes"/1 – "Abstention." Mr. Lykos abstained.

(B) Thomas C. Gibbs – Waiver of Testing to Reinstate License

Michael Ossorio noted:

- Mr. Gibbs owns "Thomas C. Gibbs Custom Cabinets, Inc."
- He has been in the cabinetry and mill working business for many years
- He is currently licensed in Lee County and the City of Cape Coral
- He was licensed in Collier County but let it lapse approximately five years ago
- He is applying to reinstate his license without retesting

Attorney Neal cited Chapter 22-184 (c), "Standards for the Issuance or Denial of a Certificate of Competency," of the County's Ordinance as follows:

"(c) When an application is referred to the Contractors' Licensing Board, the Board shall take testimony from the applicant and shall consider other relevant evidence regarding whether the application meets the requirements of this division. Upon the evidence presented by the applicant and the Contractor Licensing Supervisor, the Contractors' Licensing Board shall determine whether the applicant is qualified or unqualified for the trade in which application has been made.

The Board may consider the applicant's relevant recent experience in the specific trade and based upon such experience may waive testing requirements if convinced that the applicant is qualified by experience whereby such competency testing would be superfluous."

Mr. Gibbs confirmed he has been continuously working in the industry for thirty-five years.

In response to a question from the Board, Mr. Gibbs verified that he makes and installs cabinets and countertops. He stated he does not currently have any employees working for him.

Mr. Ossorio stated while there is no pending work at the present time, Thomas Gibbs applied to reinstate his license in anticipation of future jobs.

Terry Jerulle asked the applicant if he had taken the Business Exam.

Thomas Gibbs replied he had and had taken the test in Lee County.

Michael Ossorio recommended approval and noted the applicant will be required to pay all back fees before the license will be reinstated.

Patrick White moved to approve Thomas C. Gibb's application for reinstatement of his licensed without requiring testing. Second by Richard Joslin. Carried unanimously, 8 – 0.

(C) **Tony C. Kirkland – Qualify 2nd Entity**

Michael Ossorio stated Tony Kirkland is the owner and Qualifier of “TK Pump & Irrigation, LLC” and appeared before the Board last year to qualify “Earth Care Landscape.”

Mr. Kirkland has applied to qualify “George T. Sands, Inc.” and will train/supervise Mr. Sands and his employees. The goal is for Mr. Sands to obtain his irrigation license.

Mr. Kirkland stated:

- “George T. Sands, Inc.” has been in the lawn maintenance business for twenty years
- Mr. Sands wishes to obtain his irrigation license in order to expand his business

Richard Joslin stated Mr. Kirkland has a number of medical bills which have been noted on his personal credit report.

Tony Kirkland stated he has made a consistent effort to pay off the medical bills and his payments have not been reflected on his credit report.

Mr. Ossorio noted the credit report for “TK Pump & Irrigation, LLC” is clean with no record of liens. He recommended approval of the application to qualify the second entity, “George T. Sands, Inc.”

Patrick White questioned the amounts and the number of checks paid to George T. Sands from his business and drawn on a 5th/3rd Bank account.

George T. Sands stated:

- He does not handle the paperwork in his company
- The large checks were to cover payroll and taxes – the checks were written to him from the company’s payroll account

- He stated he will provide whatever information the Board needs

The checks in question were written in January, 2011:

- on the 10th for \$11,000;
- on the 15th for \$9,000;
- on the 22nd for \$12,000;
- and on the 29th for \$18,000.

Terry Jerulle asked what the Sands business entailed.

George Sands explained the company specializes in landscape maintenance, and mows/edges lawns, and operates pest control. He does not install plantings but his company will replace a plant if one was damaged/killed during lawn service.

Michael Ossorio confirmed maintenance companies are permitted to replace items damaged at no cost to the homeowner. He noted some inconsistencies which he stated Mr. Kirkland was trying to overcome by qualifying the Sands company so he could oversee the training of the employees in order for the company to come into compliance.

Richard Joslin expressed concern regarding the number of red flags.

Jon Walker moved to approve Tony Kirkland's application to qualify a second entity based on the recommendation of Michael Ossorio. Second by Robert Meister.

Richard Joslin asked if the approval could be probationary with a review in six months due to the number of "red flags," i.e. the number of checks paid out, the amounts, and the credit report.

Patrick White stated the Board did not have concerns about Mr. Kirkland's capability but was concerned about Tony's personal credit report. He stated an updated credit report must be produced because items cited two years ago still appear as owed and not paid.

Attorney Neale stated the qualifications for issuance of a second entity are the same as a new contracting license and outlined pertinent sections from the Ordinance. All second entity applications are referred to the Contractors' Licensing Board for approval.

Chairman Lantz stated one of the Board's goals is to bring people into the system and Mr. Kirkland is helping to accomplish that with Mr. Sands and his company.

Thomas Lykos stated there were four items to be considered by the Board:

- (1) Completeness of application
- (2) Credit report as it relates to the business
- (3) Trade skills
- (4) Financial responsibility

He noted nothing was submitted to indicate that either Tony Kirkland or George

Sands have been financially irresponsible. He deferred to Michael Ossorio's recommendation and supported approving the application for a second entity. **Terry Jerulle** stated instituting the probationary period would allow the Board to review its decision in six months.

Michael Ossorio confirmed that, as a Qualifier, Tony Kirkland will be responsible for the day-to-day operation of Mr. Sands' company. He continued the Qualifier for a company is responsible for any misconduct. The Licensing Board is to determine the amount of the Qualifier's responsibility.

Chairman Lantz asked Jon Walker, as the maker of the Motion, to consider revising his motion to add a six month probationary period in order to answer the Board's questions regarding the finances (large checks) and credit.

Jon Walker amended his Motion: he moved to approve Tony Kirkland's application to qualify a second entity, "George T. Sands, Inc.," on a probationary basis. Mr. Sands and Mr. Kirkland are to return before the Board in six months to provide an explanation concerning the large checks and an updated credit report, respectively.

Second by Robert Meister. Carried unanimously, 8 – 0.

George Sands stated money (checks) is deposited into his company's payroll account and employees' paychecks and payroll tax (payment) checks are written from that account. He verified he will comply with the Board's order to provide proof.

(D) David W. Wainscott – Review of Credit Report(s)

Michael Ossorio provided background information:

- David Wainscott applied to become a registered General Contractor
- When a Tier I License is applied for, credit is reviewed
- Mr. Wainscott will answer the Board's questions concerning his credit issues

David W. Wainscott stated:

- He would like to expand his design business into a design/build construction business
- He has been designing various types of residential projects in Collier County since 1985
- A few years ago, his business partner had some life issues and the partnership was dissolved
- After the dissolution of the company, Mr. Wainscott found his partner had left the company with credit problems
- Due to the economic downturn, there were late payments (*See* letter of explanation submitted by the applicant)
- Prior to and after this period of time, Mr. Wainscott's credit rating was good

- He has personal experience in construction – he built two homes as an owner/builder
- He continue be involved only in residential projects if he obtains his General Contractor’s License

In response to a Board member’s question, Michael Ossorio noted to obtain a registered General Contractor’s License, experience is required in all phases of construction, i.e., residential, commercial and condominium. He asked Mr. Wainscott why he didn’t apply to the Board previously since he took the exam in 2009.

Mr. Wainscott replied with no business to pursue, there was no need to obtain the license and the expense was also a consideration.

Mr. Ossorio stated the trade exam has not changed since Mr. Wainscott took it in 2009 and once he becomes registered, he will be required to complete CE hours.

Mr. Wainscott stated even though he took and passed the exam for a registered General Contractor’s License, his intention is to work only in the residential arena.

Michael Ossorio stated the Code allows the Board to restrict the license to a particular trade or area.

Attorney Neal referred Section 22-189 of the Code, “*Restricted Certificates of Competency*,” as follows:

“The Contractors’ Licensing Supervisor, or designee, may issue a Restricted Certificate of Competency to an Applicant for a certificate in a particular trade, which Certificate is restricted to certain aspects of that trade where the Applicant has satisfactorily demonstrated that he/she is qualified under this article in certain aspects of that trade, but lacks the required experience in other aspect(s) of that trade. For example, an Applicant for a Certificate as a Floor Covering Installation Contractor may have the required experience in laying carpets and/or tiles, but not wood flooring. Each staff level decision to restrict a Certificate shall be final unless reversed or modified by the Contractors’ Licensing Board upon appeal by the certificate holder.”

Michael Ossorio asked the applicant if he had any formal education or training.

Mr. Wainscott obtained a degree in Architecture from the University of Miami. He elaborated he is not a licensed Architect, he is a designer. His partner was a licensed Architect. His firm, “Dave Wainscott Designs,” produces design work and working drawings for residential projects.

Tom Lykos noted there are two issues under consideration:

- (1) The level of experience and which license is most appropriate, and
- (2) Credit.

He stated there is a vast difference between residential and commercial

construction, and to approve a General Contractor's License for someone with only limited commercial experience is not a good idea.

Dave Wainscott stated the business relationship with his former partner was ending, he realized his partner could not participate in the day-to-day operation of the company. The recession hit at the same time and business slowed down. He began to re-organize his company, took control of the books, and realized his partner had left him with a great deal of credit-card debt. He contacted the two major debtors (American Express and Suncoast Federal Credit Union) and made arrangements to pay off the debts. The settlement payment to American Express was made, and he made two payments to Suncoast which he will continue to pay on a monthly basis as agreed.

Michael Ossorio reiterated David Wainscott took and passed the General Contractor's Licensing exam. If the Board approves his application, he will be issued a General Contractor's Restricted License – restricted to “residential” only as defined in the Code, i.e., one, two, or three-family and no more than two stories.

In order to “upgrade” the license in the future, Mr. Wainscott will be required to petition the Board. Currently, he will be restricted to Collier County, the City of Naples, and the City of Marco Island.

Thomas Lykos moved to approve David Wainscott's application for a General Contractors' License, restricted to residential construction only, for a one-year probationary period with a six-month review. After six months, the Applicant will appear before the Board and produce an updated credit report. At the end of the one-year probationary period, the Applicant will again appear before the Board and produce an updated credit report. The Board will decide whether to extend or cancel the probationary period, or to revoke the license. Second by Terry Jerulle. Carried unanimously, 8 – 0.

VII. OLD BUSINESS:

A. Orders of the Board

Thomas Lykos moved to approve the signing of the Orders of the Board by the Chairman. Second by Robert Meister. Carried unanimously, 8 – 0.

BREAK: 10:25 AM

RECONVENED: 10:37 AM

VIII. PUBLIC HEARINGS:

B. Case #2011 – 07:

**Daniel M. Kimball
d/b/a – Dan Kimball Floor Installation, Inc.**

Chairman Lantz outlined the manner in which the Public Hearing will be conducted:

- Hearings will be conducted pursuant to the procedures contained in Collier County Ordinance #90-105, as amended, and Florida Statutes, Title XXXII, “*Regulation of Professions and Occupations*,” Chapter 489.
- Hearings are quasi-judicial in nature and the Formal “Rules of Evidence” shall not apply.
- Fundamental fairness and due process shall be observed and govern the proceedings.
- Irrelevant, immaterial or cumulative evidence shall be excluded.
- All other evidence of the type commonly relied upon by reasonably prudent persons shall be admissible, whether or not such evidence would be admissible in a trial in the Courts of the State of Florida.
- Hearsay evidence may be used for the purpose of supplementing or explaining any evidence but shall not be deemed sufficient by itself to support a Finding, unless such hearsay would be admissible over objection in a civil action in Court.
- The “Rules of Privilege” shall be effective to the same extent that such Rules are now, or hereafter may be, recognized in civil actions.
- Any member of the Contractors’ Licensing Board may question any witness before the Board.
- Each party to the proceedings shall have the right to call and examine witnesses, to introduce Exhibits, to cross-examine witnesses to impeach any witness regardless of which party called the witness to testify, and to rebut any evidence presented against the party.
- The Chairperson or, in his/her absence, the Vice Chair, shall have all powers necessary to conduct the proceedings at the Hearing in a full, fair, and impartial manner, and to preserve order and decorum.
- The general process of the Hearing is for the County to present an Opening Statement to set forth the charges and, in general terms, how the County intends to prove the charges.
- The Respondent will present his/her Opening Statement setting forth, in general terms, defenses to the charges.
- The County will present its *Case in Chief* by calling witnesses and presenting evidence.
- The Respondent may cross-examine the witnesses.
- After the County has closed its *Case in Chief*, the Respondent may present his/her defense as described previously, i.e., to call/examine witnesses, etc.
- After the Respondent has presented his/her case, the County will present a rebuttal to the Respondent’s presentation.
- When the Rebuttal is concluded, each party is permitted to present a Closing Statement.
- The County is allowed a second opportunity to rebut the Respondent’s Closing Statement.
- The Board will close the Public Hearing and begin deliberations.

- Prior to beginning deliberations, the Board's Attorney will give a "charge" to the Board, similar to the charge given to a jury, setting forth the parameters on which the decision will be based.
- During deliberations, the Board can request additional information and clarification from the parties.
- The Board will decide two different issues:
 - (1) Whether the Respondent is guilty of the offense as charged in the Administrative Complaint. A vote will be taken on the matter.
 - (2) If the Respondent is found guilty, the Board must decide the sanctions to be imposed.
- The Board's Attorney will advise the Board concerning the sanctions and the factors to be considered.
- The Board will discuss the sanctions and vote.
- After the matters are decided, the Chair/Vice Chair will read a Summary of the Order to be issued by the Board. The Summary is a basic outline of the Order and may not reflect the same language contained in the Final Order.
- The Final Order will include complete details as required under State laws and procedures.

Richard Joslin moved to approve entering the information packet submitted for Case No. 2011-07, Board of County Commissioners, Petitioner, versus Daniel M. Kimball, d/b/a "Dan Kimball Floor Installations, Inc.," Collier County Certificate: #27220, Respondent, into evidence. Second by Thomas Lykos.

Mr. Joslin noted a discrepancy between the dollar amount of the deposit check (*See E-8*), and the amount specified in the "Reimbursement of Deposit" (*See E-9/E-10*), i.e., \$3335 and \$3435, respectively.

Rob Ganguli clarified the correct amount was \$3,335.00.

Chairman Lantz called for a vote on the Motion. Carried unanimously, 8 – 0.

Opening Statement by Rob Ganguli, Contracting Licensing Investigator:

- Daniel M. Kimball is the Qualifier of a tile/marble contracting company, "Dan Kimball Floor Installations, Inc."
- The Company has been a Collier County licensed contractor since April 29, 2005
- Mr. Kimball is appearing due to violation of Ordinance 2006-46, § 4.1.3, for abandoning a construction project.
- It has been 139 days since a deposit was paid to the Contractor by the homeowner without work commencing on the project.
- The homeowner, Michael S. Boll, will testify in the matter.

Daniel M. Kimball, the Respondent, presented his case:

- Admitted that he owes money to Mr. Boll
- He is aware of a Second Complaint

- Defense: He as admitted in Naples Community Hospital on December 21, 2010 and underwent by-pass surgery on December 23, 2010
- Tried to resume work on March 2, 2011, but surgeon would not release him
- He is a one-person operation – there are no employees
- He has every intention of paying back the money to Michael Boll
- He had no other complaints against him previously

Mr. Kimball has another appointment to see the surgeon at the end of March, 2011.

Lee Horn noted Mr. Kimball accepted the deposit on October 20th – almost two months earlier.

Daniel Kimball responded that he ran into problems – he had other jobs to complete and ran out of time. He stated his health issues began in 2007 when he suffered two heart attacks (in May and November), and he was hospitalized in October, 2010 to adjust his medications.

Michael Ossorio questioned Mr. Kimball, asking if he was the Qualifier of “Dan Kimball Floor Coverings, Inc.” and if his Certificate number was 27220.

Mr. Kimball answered affirmatively.

Mr. Ossorio further questioned Mr. Kimball, asking if he understood the violations against him and if he would freely stipulate to the charge that he abandoned the project.

Mr. Kimball admitted his guilt, stating he would not deny that he was at fault.

Mr. Ossorio stated the County would rest its case.

Patrick White questioned the relevance of the documents presented, noting the incorrect dollar amounts and that the documents had not been signed.

Rob Ganguli stated the documents represented opportunities for the Respondent to make restitution by returning the deposit, but he was unable to do so.

Michael Ossorio stated attempts had been made to mitigate the situation between the parties but the attempts failed, and the case moved forward.

He reiterated the Respondent acknowledged that he was in violation of the Ordinance and stipulated to the charge.

Lee Horn moved to close the Public Hearing. Second by Terry Jerulle. Carried unanimously, 8 – 0.

Lee Horn noted there was an admission of guilt by the Respondent and moved to find Daniel M. Kimball, d/b/a “Dan Kimball Floor Installations, Inc.,” Case #2011-07, Collier County Certificate #27220, guilty of Count #1, 4.1.3 – Abandoning a construction project in which he was engaged. Second by Richard Joslin. Carried unanimously, 8 – 0.

Attorney Neale stated the Board is to decide what sanctions to impose, and may impose all, or of any combination of the Sanctions, as noted in Section 22-203 of the County's Ordinance, as follows:

- (1) Revocation of a Collier County Certificate of Competency;
- (2) Suspension of a Collier County Certificate of Competency;
- (3) Denial of the issuance or renewal of a Collier County Certificate of Competency;
- (4) Imposition of a period of probation of reasonable length, not to exceed two years, during which the Contractor's contracting activities shall be under the supervision of the Contractor's Licensing Board, and/or participating in a duly-accredited program of continuing education directly related to the Contractor's contracting activity. Any period of probation or continuing education program ordered by the CLB may be revoked for cause by said Board at a Hearing noted to consider said purpose.
- (5) Restitution;
- (6) A fine not to exceed ten thousand dollars (\$10,000.);
- (7) A public reprimand;
- (8) Re-examination requirement;
- (9) Denial of the issuance of Collier County (or City) Building permits or requiring the issuance of permits with specific conditions;
- (10) Reasonable legal and investigative costs for the prosecution of the violation.

Attorney Neale continued in imposing the sanctions, the Board shall consider the following:

- (1) The gravity of the violation;
- (2) The impact of the violation on public Health/Safety or Welfare;
- (3) Any actions taken by the Respondent to correct the violation;
- (4) Any previous violations committed by the Respondent, and
- (5) Any other evidence presented at the Hearing by the parties relevant as to the sanction which appropriate for the case given the nature of the violation.

The Board shall also issue a recommended penalty to the State Board. The recommended penalties are:

- No further action is required, or
- Suspension, revocation, or restriction of the Certification or Registration, or
- A fine to be levied by the State Board

Michael Ossorio stated he would reserve the County's recommendations until after the Public Hearing was opened and Mr. Boll addressed the Board.

Patrick White moved to open the Public Hearing. Second by Richard Joslin. Carried unanimously, 8 – 0.

Michael S. Boll was sworn in and stated:

- He is a full-time resident of Naples, having moving from Michigan fourteen months ago.
- As requested by Michael Ossorio, he examined Exhibit E-8 and verified that it was a copy of his check which had been written to Daniel Kimball.
- He confirmed he had not been reimbursed the amount of \$3,335.00.
- He also verified that no tile work had been completed on his property.

Mr. Boll continued Mr. Kimball brought several items to his residence including the cement necessary to form a shower pan, and removed some existing tile from another bathroom.

In response to a question from the Board, Mr. Boll confirmed the Respondent left the bathroom he was hired to tile was left in disarray, and it remains in the same condition currently.

Michael Ossorio asked Mr. Boll to review Item E-7, which is a copy of a contract between the parties. He asked if any of the work had been commenced and the response was “no.”

Mr. Boll confirmed the check written to Daniel Kimball was a deposit to purchase tile for the two bedrooms and an outside lanai. The check was annotated with “for Condo tile” in the memo portion.

He continued that he was to supply tile for the bathroom, the shower enclosure, and the tub enclosure.

Chairman Lantz noted the contract was written in August, but the check was dated in October, and asked what the timeline was.

Mr. Boll replied the work was to have been completed by December 15, 2010, in accordance with the Condo Association’s rules. He further stated he cannot hire anyone to begin the work until after “season.” He explained Mr. Kimball had been highly recommended, but he has only received excuses from Mr. Kimball. He wants his money back because it has been obvious to him that Mr. Kimball did not purchase the tile.

Attorney Neale suggested placing testimony on the record concerning the service invoice (E-7) that (1) it was the agreement that was reached, and (2) the parties did agreed upon the December 15th date.

Lee Horn questioned Mr. Boll and Mr. Kimball asking for the information requested by Attorney Neale. Both agreed.

Tom Lykos questioned Daniel Kimball concerning the service invoice and asked for details concerning the “Scope of Work” for the shower labor and the tub enclosure labor.

Daniel Kimball stated he was to install the concrete board, building the curb and the base, and tiling the shower/tub enclosure. He did not do any demolition work, and was to install and tile the new walls.

Mr. Lykos continued to question the Respondent concerning the work he actually did and did not perform in a condominium, i.e., “commercial” building. The homeowner admitted he performed some work himself including removing tile and the tile sub-straft as well as the plumbing hardware.

There was a brief discussion about another complaint that had recently been made and Mr. Kimball’s intentions concerning payment of that debt.

Attorney Neale cautioned it was not appropriate for the Board to discuss a case that was not before it.

Mr. Kimball stated he intended to pay the second debt of approximately \$1,110 before it became necessary to again appear before the Board.

He reiterated he has a follow-up appointment with the surgeon at the end of March, and has not been cleared to resume to work until then.

Michael Ossorio stated the Respondent holds a license as a tile and marble contractor, which was issued in 2005. He noted Mr. Kimball was also issued Citations for unlicensed plumbing work and for not obtaining a building permit – none of the Citation fees have been paid to date.

Mr. Kimball stated he was completed approximately 250 jobs. When questioned by Board members concerning where was the money he earned since he became licensed, and if Mr. Boll were to permit it, would the Respondent be able to complete the work as contracted, the Respondent could not answer the questions. He admitted his financial situation is precarious.

While the Respondent claimed he will pay back Mr. Boll, he could not give a time frame for the restitution period.

Thomas Lykos summarized:

- The Respondent’s health emergency did not impact his ability to perform the work based on the agreement with Mr. Boll which had a December 15th deadline;
- The Respondent stated, vaguely, there were some financial issues which prevented him from performing the job;
- The decision to be made by the Board is whether or not the Respondent has sufficiently recovered from the financial situation with Mr. Boll and possibly another client, and if he will be able to earn enough in the future to reimburse Mr. Boll.

Mr. Lykos expressed his concerns:

- The Respondent may accept deposits from potential clients that he will not be able service;
- The Respondent has not shown he understands how he got into the financial situation that he is in;
- The Respondent has not provided the Board with a plan detailing when he will reimburse Mr. Boll and any other potential clients who may be owed money;

- The Respondent has not provided the Board with a tangible plan to recover from his present situation;
- How many other people will be placed in the same circumstances if the Respondent is allowed to retain his license?

Chairman Lantz verified:

- The contract was written in August, the deposit was not taken until October, and the deadline to complete the work was December 15th
- The Respondent did perform some work – he installed concrete board and the shower pan

Michael Ossorio stated Mr. Boll will hire a licensed plumber to inspect the work when the Condo Association permits work to resume. The other problem is that Mr. Kimball was to have supplied materials, i.e., tile, which he did not.

Mr. Boll confirmed he has hired a licensed General Contractor who will obtain the necessary permits to complete the work.

Richard Joslin noted if the Board revoked the Respondent's license, he would not be able to repay Mr. Boll and one of the Board's goals is to make the homeowners "whole." He recommended requiring the Respondent, for the next 90 days, to report all jobs he has been contracted to perform in order to monitor him regarding future deposits. The Respondent will be able to earn money to make payment to Mr. Boll.

Tom Lykos expressed concern that if the Respondent is allowed to continue to work, the Board is inadvertently contributing to a "Ponzi scheme" where the Respondent accepts a deposit from one client and uses it to pay for the materials needed by another client, etc. He suggested the Respondent find a job working for a tile company or some place where he will receive a regular paycheck that he can budget in order to repay Mr. Boll.

Mr. Lykos reiterated to allow the Respondent the ability to collect deposits from future clients would be negligent on the part of the Board. He stated the Respondent clearly has a problem managing money and should not be permitted to operate a business.

Patrick White expressed his opinions:

- Reimbursement is to be made;
- The Respondent is to receive a probationary license with a requirement that any future contract is to be disclosed to the County prior to signing;
- All jobs are to be monitored by the County.
- The Citations are a separate matter and will be brought to be Board if the fines not paid.

Terry Jerulle agreed with Patrick White stating the Respondent has been licensed since 2005 and has not had any complaints made against him. No prior pattern of behavior has been indicated.

Jon Walker also agreed and noted there are two issues that should be the focus of the Board: (1) restitution to the consumer, and (2) whether or not to allow the Respondent to continue to perform work.

Chairman Lantz asked Mr. Ossorio for the County's recommendation.

Michael Ossorio replied the County recommended a three-month probationary period during which time the County is to be notified of all jobs, and restitution to Mr. Boll in the amount of \$3,335.00 is to be made within three months or the Respondent's license will be revoked, and the Respondent will be responsible for paying the Investigative Costs of \$500 within three months.

Richard Joslin moved to approve recommending (1) the Respondent is to be placed on a six-month probationary period during which time all jobs are to be reported to the County, (2) The Respondent is required to pay the sum of \$3,335.00 to Michael Boll within ninety days or his license will be revoked, (3) the Respondent is required to reimburse the County for Investigative Costs in the sum of \$500 within ninety days or his license will be revoked; and (4) at the end of the probationary period, the Respondent is to appear before the Board and provide an update of his financial situation. The payment period is to begin April 1st and end on July 1st.

Mr. Joslin expanded his Motion to include that the Respondent is to deliver checks, made payable to Michael Boll, to the County for distribution.

The Chairman called for a vote on the Motion. Motion carried, 6 – "Yes"/2 – "No." Thomas Lykos and Lee Horn were opposed.

Lee Horn moved to close the Public Hearing. Second by Patrick White. Carried unanimously, 8 – 0.

Findings of Fact:

- Daniel M. Kimball is the holder of record of Collier County Certificate Number 27220.
- The Board of County Commissioners, Collier County, Florida, Contractors' Licensing Board is the Petitioner (Complainant) in this matter.
- The Board has jurisdiction of the person of the Respondent.
- The Respondent, Daniel M. Kimball, was present at the Public Hearing held on March 16, 2011.
- The Respondent, Daniel M. Kimball, was not represented by Counsel.
- All notices required by Collier County Ordinance 90-105, as amended, have been properly issued and were personally delivered
- The Respondent acted in a manner that is in violation of Collier County Ordinance and is the one who committed the act
- The allegations set forth in Administrative Complaint as Count I, under Section 4.1.3, "Abandoning a construction project in which he was engaged,

or under contract as a Contractor,” have been found to be supported by the evidence presented at the Hearing

Conclusions of Law:

- The Conclusions of Law alleged and set forth in the Administrative Complaint as Count I have been approved, adopted and incorporated herein, to wit:
 - The Respondent violated Section 4.1.3, “*Abandoning a construction project in which he was engaged or under contract as a Contractor,*” of Collier County Ordinance 90-105, as amended, in the performance of his contracting business in Collier County by acting in violation of the Section set out in the Administrative Complaint with particularity.
 - “*A project may be presumed abandoned if the Contractor terminates the project without just cause, or fails to notify the owner in writing of termination of the contract and the basis for same, or fails to perform work for ninety (90) consecutive days without just cause and no Notice given to the owner.*”

Order of the Board:

- Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority granted in Chapter 489, Florida Statutes, and Collier County Ordinance 90-105, as amended, by a vote of 8 in favor and zero in opposition, a majority vote of the Board members present, the Respondent has been found in violation as set out above.
- Further, it is hereby ordered by a vote of 6 in favor and 2 in opposition, a majority vote of the Board members present, that the following disciplinary actions and related Orders are hereby imposed upon the holder of Collier County Certificate of Competency Number 27220.
- Sanctions:
 - The Respondent is to pay restitution in the amount of \$3,335.00 within ninety days of April 1, 2011;
 - The Respondent is to pay \$500 in Investigative Costs within ninety days of April 2, 2011;
 - If these fees are not paid within 90 days of April 1, 2011, the Respondent’s license shall be revoked;
 - The Respondent is immediately placed on a six-month probationary period, during which time all jobs are to be reported to the Contractors’ Licensing Supervisor.

Chairman Lantz stated the case was closed.

IX. REPORTS:
(None)

- X. NEXT MEETING DATE: Wednesday, April 20, 2011
Board of County Commissioners' Chambers, Administrative Building "F,"
3rd Floor (Courthouse Complex), 3301 E. Tamiami Trail, Naples, FL 34112**

There being no further business for the good of the County, the meeting was adjourned by the order of the Vice Chair at 11:45 AM.

**COLLIER COUNTY CONTRACTOR
LICENSING BOARD**

Kyle Lantz, Chairman

The Minutes were approved by the Board/Chairman on _____, 2011,
as presented [____], or as amended [____].