



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

James S. Cheng
Secretary of
Commerce and Trade
Gordon N. Dixon
Director

CLAIM REVIEW

TO: Board for Contractors

FROM: Ronda M. Holmes
Legal Analyst

DATE: September 13, 2013

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of
Ray Gregory (Claimant) and Masonry Restoration, Incorporated
(Regulant)
File Number: 2014-00578

BACKGROUND

On July 26, 2012, in Norfolk Circuit Court, Ray Gregory obtained a judgment against Masonry Restoration Incorporated in the amount of \$48,688.60 plus interest.

A claim in the amount of \$48,957.10 was received by the Department of Professional and Occupational Regulation on January 30, 2013.

CLAIM FILE INFORMATION

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The order states that . . . "all facts alleged in Gregory's Amended Complaint in said action are hereby taken as established and proved for all purposes in said action." Gregory's amended complaint states. . . "Defendants breached the contract with Plaintiff, which breach involved improper and/or dishonest conduct in that said work was performed in a grossly negligent manner."

Section 54.1-1120(A) also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant entered into a written contract with Masonry Restoration Inc. on April 21, 2011 for repairs to his primary residence. The contract was signed by Timothy Watson, an authorized agent of the regulant.

The Board issued a Class B Contractors License, License Number 2705129352 to Masonry Restoration Incorporated on June 1, 2009.

The license was suspended on April 4, 2012. The licensing record reflects Gary D. Todd, Jr. as the Responsible Management, Designated Employee, and Qualified Individual.

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Board for Contractors was served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board for Contractors did receive any pleadings and/or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A judgment was entered on July 26, 2012. The claim was received on January 30, 2013.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Masonry Restoration Inc. on April 21, 2011 for repairs to his primary residence. The contract was signed by Timothy Watson, an authorized agent of the regulant.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered, "No".

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Director's Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted and a bank account with \$50.00 was revealed. The claimant stated that the court costs and attorney's fees for issuing a garnishment summons would exceed the amount available for collection.

Section 54.1-1120(A)(7) states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The order states that . . . "all facts alleged in Gregory's Amended Complaint in said action are hereby taken as established and proved for all purposes in said action." Gregory's amended complaint states. . . "Defendants breached the contract with Plaintiff, which breach involved improper and/or dishonest conduct in that said work was performed in a grossly negligent manner."

SECTION 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No".

SECTION 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim does not include interest or damages.

PRIMA FACIE CASE AND RECOMMENDATION

SECTION 54.1-1122 permits the claim to be presented to the Board without proceeding to an Informal Fact-Finding Conference if a prima facie case for payment is made and the regulant does not request an Informal Fact Finding Conference.

On September 23, 2013, a Recovery Fund Notice of Prima Facie Case was mailed, via United Parcel Service ("UPS"), to Masonry Restoration Incorporated. The regulant's certified mail was delivered.

Based upon a review of the claim and facts contained in this Claim Review, it appears the claimant has provided sufficient documentation to support his claim that the regulant's actions meet the statutory definition of "improper or dishonest conduct" as stated in §54.1-1118 of the *Code of Virginia* and that they have met all other statutory provisions for reimbursement from the Virginia Contractor Recovery Fund.

It appears the claimant was able to receive a default judgment which stated that. . . "all facts alleged in Gregory's Amended Complaint in said action are hereby taken as established and proved for all purposes in said action." Gregory's amended complaint states. . . "Defendants breached the contract with Plaintiff, which breach involved improper and/or dishonest conduct in that said work was performed in a grossly negligent manner."

The claimants claim amount of \$48,957.10 exceeds the statutory limit of \$20,000.00 imposed by the Virginia Contractor Transaction Recovery Act. Based upon a review of the claim and facts contained in this Claim Review, payment of the recovery fund claim in the amount of \$20,000.00 is recommended.