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1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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3 PROCEEDINGS AT HEARING

4 IN RE:

5 APPEAL HEARING: BOYSIE FORTEZ #2983

6

7 DATE: AUGUST 21ST, 2007

8 TIME: 9:00 A.M.

9 PLACE: DEPT. OF LABOR AND TRAINING

10 BOARD OF EXAMINERS AND PLUMBERS

11 1511 PONTIAC AVENUE

12 CRANSTON, RHODE ISLAND

13

14 BEFORE: LEO CHAMPAGNE, CHAIRMAN

15

16 PRESENT:

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18 FOR THE BOARD OF EXAMINERS AND PLUMBERS

19

20 E. PATRICK LUTHER BEN COPPLE

21 JEFFREY HUTTON

22 ANTHONY CARDARELLI

23 MICHAEL NEWMAN

24 ELAINE HEISS

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2 **ALSO PRESENT:**

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4 **REPRESENTING BOYSIE FORTEZ**

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6 **JOSEPH LITTLE, ESQUIRE**

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13 **RHODE ISLAND COURT REPORTING**

14 **747 NORTH MAIN STREET**

15 **PROVIDENCE, RHODE ISLAND 02904**

16 **(401) 437-3366**

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1 **(HEARING COMMENCED AT 9:02 A.M.)**

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3 **MR. CHAMPAGNE:** I'd like to
4 bring this meeting to order. Has everyone received
5 the minutes?

6 **MR. LUTHER:** We can't do
7 anything with the minutes.

8 **MR. CHAMPAGNE:** Let's go right
9 into the hearing then.

10 **MR. LUTHER:** The date of the
11 violation, 7-10-07. Violation 3233. Name of the
12 violator Boysie Fortez, 73 Benedict Street,
13 Providence, Rhode Island, 02907.

14 The location of the violation 15 Sawyer
15 Street, Providence, Rhode Island. The violation is
16 Rhode Island General Law 5-65-2, subsection 10,
17 contractor's registration.

18 On January 30th, 2007, the Director of
19 Labor and Training - pardon me - the Department of
20 Labor and Training, Adelita S. Orefice, rendered a
21 decision of appeal for violation number
22 2983. Stating that a \$950 be suspended for a 12
23 month period pending any further violations of Rhode
24 Island General Law 5-65-2.

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1 It has come to the Department's attention
2 that the insurance certificate provided to this

3 office did not cover the complete contract period of
4 the job that was contracted with Mr. John Foster, 15
5 Sawyer Street, Providence, Rhode Island.

6 A hearing will be held on July 17th, 2007,
7 which was continued to this date at the Department
8 of Labor and Training, 1511 Pontiac Avenue,
9 Cranston, Rhode Island at 9 o'clock second floor
10 conference room. To determine if Mr. Boysie Fortez
11 has violated Rhode Island General Law 5-65-2,
12 subsection 10. Your attendance is required. Failure
13 to appear will result in the suspension of your
14 Master Plumber Licence number MP01538.

15 A valid certificate of insurance is
16 required to operate a plumbing business in Rhode
17 Island.

18 Please provide insurance certificates for
19 the dates of April 27th, 2007 through July 17th,
20 2007.

21 Basically, board members, Mr. Fortez was
22 cited for not providing insurance certificates to
23 the Department. In your packet you will notice that
24 there is an insurance certificate dated 8-2-05

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1 through 8-2-06.

2 It has come to the Department's attention
3 that the Iroquoian Plumbing and Heating that is run

4 by Mr. Fortez did take a deposit on 5-6-05 for a job
5 at the address stated 15 Sawyer Street in
6 Providence. The insurance certificate was not valid
7 at that point in time when he entered into the
8 contract by taking the deposit with Mr. Foster.

9 MR. CHAMPAGNE: In light of
10 that information, do you want to respond with new
11 information regarding this?

12 MR. LITTLE: I want to respond
13 with some old information. This hearing was held on
14 January 16th, 2007. On this number, on this case the
15 decision of the gentlemen who were here at that time
16 Mr. Champagne made a motion that we dismiss the
17 charge of the violation. Mr. Newman seconded it and
18 it was passed.

19 So, as far as I'm concerned, this matter
20 was disposed of back in January. Now, I'm aware of
21 the fact that the Director came out with a
22 decision. Now, I provided your attorney with a copy
23 of that. I have an extra copy of that.

24 But, that was the hearing. That's what was

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1 done. That was for revocation of his license. That
2 was under the provisions of 5-20-31 by
3 recommendation of the board.

4 And listen to what it says when you hear on

5 the revocation. "The safe board of plumbing
6 examiners upon completion of hearing held on the
7 verified complaints shall present to the Director of
8 Labor and Training a written report of
9 recommendations.

10 The Director shall then order that the
11 license charged in the complaint is revoked. Or that
12 the complaint was dismissed in accordance with the
13 recommendation of the board."

14 That's the only thing that should have been
15 done at that time. You people dismissed it under
16 5ù20ù31. All she had to ùù the only thing she could
17 do was dismiss it.

18 I want to point to you a little, what we
19 have here your board is what call the statutory
20 board. Your constrained by what's in the book. We
21 are constrained by what's in the book. We have to go
22 by what's in the book. The Director should have
23 dismissed it at that time.

24 So, we shouldn't even be here. I'm going to

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1 present to the board a copy of the his present
2 insurance. Which covers December 12th of '06 to
3 December 27th, '07.

4 It shows that he is currently has the
5 insurance. Now, I don't how this happened. But if

6 you look, if you and I provided your attorney
7 with a copy of that so you can see what took place
8 then.

9 The Director came out. Now, what happened
10 is remember that was dismissed. This is what she
11 came out with.

12 "On review of the testimony and evidence
13 recorded, the finding of fact by the board, the
14 recommendation of the board and the final
15 consideration. The original fine of 950 is hereby
16 suspended for 12 months period pending further
17 violations." That means after that.

18 So, we shouldn't be here today because
19 there are no violations subsequent to this
20 hearing. And then it says the final will be
21 activated.

22 Now, I want you to listen. Bearing in mind
23 that we're talking of written pages here that you
24 dismissed it. Mr. Newman seconded it, you made the

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1 motion.

2 Listen to what the decision says. "Forth
3 finding of fact. On November 28th, 2006, Mr. Boysie
4 Fortez performed installation of plumbing and caused
5 structural damage. Mr. Fortez did not have any
6 insurance. This is the violation of the RIGL 5-62-2

7 and 506507. Mr. Boysie Fortez did receive a
8 certificate of insurance before the board had met.
9 Recommendation of the board suspended the fine of
10 950."

11 Now, I don't know how she possibly could
12 have gotten that information. Apparently, the wrong
13 information was submitted to her. There was a
14 gentlemen on, had a hearing the same day just before
15 us. His name was Gates, I believe, and they
16 suspended a fine for him.

17 But, this decision that she made is
18 completely inappropriate. The only choice she had
19 was to revoke or dismiss. You people dismissed
20 it. That's what she should have filed.

21 So, I don't know where she got this
22 information. And not only that, one thing you should
23 bear in mind as far as fines are concerned it says
24 for the statute says the first fine is \$500.

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1 Now, there's been no first fine.

2 So, I'm going to ask you to dismiss this,
3 because I have not heard one word from Pat about a
4 subsequent violation after it was dismissed back in
5 January.

6 So, this is strictly a legal basis. That
7 there is nothing before the board to act upon.

8 Because it was dismissed them. And he has current
9 insurance. If you look at the other thing, the in
10 the statute here. Let me get my number right,
11 5-65-2, that's what we're talking about. And then
12 that refers you to 5-65-7 talks about the
13 insurance. And of great significance is the
14 provision of 5-65-10, Grounds for Discipline. And it
15 says the insurance required by 5-65-7 is not
16 currently in effect.

17 He has insurance. There is also another
18 provision in here that these complaints have to be
19 filed within a year of when it took place.

20 That wasn't done. Or if was taken care in
21 the first hearing. And therefore, I'm going to ask
22 you to dismiss this because there is nothing before
23 the board.

24 The complaint, original complaint, that Pat

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1 had filed was heard and dismissed.

2 MR. CHAMPAGNE: Okay. Is there
3 any other information?

4 MR. LUTHER: I just have one
5 question. When this was sent out to Mr. Fortez as
6 her decision, did you receive a copy of this?

7 MR. LITTLE: Yes.

8 MR. LUTHER: Okay. So, you

9 didn't review the copy and determine that the
10 findings were incorrect and that as you're standing
11 here today.

12 MR. LITTLE: I didn't get the
13 transcript until later, subsequent to that.

14 MR. LUTHER: I see. Okay.

15 MR. LITTLE: That's why there
16 was nothing done at the time. My recollection was
17 that you people had dismissed it. But, I had nothing
18 in writing. And I have the, if you would like, I
19 have the original transcript here.

20 MR. CHAMPAGNE: Borrowing any
21 more new information relative to this case, because
22 we have no quorum today, I don't believe that we are
23 entitled to make any decision relative to your
24 information.

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1 We are going to take the information. We
2 are going to pass that information on to our next
3 meeting. Where at that time, I believe, we can vote
4 on the merits of the now information relative to
5 this case.

6 And as far as anything with our Director,
7 we are not ready to report about whatever she does
8 decide or does not decide. It's up, when the
9 information leaves this table, it's up to the

10 Director to make a decision. Her decision will stand
11 relative to the information that we have at the
12 time. And I don't believe that we have the position
13 or the power to change that decision.

14 MR. LITTLE: I'm just telling
15 you that under the statute that we have, she had no
16 authority to do that. But, I'm just pointing that
17 out to you. And then if you look at what's in the
18 transcript, none of the board made no findings,
19 the board made no fine, the board did nothing other
20 than just dismiss it.

21 And under this section and this, of course,
22 a legal argument. This section, the only thing she
23 could do was dismiss it in accordance with your
24 recommendation.

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1 That's why it's a statutory matter. And you
2 have to go by what's in the statute.

3 MR. COPPLE: Just to make sure
4 we have a clean record, is there anybody that has
5 questions for Pat?

6 MR. HUTTON: I have a
7 question. This is a general question. Everything
8 that comes out of here, as far as the decision, is a
9 recommendation to the Director. The Director has the
10 final decision. So, it's not binding when it leaves

11 here as far as the way that I understand it.

12 MR. LITTLE: I just explained
13 to you what the statute says. If you dismiss it, she
14 has no option. Unlike other things that she has, and
15 if you were to look at the transcript of what you
16 did and what she said were findings of fact, there
17 is absolutely nothing in there.

18 Somehow she got the wrong information. I'm
19 not saying she was doing anything wrong. But, she
20 ùù the things that were in her decision, were never
21 discussed by this board. I know. I was here.

22 MR. CHAMPAGNE: Okay. And
23 that's fine. That's why we take everyone's opinion
24 and all the information and pass this along. Today
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1 is not the day to make any to decision because of
2 the quorum situation.

3 MR. LITTLE: I understand that
4 perfectly, Mr. Chairman.

5 MR. NEWMAN: I have a question
6 for counsel, if a case, a matter has been closed and
7 then new information comes to light, does this board
8 have the right to resurrect the original complaint?
9 If it was misinformation given?

10 MR. COPPLE: I think that once
11 the Director has made a final decision, then that

12 becomes final. Prior to that, I think that a party
13 could petition the board to take a look at new
14 information. And the board could alter its
15 recommendation to the Director prior to the
16 decision.

17 MR. NEWMAN: Prior to the
18 decision.

19 MR. LITTLE: But not subsequent
20 to the decision.

21 MR. COPPLE: I think once the
22 Director makes the decision, it's final.

23 MR. CHAMPAGNE: Okay. So,
24 borrowing any other information, does anyone else

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1 have any information? No. Okay. We will pass all
2 this information along to our next meeting. And at
3 that time, we will take a all the new information
4 into the record and then we will decide on that.

5 That will be approximately 30 days from
6 today.

7 MR. NEWMAN: When the
8 information packet gets mailed out, can we get the
9 original transcript as well as what was today so
10 that we can see what was said before, please?

11 MR. LUTHER: Absolutely.

12 MR. LITTLE: I produced to our

13 attorney a copy, you know, what took place in our
14 hearing. That's what I gave him. That's what I made
15 available to you.

16 But, my question to the Chairman though,
17 all you are going to do is review what we did
18 today. Is that correct?

19 MR. CHAMPAGNE: I think what
20 should be done, but we will see who is Chairman at
21 that meeting. But, what should be done is we should
22 review all the information from the beginning. And
23 make sure that we have the facts, as they were first
24 of all, as they were recorded because it was all

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1 done under oath.

2 And make sure that we have the right facts,
3 the correct information. Take the new
4 information. And then go forward.

5 MR. LITTLE: I want to point
6 out to board, though, that since that decision
7 filed, my client has had insurance. So, an
8 additional, besides dismissing it, an additional
9 factor is, there is no evidence before you that
10 assuming that decision was okay from the Director,
11 she said future violation.

12 He has had that insurance since then. In
13 fact, he had it before then. So, there have been no

14 further violations assuming, this is a supplemental
15 argument, of course, because I think it should be
16 dismissed.

17 But, if you would assume that her decision
18 is valid, which you seem to be doing, what evidence
19 do you have of the future violation from the date of
20 that decision? There's absolutely none.

21 Because, that's why I submitted the copy of
22 this policy to show you that he had insurance at the
23 time of the last hearing.

24 In fact, Pat asked for a copy of it at the
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1 hearing and unfortunately, I didn't have it
2 then. But, there it is.

3 So, besides my argument that decision is
4 defective, even if you say well, it's fine that it
5 wasn't appealed or whatever. There are no future
6 violations because under the provisions of that
7 section 10, he has current insurance.

8 MR. CHAMPAGNE: Okay. Again, I
9 will take all your information, for the record. I
10 don't believe that this board has the authority to
11 supercede any decision that our Director makes.

12 It's simply up to the Director. We have no
13 authority to renegotiate something that's been
14 decided by the Director. It's certainly up the to

15 Director to review the new information and maybe at
16 that time.

17 We can make all the recommendations that we
18 want, but I believe it's the authority of the
19 Director alone to make the decision on the things
20 that come before this board. And that's why you are
21 appealing us at this meeting with the new
22 information. And that's fine. All of this
23 information has to go to the Director. And only she
24 can make the change.

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1 MR. LITTLE: I disagree with
2 you because on the provision I read to you, that
3 says her only choice in where there's a revocation
4 is revocation or dismissal.

5 I disagree with you on that. If you accept
6 this, which you seem to be doing, there's no
7 evidence that there's been a violation since she
8 entered the decision.

9 You don't have one word. There is
10 nothing. All you have is a certificate that shows
11 that before that hearing in January he had the
12 insurance. And he's got current insurance of a
13 million dollars.

14 So, either way, I'm saying the matter
15 should be disposed of. Thank you for consideration,

16 ladies and gentlemen.

17 MR. CHAMPAGNE: Okay. That
18 information will go to the Director.

19 MR. LUTHER: Mr. Little, we
20 will send you a certified mail for the next
21 meeting. And whether you want to attend is up to you
22 and your client.

23 MR. LITTLE: I will be
24 here. Thank you very much.

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1 MR. CHAMPAGNE: Okay. Because
2 we do not have a quorum, I guess what we have to do
3 you is adjourn this meeting.

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6 (HEARING CLOSED AT 9:21 P.M.)

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C E R T I F I C A T E

**I, Cassandra M. Capraro, a Notary
Public in and for the State of Rhode Island, hereby
certify that the foregoing pages are true and
accurate record of my stenographic notes that were
reduced to print through computer-aided
transcription.**

**In witness whereof, I hereunto set
my hand the 21st day of August, 2007.**

**CASSANDRA M. CAPRARO
CERTIFIED COURT REPORTER, NOTARY PUBLIC**

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