

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: **Masonry Restoration Inc
Norfolk, VA 23509**

**File Number 2012-00124
License Number 2705129352**

FINAL OPINION AND ORDER

On March 6, 2012, the Summary of the Informal Fact-Finding Conference ("the Summary") and notification of the Board for Contractors ("the Board") April 3, 2012 meeting was mailed, via United Parcel Service ("UPS"), to Masonry Restoration Inc ("Masonry Restoration Inc") at the address of record. The mail was delivered.

In addition, the Summary was mailed, via UPS, to 2418 Alabama Avenue, Norfolk, Virginia 23509. The mail was delivered.

On April 3, 2012, the Board met and reviewed the record, which consisted of the investigative file, the transcript, and exhibits from the Informal Fact-Finding Conference ("IFF") and the Summary. Masonry Restoration Inc did not appear at the Board meeting in person or by counsel or by any other qualified representative.

The Board adopts the Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, and adopts the Summary. The Report of Findings and Summary are incorporated as part of this Order.

The Board finds substantial evidence that Masonry Restoration Inc violated the following sections of its Regulation(s):

(Effective February 1, 2006)
Count 1: 18 VAC 50-22-260 B 2

The Board imposes the following monetary penalty:

Count 1:	18 VAC 50-22-260 B 2	\$ 750.00
	TOTAL	<u>\$ 750.00</u>

In addition, for violation of Count 1, the Board voted to require Masonry Restoration Inc have a member of Responsible Management successfully complete a Board-approved remedial education class within 90 (ninety) days of the effective date of this order. Failure to comply with the terms will result in the automatic imposition of license suspension.

The Board also imposes the following sanctions:

Revocation of license for the violation of the regulation.

Also, the Board voted to stay the imposition of license revocation and place Masonry Restoration Inc on Probation subject to the following condition:

Masonry Restoration Inc shall provide evidence acceptable to the Board within ninety (90) days of the effective date of this Order that Watson is no longer an officer of Masonry Restoration Inc.

If Masonry Restoration Inc fails to comply with the terms of Probation, then the license revocation specified above shall be imposed.

THE TOTAL MONETARY PENALTY ASSESSED HEREIN SHALL BE PAID WITHIN NINETY (90) DAYS FROM THE DATE OF ENTRY OF THIS FINAL ORDER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) DAYS OF THE DATE OF ENTRY OF THIS FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF YOUR LICENSE (LICENSE NO. 2705129352) UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

AS PROVIDED BY RULE 2A:2 OF THE SUPREME COURT OF VIRGINIA, YOU HAVE THIRTY (30) DAYS FROM THE DATE OF SERVICE (I.E. THE DATE YOU ACTUALLY RECEIVED THIS DECISION OR THE DATE THE DECISION WAS MAILED TO YOU, WHICHEVER OCCURRED FIRST) WITHIN WHICH TO APPEAL THIS DECISION BY FILING A NOTICE OF APPEAL, SIGNED BY EITHER YOU OR YOUR COUNSEL, WITH GORDON N. DIXON, SECRETARY OF THE BOARD FOR CONTRACTORS. IN THE EVENT THAT THE DECISION WAS SERVED ON YOU BY MAIL, THREE (3) DAYS SHALL BE ADDED TO THE THIRTY (30) DAY PERIOD.

IF A PETITION FOR APPEAL IS FILED WITH THE CLERK OF THE CIRCUIT COURT, AS PROVIDED BY RULE 2A:4 OF THE SUPREME COURT OF VIRGINIA, THEN THE AUTOMATIC SUSPENSION OF YOUR LICENSE FOR FAILURE TO PAY THE TOTAL ASSESSED MONETARY PENALTY WILL BE STAYED PROVIDED THE FOLLOWING INFORMATION IS RECEIVED BY GORDON N. DIXON, SECRETARY OF THE BOARD FOR CONTRACTORS:

1. A SIGNED COPY OF THE NOTICE OF APPEAL; AND
2. A COPY OF THE SURETY AGREEMENT OR A COPY OF THE RECEIPT FROM THE CLERK OF THE CIRCUIT COURT WHERE THE APPEAL HAS BEEN FILED INDICATING THAT A BOND HAS BEEN POSTED OR CASH PAID INTO THE COURT IN THE AMOUNT OF THE TOTAL MONETARY PENALTY ASSESSED IN THE FINAL ORDER.

SO ORDERED:

Entered this 3rd day of April, 2012.

Board for Contractors

BY: _____


Gordon N. Dixon, Secretary

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Masonry Restoration, Inc.

File Number: 2012-00124
License Number: 2705129352

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On January 10, 2012, the Notice of Informal Fact-Finding Conference ("Notice") was sent by United Parcel Service ("UPS") to Masonry Restoration, Inc. ("Masonry") at the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The Notice was returned by UPS, marked, "Company or Person Unknown, Not Delivered."

On January 18, 2012, an additional copy of the Notice was sent by UPS to 2705 Vincent Avenue, Norfolk, Virginia 23509, an alternate address that Gary Todd ("Todd"), a member of Responsible Management for Masonry, provided in a telephone conversation with staff. The second copy of the Notice was delivered.

On February 14, 2012, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Todd, on behalf of Masonry, Respondent (by telephone); Timothy Wayne Watson ("Watson"), Witness (by telephone); Joseph Haughwout and Caroline Pruet, Staff Members; and Wyatt Walton, III, Presiding Board Member.

Based upon the evidence in the record, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation

On April 28, 1989, in the Circuit Court of the City of Chesapeake, Virginia, Watson was convicted of rape, a felony, in violation of Section 18.2-61 of the Code of Virginia.

On June 1, 2009, Masonry submitted a License Application ("Application") to the Board for licensure as a Class B contractor in Virginia. The Application listed Todd and Watson as members of Responsible Management for Masonry. The Application was completed and signed by Todd.

On the Application, Todd answered "NO" to the following question:

18. A. Has your business, Designated Employee, Qualified Individual(s) or Responsible Management ever been convicted in any jurisdiction of any felony?

Page 5, item 21, of the Application included the following certification that states, in part:

I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the Board's decision to approve this application.

On June 1, 2009, Todd signed and dated the certification as president of Masonry. Masonry was issued a Class B contractor license (number 2705129352). Watson and Todd were listed as members of Responsible Management for Masonry.

On September 19, 2011, Watson acknowledged that he and Todd were both members of Responsible Management for Masonry. Watson stated that Todd was aware that Watson had been convicted of a felony prior to applying for Masonry's contractor license. Watson stated that he is not a Designated Employee or Qualified Individual for the license, and only provides financial backing for Masonry. Watson also stated that he had applied for a contractor license prior to Todd obtaining one; however, Watson reported his felony on his application, attended a licensing IFF, and was not approved for a license.

On October 24, 2011, Watson requested to be removed as a member of Responsible Management for Masonry's license (number 2705129352). Watson was removed as Responsible Management for Masonry's license. Todd told the Board's investigators that Watson was removed from Masonry's license due to his felony conviction. However, Watson is still listed as an officer of the corporation in the records of the State Corporation Commission ("SCC").¹

At the IFF, Todd stated that he was not aware of Watson's conviction at the time that he applied for the license. He became aware of the conviction approximately a month after the paperwork had been filed. At this point, Masonry had already received its license. Todd chose not to inform the Board of the information he had learned. (Transcript, pp. 11-12). Watson stated that Todd knew Watson "had been in trouble for something many years ago" but did not inquire into the specifics. (Transcript, p. 14)

Several reasons were given for not disclosing Watson's felony conviction. Todd stated that he believed, because 22 years had passed since Watson's conviction, "it shouldn't have played that much of an effect in my being able to become a licensed contractor." (Transcript, p. 9). Watson also stated that he and Todd believed "that the licensed

¹ At the IFF, Todd stated that Watson previously used to go out on jobs, talk with customers, and place bids. However, more recently, he has only been involved in an advisory role, to answer Todd's questions based on Watson's experience in the industry. (Transcript, p. 10)

contractor for the business, [Todd's] criminal record would be the one of most importance." (Transcript, p. 16)

Masonry's response to these charges is troubling in several respects. First, it appears that Todd had reason to know of Watson's criminal history at the time he filed the application. He submitted the application with a signed certification that no member of responsible management had been convicted of a felony. However, despite knowing that Watson had "been in trouble," he did not inquire about Watson's criminal history, or otherwise exercise due diligence to ensure that the signed statement he submitted was true.

In addition, the statements made at the IFF by both Todd and Watson indicate that they did not think the information needed to be disclosed because they did not believe it was important. This belief seems to be based on the number of years that had passed since the conviction, and on the belief that Watson's criminal history was less important than Todd's. Both men indicated their belief that it was only Todd who was actually becoming a licensed contractor. In fact, the license was issued to Masonry as a corporation. As such, the criminal history of all members of Responsible Management is relevant to Masonry's suitability for licensure. These statements indicate that neither Todd nor Watson fully understood the requirements of the Board's regulations, or even what entity was being licensed.

Despite this lack of understanding of the regulations, Todd and Watson attempted to substitute their judgment for the judgment of the Board regarding what information to disclose. The text of the application clearly states that disclosure is required if any member of Responsible Management has ever been convicted of any felony. The Board requires disclosure of criminal convictions in order to protect the public by ensuring the applicant possesses the character to engage in the profession. Disclosing this information does not necessarily bar an applicant from receiving a license, but the Board is obligated to carefully review this information and consider the public welfare before deciding to issue a license. By not disclosing to the Board the required information, the Board was denied the opportunity to evaluate Masonry's application in full light of the facts.

Masonry provided substantially inaccurate or incomplete information to the Board in obtaining a license.

Masonry's action is a violation of Board Regulation 18 VAC 50-22-260.B.2. Masonry has made efforts to remedy its violation by removing Watson from the license as a member of Responsible Management, and statements made at the IFF indicate he no longer has an active role in the company. Therefore, I recommend a monetary penalty of \$750.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Although Todd claimed at the IFF that he took action to remove Watson as an officer of the company, I note that Watson is still listed in the SCC records as an officer of Masonry. (Board Exh. 5). Under the Board's regulations, the officers of a corporation are the firm's Responsible Management. If Watson is truly no longer a member of Responsible Management, then the SCC records should verify this. Also, according to evidence in the record, Watson previously applied for a contractor license and was rejected based on his criminal record. It is evident the Board determined that not granting Watson a license would protect the public welfare. If Masonry is going to continue to operate as a licensed contractor, it is critical that Watson no longer be an officer in the company.

Accordingly, I recommend that license revocation be imposed. However, I recommend that the Board stay the imposition of license revocation, and place Masonry on probation subject to the following condition:

- (1) Masonry shall provide evidence acceptable to the Board within 90 days of the effective date of this order that Watson is no longer an officer of Masonry.

If Masonry fails to comply with this term of probation, then the license revocation specified above shall be imposed.

By: Cawline Puett
Wyatt Walton
Presiding Board Member

Board for Contractors

Date: 3/5/12

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
9960 MAYLAND DRIVE, SUITE 400
RICHMOND, VA 23233-1463

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: November 18, 2011 (revised December 19, 2011)

FILE NUMBER: 2012-00124
RESPONDENT: Masonry Restoration, Inc.
LICENSE NUMBER: 2705129352
EXPIRATION: June 30, 2013

SUBMITTED BY: Investigator Anna Badgley
APPROVED BY: Investigations Supervisor Rose Durbin

COMMENTS:

None.

Masonry Restoration, Inc. ("Masonry") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705129352).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On July 6, 2011, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received an anonymous complaint regarding Masonry. (Exh. C-1)

1. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001; Volume 22, Issue 8, eff. February 1, 2006.

Print Date: December 1, 2008

FACTS:

On April 28, 1989, in the Circuit Court of the City of Chesapeake, Virginia, Timothy Wayne Watson ("Watson") was convicted of rape, a felony, in violation of Section 18.2-61 of the Code of Virginia. (Exh. C-1 and I-5)

On June 1, 2009, Masonry submitted a License Application ("Application") to the Board for licensure as a Class B contractor in Virginia. The Application listed Gary Todd ("Todd") and Watson as members of Responsible Management² for Masonry. The Application was completed and signed by Todd. (Exh. I-2)

On the Application, Todd answered "NO" to the following question:

18. A. Has your business, Designated Employee, Qualified Individual(s) or Responsible Management ever been convicted in any jurisdiction of any felony? (Exh. I-2)

Page 5, item 21, of the Application included the following certification that states, in part:

I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the Board's decision to approve this application. (Exh. I-2)

On June, 1, 2009, Todd signed and dated the certification as president of Masonry. (Exh. C-1, I-2 and I-5)

² Board Regulation 18 VAC 50-22-10 defines Responsible Management as the following individuals: 1. The sole proprietor of a sole proprietorship; 2. The partners of a general partnership; 3. The managing partners of a limited partnership; 4. The officers of a corporation; 5. The managers of a limited liability company; 6. The officers or directors of an association, or both; and 7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

On June 1, 2009, Masonry was issued a Class B contractor license (number 2705129352). Watson, individual tracking number 2706187933, and Todd, individual tracking number 2706188536, were listed as members of Responsible Management for Masonry (license number 2705129352). (Exh. I-1)

On September 19, 2011, Watson acknowledged that he and Todd were both members of Responsible Management for Masonry. Watson stated that Todd was aware that Watson had been convicted of a felony prior to applying for Masonry's contractor license. Watson stated that he is not a Designated Employee or Qualified Individual for the license, and only provides financial backing for Masonry. Watson also stated that he had applied for a contractor license prior to Todd obtaining one; however, Watson reported his felony on his application, attended a licensing IFF, and was not approved for a license. (Exh. I-3)

On October 24, 2011, Watson requested to be removed as a member of Responsible Management for Masonry's license (number 2705129352). Watson was removed as Responsible Management for Masonry's license. (Exh. I-1, I-4 and I-6)

On November 16, 2011, Todd stated that he was not aware that Watson had been convicted of a felony prior to applying for Masonry's contractor's license and that Todd was only made aware of Watson's felony conviction after receiving the license for Masonry. Todd further stated that he believed that since Watson's conviction was in 1989, the information would not be relevant. When Todd was made aware that the felony conviction was relevant, Watson was removed from Masonry's license. (Exh. I-6)

Masonry provided substantially inaccurate or incomplete information to the Board in obtaining a license.