

MINUTES OF THE
COLLIER COUNTY CONTRACTORS' LICENSING BOARD
MEETING

February 16, 2012
Naples, Florida

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 Conference Room #610, Collier County Growth Management Division/Planning & Regulation Office, 2800 North Horseshoe Drive, Naples, Florida, with the following Members present:

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

ALSO PRESENT:

Michael Ossorio – Supervisor, Contractors' Licensing Office
Michael D. Gentzle, Esq., and James F. Morey, Esq., Attorneys for the
Contractors' Licensing Board
Steve Williams, Esq., Assistant County Attorney
Rob Ganguli, Licensing Compliance Officer
Ian Jackson, Licensing Compliance Officer

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

I. ROLL CALL:

Chairman Lee Horn called the meeting to order at 9:02 AM and read the procedures to be followed to appeal a decision.

Roll call was taken and a quorum was established. All members were present.

II. ADDITIONS OR DELETIONS:

(None)

III. APPROVAL OF AGENDA:

Patrick White moved to approve the Agenda as submitted. Second by Thomas Lykos. Carried unanimously, 9 – 0.

IV. APPROVAL OF MINUTES – January 18, 2012:

Corrections:

- Page 20, the Contractors’ Licensing Board meeting ended at 11:15 **AM**.
- **James F. Morey, Esq., Attorney for the Board**, noted Mr. Boyd abstained from voting during the January meeting. He requested to include Form 8-B, entitled “Memorandum of Voting Conflict,” in the Minutes and to reference it as Exhibit “A” on Page 18.

Patrick White moved to approve the Minutes of the January 18, 2012 meeting as amended. Second by Thomas Lykos. Carried unanimously, 9 – 0.

V. DISCUSSION:

Attorney Morey requested that Michael Boyd read the “Disclosure of Local Officer’s Interest” portion of **Form 8-B**, “Memorandum of Voting Conflict,” into the record as follows:

“The Respondent who was the subject of the Complaint in question holds the same license and provides the same services as I do. The Respondent did not attend the Public Hearing and did not provide testimony. While I am not aware of any direct special benefits I would receive by the possible disciplining of the Respondent, to avoid even the appearance of impropriety or subsequent argument by the Respondent that I may have voted in such a way to take advantage of a business opportunity and, thus, obtain a special benefit, I disclosed my concerns orally at the meeting on January 18, 2012 prior to participating in any of the discussions. Moreover, I decided that abstaining from voting on the measure was proper under the circumstances.”

Mr. Boyd signed the Memorandum on January 31, 2012.

VI. NEW BUSINESS:

(Note: *In each of the cases heard under this Section, and Section VIII, “Public Hearings,” the individuals who testified were sworn in by the Attorney for the Board.*)

A. Mary Ann Mulligan – Request for Waiver of Examination/License Re-instatement

Michael Ossorio, Supervisor – Contractors’ Licensing Office, provided background information:

- Ms. Mulligan’s license lapsed in Collier County in 2001
- She has maintained a license in Lee and Charlotte Counties and in the City of Cape Coral
- She requested a Waiver of the requirement to take the Business Procedures test

Chairman Horn noted Ms. Mulligan’s Business credit report lacked any documentation.

Mary Ann Mulligan replied she paid cash for tools. She stated she installs cabinets and doesn’t purchase very much equipment or materials. She deposits payments into her business account and writes checks from the account as needed.

Patrick White noted Mulligan’s Cabinet Installation, Inc. was incorporated on January 1, 2004.

Vice Chairman Richard Joslin asked if Ms. Mulligan’s personal credit report should be reviewed since there was no business report to review.

Michael Ossorio explained that a Business credit report had been submitted – it simply had nothing on it. He also noted there were no complaints or liens against the company. He further stated the County recommended reinstatement of her license.

Thomas Lykos asked if the Ordinance requires payment of no more than three years of back fees.

Mr. Ossorio concurred.

Mr. Lykos stated the only reason why Ms. Mulligan appeared before the Licensing Board was to request a waiver of the requirement for testing.

Mr. Ossorio reiterated it was his job to review the application and if the criteria was met, he would issue the appropriate license. The question before the Board was whether or not to waive the requirement for testing since Ms. Mulligan’s license was in “expired/cancelled” status. In order for her license to be reinstated, she submitted an application and a credit report as required.

He continued since Ms. Mulligan was still in business and had been working in other counties, it would be superfluous to require her to take a test.

Ms. Mulligan clarified that she took a “finished carpentry” exam, as required by Charlotte County, approximately four years ago.

Kyle Lantz moved to approve the request for a Waiver of Examination. Second by Patrick White. Carried unanimously, 9 – 0.

B. Robert J. Spano – Contesting Citations(s)

Citations: #6740 (“Unlicensed Tree Trimming”)

Date: January 27, 2012

Fine: \$300.00

Description of Violation:

Engage in the business or act in the capacity of a Contractor, or advertise self or business organization as available to engage in the business of, or act in the capacity of a Contractor, without being duly registered or certified.

Robert Spano:

- Received a Citation on January 27th for unlicensed contracting
- Was contacted by Ian Jackson and met at the Contractors’ Licensing Office on January 27th
- Had not realized that his license was not renewed in Collier County
- Due to a clerical error, the business tax receipt was paid but the license was not renewed
- Paid the fees to renew his license which is in “active” status
- Requested leniency requiring the fine
- Has been in business since 2009

Michael Ossorio provided a brief overview of the licensing renewal process and noted Mr. Spano’s license was in “suspended” status at the time the Citation was issued. He stated Mr. Spano acted quickly to submit an application to reinstate his license and to pay the required fees. He further stated the County would not object if the Board decided to waive imposing the fine.

Vice Chairman Joslin reminded the Board that exceptions have been made in the past, i.e., if a violation was abated prior to the date of the Hearing, the Board waived the Citation.

Patrick White asked Mr. Spano what he would do in September 2012 that was different from his actions in September 2011.

Mr. Spano replied the renewal rested on his shoulders. He knew the County sent a renewal notice in September – his only explanation was the document was misplaced but the renewal date has been noted on his company’s business calendar. He did not foresee another problem.

Mr. White asked if Mr. Spano’s business practice had been modified as the result of receiving the Citation.

Mr. Spano concurred.

Terry Jerulle asked if Mr. Spano could be found guilty of the violation but not required to pay the fine.

Michael D. Gentzle, Esq., Attorney for the Board, referenced Section 487.127 of *Florida Statutes*. He noted the Licensing Board could find in violation and order a violator to pay a fine or it could dismiss the Citation.

Terry Jerulle noted if the Citation was dismissed entirely, there would be no history to reference if Mr. Spano ever appeared before the Board again for the same violation.

Patrick White stated the violation would remain on the record even if the Citation was dismissed.

Jon Walker asked Mr. Spano if he was contesting the violation.

Robert Spano replied he was not contesting the violation – only asking for leniency concerning the fine.

Chairman Horn asked Mr. Ossorio if his Office's records would still note that there had been a violation.

Michael Ossorio stated if the Citation was dismissed, a Non-Compliance Order would be issued. He further stated "City View" [the County's computer program] would note that a Citation had been issued but was dismissed.

Mr. White asked if a "Non-Compliance Order" was the equivalent of a minor violation and Mr. Ossorio concurred.

Kyle Lantz moved to approve dismissing Citation #6740. Second by Robert Meister.

Jon Walker suggested amending the motion to approve upholding the Citation while dismissing the fine.

Kyle Lantz agreed to amend his Motion. Second by Robert Meister. Carried unanimously, 9 – 0.

VII. OLD BUSINESS:

A. Orders of the Board

Thomas Lykos moved to approve authorizing the Chairman to sign the Orders of the Board. Second by Vice Chairman Joslin. Carried unanimously, 9 – 0.

B. Case #2011-11: Motion for Re-Hearing – Duane O. Thomas, d/b/a Duane Thomas Marine Construction, LLC

John F. Hooley, Esq., of Garber, Hooley & Holloway, LLP, appeared on behalf of the Respondent, Duane O. Thomas, who was present.

Chairman Horn asked why a re-hearing had been requested.

Attorney Hooley stated the purpose was to revisit the sanctions that were imposed and requested the Board review the Sanctions.

Chairman Horn asked if there was new evidence or a reason that the Board had not been made aware of at the time of the initial Hearing.

Attorney Hooley stated the Board was to impose Sanctions after reviewing the following:

- Gravity of the violation,

- Impact of the violation on the public's health, welfare and safety,
- Actions taken by the violator to correct the violation,
- Previous violations committed by the violator, and
- Any other relevant evidence presented by the parties at the Hearing.

Attorney Hooley stated Mr. Thomas did not represent himself very well – “he did somewhat of a bad job.”

Patrick White noted the standard for a re-hearing identified the grounds for the re-hearing, as follows:

- A fundamental error had occurred which resulted in a failure of due process,
- The decision was contrary to the evidence, or
- The Hearing involved an error on a ruling of law and/or fact which was fundamental to the decision of the Contractors' Licensing Board.

He asked which of the grounds was the basis of Mr. Hooley's Motion.

Attorney Hooley replied a fundamental requirement of law, noted in 4.3.1 (b), was defined as a “minor violation.” He stated in reviewing the ruling of the Board, the mitigating circumstances relating to the work were not addressed.

He continued, Mr. Thomas admitted he was working without having received a permit which does require action. However, the Board's punishment should have been ameliorated by the factors surrounding the work.

He further stated the Order failed to make “Findings,” as required by Section 4.3.5.3.

Patrick White asked if the ground was that a fundamental error occurred which resulted in a failure of due process. “Yes or no?”

Attorney Hooley replied it was not a fundamental error.

Patrick White: “Notice and opportunity to be heard?”

Attorney Hooley: “He had a notice and opportunity to be heard.”

Patrick White: “I will take that as a ‘no’.”

Attorney Hooley: “Yes.”

Patrick White: “The second is ‘the decision was contrary to the evidence.’ Is it your position that it is or it isn't?”

Attorney Hooley: “It is my position that the decision wasn't but that the penalty was.”

Patrick White: “We made a decision. The third is that the Hearing involved an error on a ruling of law and/or fact that was fundamental to the decision of the Contractors' Licensing Board. If you don't get in under the second one as to what a decision is, I don't think you can get in under the third, either.”

He continued, “What I'm trying to help you articulate for the record and for this Board to understand, is – what you are asking for – is it the third ground as well?”

Attorney Hooley: “Yes, because I felt the Board did make a decision but I don't believe it considered the ameliorating factors as required by the Ordinance in accordance with the set forth specifications.”

Patrick White: “And that there weren't written Findings?”

Attorney Hooley: “Correct.”

Patrick White: “It seemed essential to me that we understand which grounds the Motion was based upon.”

Terry Jerulle: “I guess I’m still not clear.”

Chairman Horn requested clarification from the Board’s attorneys.

Attorney Morey noted Mr. White cited Section 22.204 of the Code of Laws Ordinance. He stated Mr. Hooley must claim that a fundamental error occurred in the process.

He continued, noting the Order of the Board recited, “. . . *that after due consideration of all factors required under the Collier County Code of Laws and Ordinances 22-203(c) and based upon the evidence and testimony presented . . .*” He stated there was a recitation in the Order that all the factors were considered. The Order did not have specific binding “Facts” which enumerated a listing in detail exactly which factors were considered. The Order stated the Board did consider all relevant factors, which were the required factors. The Board has the ability – if it determines that the Findings were inadequate and not specific enough – to grant the Motion for a Re-Hearing and hold a Hearing on a specific issue or as requested, simply hear the penalty phase. A Public Hearing would be held, the charge to the Board would be given, deliberation would take place considering all the factors, and the Board could decide to change its initial decision, or uphold the penalty, or change the penalty. The Board must feel comfortable with and believe that there was a fundamental error in the Findings.

Chairman Horn asked if the Board could reopen just the penalty phase as long as the Respondent agreed he was guilty of a violation.

Attorney Morey: “That is correct.” He explained that during a re-hearing, the Board could limit the issues to a specific issue, including going directly to the penalty phase.

Chairman Horn asked if additional notice was required or if the Board could proceed.

Attorney Morey stated since there had been proper notice and the Respondent was present, along with his attorney, the Board could proceed because the Motion for a Re-Hearing was filed within the required time frame.

Vice Chairman Joslin asked if a motion to approve was necessary from the Board before a re-hearing could be held.

Attorney Morey explained the Board could grant the Motion for a Re-Hearing or deny it. If the Board granted the Motion, the Public Hearing would go forward, evidence would be heard, and the penalty phase would be opened and the penalty would be discussed. He reminded the Board that the violation had been established.

Patrick White noted the Board could set the Re-Hearing for the next Board meeting.

Attorney Morey concurred that Mr. White’s suggestion was also an option.

Patrick White stated if the Re-Hearing was set for a later date, according to the Ordinance, the time period to file an appeal would also be “stayed.”

Attorney Morey: “That is correct.”

Patrick White: “There’s nothing that says that a Notice of Appeal cannot be filed prior to the Re-Hearing being decided. Or, is it essentially an attempt to restate what I otherwise would expect -- the jurisdictional limits of the Board for entertaining what is a quasi-judicial matter on appeal – which I believe is very strict. I’m trying to dance on the head of this pin in a way that doesn’t prejudice the County but also puts this Board in a position to understand that if we choose to hear it and move that to [one] month from now, that it puts the Respondent in a position where he has to make decisions to act or not.

He further stated he was one of the two dissenting votes. “It might be quite surprising to hear me analyze and come to the conclusion that I think we fully vetted every one of those factors, whether they were ameliorating or mitigating or aggravating. I don’t think they were stated that way in the Ordinance. The Ordinance states each Board member is to weigh the factors in accordance with the evidence presented and the testimony heard. I weighed the factors and came to a different conclusion than seven of my colleagues and I respect that.”

He continued, “The point is – as to the scope of the Re-Hearing – and the grounds upon which the decision is being challenged as to the penalty imposed, my position is that we fully considered every one of those factors in detail and there is no requirement, in my understanding of the Law, that in this type of a matter – that the factors are to be stated with specificity. There are plenty of cases in quasi-judicial matters where written orders are required, in particular Code Enforcement cases, where a similar kind of standard exists, and I think we did our jobs and I believe that the Order as a matter of precedence ought to be respected to the degree that it says, as our Board’s counsel indicted, after due consideration of all factors required and that is what we did.”

He further stated, “I think that is the standard that a Court is likely to look at and come to the conclusion that it’s a tough three-pronged test of a quasi-judicial matter and because I was one of the people on the negative side of the motion, and also looking at and trying to find help for this Board when there have been few re-hearings, and based on the two grounds that are the basis of this motion, I would not be comfortable voting in favor of granting the Motion for Re-Hearing.”

He concluded that “because of the lack of clarity about the timing and of having a re-hearing or not, it makes more sense to me to dispose of this today and give the Respondent an opportunity to go to Court if he thinks that this Board needs to have written, specific Findings to put into the Order. If a Court thinks that’s the case, we will have a re-hearing. I would prefer to have the Court tell us to do that than to do it on our own – to start out on a greater path than is in the Ordinance. We have over the years done an ever-increasing, more precise job of working within the framework of the rules that the Board of County Commissioners established and I don’t want to tread onto some new ground where I don’t think the Courts have gone without a Judge telling us.”

Finally, he urged the Board members to ask questions before making a determination.

Chairman Horn stated it did not make sense to go above the Ordinance especially since the video recording was available and could be used as evidence in a third-party hearing. He noted a Court Reporter could produce a certified transcript if required.

He further stated in every case that has come before the Board, the Board's attorneys reviewed the factors to be considered and the penalties, especially when the Respondent was a State-certified Contractor since the penalties are different. "We hear it during every single case and it is repeated into the record."

Attorney Hooley stated he agreed with Mr. White but he did not perceive the Motion for a Re-Hearing as precedent-setting move by the Board or that the Board would be required to do it each and every time. He did not see the need for changes to the Statutory or adjudicatory scheme.

He further stated Mr. Thomas was asking the Board to reconsider the factors at least with regard to one of the prior Citations. The Board didn't note that he mobilized prior to receiving the permit. Mr. Thomas applied for the permit, was cited on one day, and the permit was issued the following day.

He concurred there was a violation, "but it was just on the cusp of a violation." He obtained documents from the City of Marco Island verifying that the type of work done was allowed at the time – that it was the ultimate factor for the Board to consider.

He pointed out granting a Motion for a Re-Hearing would not re-write the Ordinance and going through the factors would not be a divergence from what the Board normally does.

Patrick White countered it was the statement in the Respondent's Motion requiring written, specific Findings that concerned him as a precedent-setting. He stated if that aspect of the re-hearing request was withdrawn, he would be less concerned. The process comes down to a vote – individual votes by the Board members – and after considering the factors, the penalties made sense.

Thomas Lykos noted that he stated at the previous Hearing, the Respondent could have made a phone call to the Building Department before he started the job. If he had put the effort in at the beginning, the Respondent would not have been cited for a violation.

He further stated "we vetted this case – we vetted the issue of whether or not past violations were documented properly." He stated he was offended that the Board was asked to invest more time in the case and that the thoroughness of the vetting process was in question.

Attorney Morey suggested, if there was no further discussion, a Motion to grant or deny the Re-Hearing could be made.

Jon Walker moved to deny the Motion for a Re-Hearing. Second by Thomas Lykos.

Discussion:

Patrick White:

- Questioned what constituted the nature and scope of a “Cease and Desist” Order and whether or not the two prior incidents had been considered as violations.
- He stated at the initial Hearing he questioned whether the two prior incidents (screen-shot identified) involving the City of Marco Island constituted violations.
- He noted the Hearing Minutes were changed during the January meeting:
 - On Page 12, 2nd paragraph, 4th line – the word “refusal” was changed to “failing”
- The sentence was corrected as follows:
“The issue was his [the Respondent’s] inability to obtain a permit before starting work and the Respondent’s failing to follow the County’s regulations.”
- He stated the case was heard and did not think re-hearing the case would alter the outcome or assist a Court in anyway to be able to dispose of the matter.

Vice Chairman Joslin:

- Stated when he made the motion during the initial Hearing, he felt the penalty was correct for the gravity of the violation.
- It would have been very simple for the Respondent to contact the County prior to beginning the job if it was an emergency situation. He chose not to make the call.
- We knew the violation did occur due to sworn testimony given by the County.
- To hear the case again could result in a more severe penalty phase.

Attorney Hooley:

- Mr. Thomas appreciates the power of the Board and is concerned about blemishes on his license, being placed on probation for a year, and the financial punishment. His reputation in the marine construction field is important to him.
- He is not here to “get off Scott-free.”
- He has requested the Board’s indulgence to take another look at the case and he recognizes the fact that even more severe penalties could be imposed.
- Mr. Thomas has not taken an Appeal to the Circuit Court or any other place.
- Mr. Thomas is asking for reconsideration of some of the terms of the Board’s Order.

Thomas Lykos:

- Choosing to be a General Contractor means we live under the rules and regulations of the industry. We follow the laws of the industry that we are in – as set forth for our industry.

Attorney Hooley explained Mr. Thomas was not calling into question the Board's ability to look at the facts – he was asking the Board to re-examine the factors. He admitted he was guilty as charged and was asking only about the penalty phase.

Vice Chairman Joslin asked if there was any new evidence to be presented by the County.

Michael Ossorio responded that the County's position was that it had no position. The case was presented and the Licensing Board made its decision.

Chairman Horn called for a vote on the Motion made by Mr. Walker: To deny the Respondent's Request or Motion for a Re-Hearing.

Patrick Walker asked if the Motion should state why the Request for a Re-Hearing was denied. He suggested adding the Request for a Re-Hearing failed to proffer facts that met either the 2nd or the 3rd ground as cited in Section 22-204.

Jon Walker amended his Motion as follows: To deny the Request for a Re-Hearing based on that the fact there was no probable cause that the first case was not properly vetted.

Attorney Morey suggested the following language: "To deny the Motion for a Re-Hearing based on the fact that no fundamental error occurred in the first Hearing."

Mr. Walker amended his Motion and Mr. Lykos offered his second in support of the amended motion. Carried unanimously, 9 – 0.

BREAK: 10:00 AM.

RECONVENED: 10:15 AM

VIII. PUBLIC HEARINGS:

B. Case #2012-02: Raymond V. Trotta, (d/b/a: Naples Tile, Marble, Carpet & Wood, Inc.)

Chairman Horn noted the Respondent, Raymond V. Trotta, was not present.

Terry Jerulle stated he would abstain from voting due to a possible conflict of interest because he employed Mr. Trotta's company several years.

Ian Jackson, Licensing Compliance Officer, stated the Notice of Hearing had been hand-delivered to Mr. Trotta on January 23, 2012.

Chairman Horn 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.
- The Hearings are quasi-judicial in nature.
- 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 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.
- 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 out 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:
 - Whether the Respondent was guilty of the offense as charged in the Administrative Complaint. A vote will be taken on the matter.
 - If the Respondent was 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.

Vice Chairman Joslin moved to approve entering Case No. 2012-02, Collier County License #33805, Board of County Commissioners vs. Raymond V. Trotta, d/b/a Naples Tile, Marble, Carpet & Wood, Inc., into evidence. Second by Kyle Lantz. Carried unanimously, 9 – 0.

Chairman Horn entered the information packet into evidence as County’s Exhibit “A.”

Ian Jackson, Licensing Compliance Officer, presented the County’s Opening Statement:

- The County will show through documented facts and sworn testimony that Raymond V. Trotta failed to secure compensation for his employees in violation of Florida Statute 440.10 (1)(a).
- Mr. Trotta violated Collier County Ordinance 90-105, Section 22-201 (6).
- The Notice of Hearing was hand-delivered to Mr. Trotta on January 23, 2012.

Mr. Jackson stated he spoke with Mr. Trotta and, although he was aware of the Hearing time and location, the Respondent was unable to attend due to health reasons. Mr. Trotta provided a statement for the Board’s review.
(A copy of the statement was distributed to the Board.)

Patrick White moved to accept the statement and admit it into evidence as Respondent’s Exhibit “A.” Second by Thomas Lykos. Motion carried, 8 – “Yes”/0 – “No”/1 – “Abstention.” Terry Jerulle abstained from voting.

Mr. Jackson read the statement into the record.

(A copy of the statement is attached as Page 23 of the Minutes.)

It was noted the date of the violation, “10/04/3011,” was incorrect – the year should be 2011.

Chairman Horn asked if the Respondent’s license was active.
Mr. Jackson responded affirmatively.

Case in Chief:

Jack Gumph, State of Florida Workers’ Compensation Investigator, appeared as the County’s witness.

Ian Jackson asked Mr. Gumph to verify that:

- He was at a construction site located at 14403 Marsala Way on or about October 4, 2011
- He encountered three employees of Naples Tile, Marble, Carpet & Wood, to wit: Cheryl Sheldon, Sara Newman, Glenn Snyder, who were performing construction while under contract to Mr. Trotta
- Mr. Trotta was operating with Workers’ Compensation provided through an employee leasing program
- At the time, the three employees were not listed on the leasing program
- The action constituted a violation of Florida Statutes 440.10(1)(a).

Jack Gumph confirmed the Statute had been violated.

Mr. Jackson noted the violation of Florida Statutes 440.10(1)(a) also constituted a violation of Collier County Ordinance 90-105, as amended, Section 22-201(6).

Vice Chairman Joslin asked if there were other employees in addition to the three mentioned and the response was “no.”

Patrick White asked if any of the individuals mentioned were officers of the corporation and the response was “no.”

Mr. Gumph explained that a PEO Leasing Company is used by Contractors to provide payroll and Worker’s Compensation insurance. The employees are technically employed by a PEO Leasing Company. The name of the leasing company was Progressive. When he called to verify the roster of employees for that day, he was told that Mr. Trotta had not run payroll for two or three weeks and had no employees on the roster. It was not the first day of the job.

Vice Chairman Joslin asked what duties the employees were performing at the job site.

Jack Gumph noted a gentleman in the garage was cutting tile. The Job Foreman, a young lady, was laying tile in the breezeway and the other young lady was sweeping up.

Ian Jackson asked Mr. Gumph to provide his background information for the record.

Mr. Gumph noted he is employed by the State of Florida Department of Financial Services – Division of Workers’ Compensation as a Compliance Investigator. His duties included performing inspections (construction sites and non-construction locations) to verify compliance with the Workers’ Compensation Law, i.e., Chapter 440 of *Florida Statutes*. He has been employed in the position for approximately 2 ½ years.

He stated:

- He spoke to the individuals at the job site. The job foreman identified the employer as Ray Trotta.
- He spoke with Mr. Trotta to ask how the employees were insured.
- Mr. Trotta indicated he used a PEO Leasing Company.
- He contacted the leasing company and was told Mr. Trotta’s employees were not on the roster for that day.
- Two of the three employees had been on leasing program
- One worker was a friend who did not work for the company but was there as a “helper.” (Mr. Trotta was not aware the individual was on the job site.)
- The employees indicated they worked for Mr. Trotta “off and on” – while they had not been paid, he had promised to pay them.

Chairman Horn asked who would have been liable if an employee had been injured on the job.

Mr. Gumph stated the General Contractor, Coastal Breeze Homes, LLC, would have been responsible. He stated he verified the General Contractor was insured.

Thomas Lycos asked if the home under construction had been a custom home built for a specific owner, and if the GC did not have insurance coverage, could an injured employee file suit against the homeowner and the response was “yes.”

Mr. Gumph noted even though Mr. Trotta used his employees on an infrequent basis, because he had not run them through the leasing company for a period of at least three weeks, it was the policy of the leasing company to consider them as (automatically) terminated. Mr. Trotta was required to contact the leasing company to reinstate the employees for them to be covered under the leasing company’s Workers’ Compensation policy and to be paid.

He further stated when he spoke with the Respondent, Mr. Trotta acknowledged that he knew his employees were not on the leasing company’s list.

Patrick White noted the time line was not known, but the Respondent’s acknowledgement indicated the degree of disregard on his part.

Michael Boyd noted the Respondent was not State-certified or registered and asked what actions were taken by the State.

Jack Gumph replied that a “Stop Work” Order was issued, and State auditors levied a penalty against him and his company for the violation. He stated the job was completed by another tile contractor hired by the General Contractor.

Ian Jackson concluded the County’s presentation, stating the County proved the Respondent violated Collier County Ordinance 90-105, as amended, Section 22-

201(6), i.e., “Disregards or violates, in the practice of his contracting business in the County, any of the building, safety, health, insurance, or Workers’ Compensation laws of the State or Ordinances of the County.”

Terry Jerulle inquired about the State’s fine.

Jack Gumph stated the Respondent was fined \$13,632.08 on October 19, 2011 and the fine had not been paid. It was a punitive fine. The company had a window of 20-business days to pay the fine or enter into a payment agreement.

Chairman Horn asked if the Respondent’s permit pulling privileges had been suspended by the County.

Michael Ossorio noted a General Contractor pulls permits for a job site. When the State issues a “Stop Work” Order, a copy is placed in the Permit file and the GC cannot pull additional building permits. He stated the Respondent’s company was active in the County’s system, i.e., his Certificate remains active until September. When the State issues a “Stop Work” Order, it applies throughout the State.

Jack Gumph concurred, stating the Respondent is not allowed to not work anywhere in the State until the requirement was satisfied.

Thomas Lykos moved to close the Public Hearing. Second by Patrick White. Motion carried, 8 – “Yes”/0 – “No”/1 – “Abstention.” Terry Jerulle abstained from voting.

Chairman Horn stated the Public Hearing was closed.

Attorney Morey outlined the Charge to the Board:

- The Board shall ascertain in its deliberations that fundamental fairness and due process were accorded to the Respondent
- Pursuant to Section 22-203(g) (5) of the Codified Ordinance, the formal Rules of Evidence set out in *Florida Statutes* do not apply.
- The Board shall consider solely the evidence presented at the Hearing in its deliberation of this matter.
- The Board shall exclude from its deliberations irrelevant, immaterial and cumulative testimony.
- The Board shall admit and consider all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, whether or not the evidence so admitted would be admissible in a Court of Law or Equity.
- Hearsay evidence may be used to explain or supplement any other evidence but hearsay, in and of itself, is not be sufficient to support a Finding, unless such hearsay would be admissible over objection in a civil action in Court.
- The Standard of Proof in actions where a Respondent may lose his privileges to practice his profession is that the evidence presented by the Complainant must prove the Complainant’s case in a clear and convincing manner.
- The Burden of Proof on the Complainant is a larger burden than the “Preponderance of Evidence” Standard set in civil cases.

- The Standard of Evidence is to be weighed solely as to the charges set out in the Complaint.
- The only charges the Board may decide upon are the ones to which the Respondent has had an opportunity to prepare a defense.
- The damages awarded by the Board must be directly related to the charges.
- The decision made by the Board shall be stated orally at the Hearing and is effective upon being read, unless the Board orders otherwise.
- The Respondent, if found guilty, has certain appeal rights to the Contractors' Licensing Board, the Courts, and the State Construction Industry Licensing Board, pursuant to *Florida Statutes* and the Florida Administrative Code.
- The Board shall vote upon the evidence presented in all areas and if the Respondent is found in violation, shall adopt the Administrative Complaint.
- The Board shall also make Findings of Fact and Conclusions of Law in support of the charges set out in the Complaint.

Patrick White moved to approve finding the Respondent "guilty" as set forth in the Administrative Complaint and in violation of the Code, Section 22-201(6) pertaining to violation of the Workers' Compensation Law, Section 440.10(1)(a) and that fundamental due process was afforded the Respondent and, based upon all relevant evidence and testimony, to a clear and convincing degree, the Respondent did so violate as set forth in the Administrative Complaint.

Second by Kyle Lantz.

Motion carried, 8 – "Yes"/0 – "No" /1 – "Abstention." Terry Jerulle abstained from voting.

Attorney Gentzle stated since the Board found there was misconduct by the Contractor under Section 22-203(b) (1), the Board may impose any of the following Disciplinary Sanctions individually, or in combination:

- (1) Revocation of the Collier County (or City) Certificate of Competency,
- (2) Suspension of the Collier County (or City) Certificate of Competency,
- (3) Denial of the issuance or renewal of the Collier County (or City) 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 noticed 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 Gentzle advised the Board that when imposing disciplinary sanctions on a State-certified Contractor or person who was found to have violated the Ordinance, the Contractors' Licensing Board shall consider the following:

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

He continued, stating in addition to any action that the Collier County Contractors' Licensing Board may take against the individual or business, and any fines that may be imposed, the Board shall issue a recommended penalty to the State of Florida Construction Industry Licensing Board. The penalty may include:

- a. A recommendation of "no further action";
- b. A recommendation of suspension, or revocation, or restriction of the registration;
- c. A fine to be levied by the State of Florida Construction Industry Licensing Board.
- d. Any combination of the above.

Chairman Horn asked the County for its recommendations.

Ian Jackson introduced a three-page document and requested to enter it into evidence as County's Exhibit "B" for consideration during the penalty phase. *(A copy of the report was distributed to the members and attached as Pages 24 through 26 of the Minutes.)*

Patrick White moved to accept the document and enter it into evidence as County's Exhibit "B." Second by Vice Chairman Joslin.
Motion carried, 8 – "Yes"/0 – "No" /1 – "Abstention." Terry Jerulle abstained from voting.

Michael Ossorio stated the County would not request any investigative costs.

Mr. Jackson described the contents of County's Exhibit "B":

- The first page was a copy of the Comment Listing Report which outlined the past history of the Contractor. He noted the Contractor had been cited in 2005 for a similar incident – "no Workers' Comp. Insurance."
- The second page was a copy of the 2005 Investigative Report,
- The third page was a copy of Citation #2408, issued on January 12, 2005.

Chairman Horn questioned the second entry on Page One of the Report, asking if it was an actual violation or a note in the system.

Michael Ossorio confirmed the entry was not a violation.

Patrick White noted it was not the Respondent's first Workers' Compensation violation and there was one prior violation, i.e., January 12, 2005.
Michael Ossorio concurred.

Chairman Horn asked the County for its recommendation.
Michael Ossorio stated the County did not have a recommendation.

Kyle Lantz noted the financial punishment levied by the State was adequate. He recommended probation.

Patrick White noted a tile contractor would probably not pull a Building Permit. He asked for clarification between a "revocation" and a "suspension" of the Contractor's certificate.

Michael Ossorio explained a "revocation" is a finite removal of the Certificate while a "suspension" could indicate a limited period of time until the Respondent appeared before the Contractors' Licensing Board or submitted an application. If a license was revoked, the Contractor could petition the Board for a Hearing at a specified date and time. He confirmed that once a license has been revoked, it was "finished."

Chairman Horn noted the State levied a fine in the amount of \$13,000 which the Respondent might or might not pay.

Patrick White stated of the options presented, given the prior violation, he recommended a revocation of the Respondent's license along with a public reprimand.

Chairman Horn asked if the Respondent intended to stay in business.

Investigator Jackson concurred with the Chairman's assessment.

Thomas Lykos summarized:

- The Respondent must pay the State levy of \$13,000+ before he will be allowed to return to work
- Mr. White recommended that the Board revoke the Respondent's license
- If the Respondent wished to re-instate his license, he would be required to apply to the Board.

He stated he agreed with Mr. White's recommendation.

It was noted the Respondent did nothing to mitigate the situation, i.e., he did not reimburse his employees for unpaid wages or bring the Workers' Compensation policy into compliance.

Jack Gumph outlined the State's repayment option: The Respondent was required to make a down payment of ten percent of the fine (\$1,300) and would have sixty months – interest free – to pay off the fine.

Kyle Lantz suggested that revocation was too severe and noted the Respondent will pay a hefty fine and will not be allowed to return to work until all conditions have been satisfied. He recommended suspension of the Respondent's license.

Vice Chairman Joslin agreed with Mr. Lantz.

Thomas Lykos and **Patrick White** reiterated their support for revocation.

Jack Gumph stated he met with the Respondent after the fine was levied and explained to Mr. Trotta that he had twenty business days to enter into a payment plan. Mr. Trotta indicated, based on his financial situation and poor health, that he could not do so.

Mr. Gump noted the State of Florida does not want Contractors to shut down or completely stop working. He stated Mr. Trotta can call him at any time to set up a payment plan.

He further stated the Respondent had the right to file an Appeal prior to the twenty-day deadline (after service of the penalty). The Respondent could have produced evidence to reduce the State's penalty. After the deadline expired, the State would not consider any reduction of the penalty.

He continued the State could collect the penalty via placing a lien against the Respondent, enlisting the services of a collection bureau. He noted there is the ultimate possibility of instituting criminal charges against the Respondent. He stated the business owner could remedy the situation by entering into a payment agreement at any time during the process.

Patrick White requested that the Respondent provide proof that his employees had been compensated before the revocation could be lifted.

Chairman Horn asked if the Board could require continuing education.

Attorney Morey explained that under probation, certain conditions could be imposed by the Board including a re-education component. He stated the Ordinance does not specifically state that the Board could impose a requirement to compensate other people since it is not related to the license.

Mr. White noted there was no prohibition and compensation was allowed as a lesser penalty for probation and he thought it could be imposed

Vice Chairman Joslin reminded the Board that the State took the position of trying to help Contractors in trouble, as evidenced by the availability of a payment plan, and stated the Board should not impose penalties that were more severe than the State.

Kyle Lantz noted the Board had never revoked a Contractor's license in the past for a Workers' Compensation violation. The Respondent has been punished by a \$13,000 fine. He recommended suspension.

Michael Boyd moved to approve revoking the Respondent's License. Second by Patrick White. Motion carried, 5 – "Yes"/3 – "No"/1 – "Abstention." Terry Jerulle abstained from voting.

Chairman Horn stated:

- This cause came on for public hearing before the Contractors' Licensing Board on February 16, 2012 for consideration of the Administrative Complaint in Case #2012-02 filed against Raymond V. Trotta, d/b/a "Naples Tile, Marble, Carpet & Wood, Inc.," the holder of record of Collier County Certificate #33805.

- Service of the Complaint was made in accordance with Collier County Ordinance 90-105, as amended.
- The Board, at this Hearing, having heard testimony under oath, received evidence and heard arguments respective to all appropriate matters, therefore issued its Findings of Facts and Conclusions of Law as follows.

Findings of Fact:

- Raymond V. Trotta, d/b/a “Naples Tile, Marble, & Wood, Inc.,” is the holder of record of Collier County Certificate #33805.
- 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.
- Respondent, Raymond V. Trotta, was not present at the Public Hearing held on February 16, 2012, and was not represented by Counsel at the Hearing.
- 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 22-201(6), “*Disregards or violates, in the practice of his contracting business in the County, any of the building, safety, health, insurance, or Workers’ Compensation laws of the State, or Ordinance of this County,*” 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 22-201(6) of Collier County Ordinance 90-105, as amended, and *Florida Statutes* 440-10(1)(a) 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.

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 in Collier County Ordinance 90-105, as amended, by a vote of 8 in favor, none in opposition, and one abstention, 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 5 in favor, 3 in opposition, and one abstention, a majority vote of the Board members present, that the following disciplinary sanction and related Order are hereby imposed upon the holder of Collier County Certificate of Competency #33805, to wit: revocation of the Respondent’s license.

Chairman Horn noted the case was closed.

IX. REPORTS:

- **Patrick White** requested an upstate of the Budget information that was to have been supplied by Ken Kovensky.
- **Thomas Lykos** stated he met with Mr. Kovensky and Jamie French. He agreed with the methodology presented and the allocation of expenses contained in the budget and was satisfied that the numbers were reasonable.

X. MEMBER COMMENTS:

(None)

- XI. NEXT MEETING DATE: Wednesday, March 21, 2012**
Board of County Commissioners' Chambers, Administrative Building "F,"
3rd Floor (Government 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 Chairman at 11:45 AM.

**COLLIER COUNTY CONTRACTOR
LICENSING BOARD**

Lee Horn, Chairman

The Minutes were approved by the Board/Chairman on _____, 2011,
"as submitted" **OR** "as amended" .