STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
CONTRACTORS' REGISTRATION AND LICENSING BOARD
560 JEFFERSON BOULEVARD, SUITE 200
WARWICK, R.I. 02886

In the Matter of:	:	
Joseph Connors, Platinum Roofing and Construction,	:	**CRLB No. 10889**
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to a Notice of Hearing ("Notice") issued on August 17, 2022 by the Department of Business Regulation Contractors' Registration and Licensing Board ("Department" or "Board") to Joseph Connors, Platinum Roofing and Construction ("Respondent"). The Respondent is registered as a contractor pursuant to R.I. Gen. Laws § 5-61-1 *et seq*. A hearing was scheduled for September 21, 2022 at which time the Respondent did not appear. Pursuant to R.I. Gen. Law § 5-65-6 and § 1.15.1 of 440-RICR-10-00-1 *General Rules and Regulations for Applications, Registration, Licensing, Claims, Violations, and Administrative Hearings* ("Regulation"), service may be made by first-class mail or certified mail and service is complete upon mailing when sent to the last known address of the party. In this matter, the Notice was sent to the Respondent's last known address by first class and certified mail.[1] Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on September 21, 2022.[2] Additionally, § 1.17 of the Regulation[3] provides that a default judgment

[1] Department's Exhibit One (1) and Two (2) (first class and certified Notice returned to the Respondent as no such number and unable to forward). Department's Exhibit Three (3) (United States Post Office tracking sheet).
[2] The undersigned hearing officer heard this matter pursuant to R.I. Gen. Laws § 5-65-12.
[3] Section 1.17 of the Regulation provides as follows:

may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party. The Board was represented by counsel who rested on the record.

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-65-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 440-RICR-10-00-1 *General Rules and Regulations for Applications, Registration, Licensing, Claims, Violations, and Administrative Hearings*.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-65-10.

IV. MATERIAL FACTS

Based on the pleadings and exhibits entered at hearing, it is undisputed as follows: The Respondent entered in an agreement on or about May 20, 2022 with a homeowner in Lincoln to install a retaining wall. The Respondent accepted a deposit in the amount of $6,667 from the homeowner. The Respondent failed to perform the work for which he was contracted. The homeowner filed a complaint with the Board on June 1, 2022 regarding the Respondent. The Board investigated the complaint and issued a report on June 21, 2022. The Board found various statutory violations by the Respondent including that he failed to return the deposit to the homeowner. Department's Exhibits One (1) and Two (2) (Notice); Four (4) (deposit check dated May 20, 2022); Five (5) (invoice); Six (6) (Board investigator's report); and Seven (7) (Notice of Intent to Assess Civil Penalty).

If any Party to a proceeding fails to answer a complaint, plead, appear at a prehearing conference or hearing or otherwise fails to prosecute or defend an action as provided by these Rules, the Hearing Officer or Board may enter a default judgment against the defaulting Party or take such action based on the pleadings and/or other evidence submitted by the non-defaulting Party as the forum deems appropriate. Challenge to such an order shall be made as a motion for reconsideration per § 1.15.6 of this Part.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM,* 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998).

B. Standard of Review for an Administrative Hearing

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, Administrative Law Treatise § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Relevant Statutes

R.I. Gen. Laws § 5-65-10 provides in part as follows:

> (a) The board or office may revoke, suspend, or refuse to issue, reinstate, or reissue a certificate of registration if the board or office determines, after notice and opportunity for a hearing:
>
> ***
>
> (10) The board may take disciplinary action against a contractor who performed work, or arranged to perform work, while the registration was suspended, invalidated, or revoked. Deposits received by a contractor and ordered returned are not considered a monetary award when no services or supplies have been received.

D. Whether the Respondent violated R.I. Gen. Laws § 5-65-10(a)(10)

It was undisputed that the Respondent did not perform the work for which he entered into a contract with said homeowner and did not return the homeowner's deposit. Therefore, pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the homeowner's deposit of $6,667. It is noted that the Respondent's other statutory violations determined by the Board were addressed in a separate final order issued to the Respondent.

VI. FINDINGS OF FACT

Based on the foregoing, the undersigned makes the following findings of fact:

1. A homeowner filed a complaint on or about June 1, 2022 with the Board regarding the Respondent failing to return a deposit given for work which was then not performed.

2. A hearing was scheduled for September 21, 2022 at which time the Respondent did not appear. As the Respondent was adequately notified, the hearing was held with the Board resting on the record.

3. The Respondent entered into an agreement on May 20, 2022 with said homeowner to perform work and took a deposit of $6,667 and did not perform the work and has not returned the deposit to said homeowner.

4. Pursuant to § 1.17 of the Regulation, the Respondent is declared to be in default for failing to appear at the hearing.

5. The facts contained in Sections I, IV, and V are incorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the foregoing, pursuant to R.I. Gen. Laws § 5-65-10(a)(10), the Respondent is ordered to return the deposit of $6,667 to said homeowner and confirm the same with the Board within 20 days of the date of this decision.

Issued by R.I. Contractors' Registration and Licensing Board.

Entered: October 7, 2022

Catherine R. Warren
Hearing Officer

NOTICE OF APPELLATE RIGHTS

Pursuant to R.I. Gen. Laws § 5-65-20 and § 1.13.2 of the Regulation, this decision may be appealed to the full Board by requesting an appeal in writing to the Contractors' Registration and Licensing Board within twenty (20) days of the date of mailing or issuance of this decision.

Any appeal shall give the specific reasons why a party believes that the findings of the hearing officer are incorrect, based on testimony or evidence received at the hearing. No new testimony or evidence will be accepted. The Board does not rehear any issues but can only accept argument as to why a wrong decision may have been reached in this case. If an appeal is filed, the parties will be notified of the date, time, and location of the Board's meeting. Either party may appear before the Board to give oral argument. Failure of either party to appear before the Board may result in an adverse decision against the party. If no appeal is filed, payment of the administrative penalties is due within 20 days as stated above.

CERTIFICATION

I hereby certify on this 7th day of October, 2022 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail to Mr. Joseph Connors, 6 Notre Dame Street, Central Falls, R.I. 02863 and by electronic delivery to the Respondent at platinumroofingma@gmail.com and by electronic delivery to James Cambio, Building Code Commissioner, Donna Costantino, Associate Director, Matthew Lambert, Principal State Building Code Officer, and Ania Zielinski, Esquire, Contractors' Registration and Licensing Board, 560 Jefferson Boulevard, Suite, 200, Warwick, R.I.

Brian S. [illegible]