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1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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PROCEEDINGS AT HEARING :

4 :

IN RE: :

5 :

PLUMBERS BOARD :

6 *****

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8

9 DATE: SEPTEMBER 18, 2007

TIME: 9:05 A.M.

10 PLACE: 1511 PONTIAC AVE.

CRANSTON, RHODE ISLAND

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PRESENT:

14

MICHAEL V. ST. MARTIN, CHAIRMAN

15 E. PATRICK LUTHER, INVESTIGATOR

WILLIAM RILEY

16 ANTHONY CARDARELLI

LEO CHAMPAGNE

17 JEFFREY J. HUTTON

MICHAEL NEWMAN

18 VALENTINO LOMBARDI, LEGAL COUNSEL

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RHODE ISLAND COURT REPORTING

23 747 NORTH MAIN STREET

PROVIDENCE, RHODE ISLAND

24 (401) 437-3366

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1 THE CHAIRMAN: We'll call this
2 meeting to order, 9:05. We have three hearings
3 today?

4 MR. LUTHER: Yes, Mr. Chairman.
5 The first hearing is Robert Arello.

6 MR. ARELLO: Right here.

7 MR. LUTHER: Could you stand and
8 be sworn in, Mr. Arello, please.

9 MR. LITTLE: Mr. Chairman, my name
10 is Joseph Little. I'm attorney for Boysie Fortez.
11 We had a hearing last month, and all the board
12 was supposed to do today was render a decision.

13 THE CHAIRMAN: You're on the
14 calendar.

15 **MR. LITTLE:** I just wanted to know
16 if we could do that first, there's no testimony
17 or anything. And then I think it was said that
18 the members would read the decision -- I mean the
19 transcript, you know, and then we just make a
20 vote on it.

21 **MR. LUTHER:** If Mr. Arello doesn't
22 mind, we called him up first.

23 **MR. ARELLO:** That's okay.

24 **MR. LUTHER:** Why don't we go right

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1 into Mr. Fortez then.

2 **THE CHAIRMAN:** No problem.

3 **MR. LITTLE:** Thank you.

4 **MR. LUTHER:** Okay. Boysie Fortez,
5 it will be the third hearing in your packet,
6 Violation No. 3233. Has everybody read through
7 the transcript of the previous meeting?

8 Mr. Little did make some statements that the
9 transcript -- the decision by the director was
10 incorrect. The board had dismissed the charges
11 because Mr. Fortez had provided a Certificate of
12 Insurance. The notice was sent to the director
13 incorrectly for a suspension of the \$950 fine.

14 We would ask Mr. Little if he would allow us
15 to reopen that hearing in order to procedurally

16 document the transcript of the previous meeting?

17 MR. LITTLE: I don't understand

18 what you're saying. You have the transcript,

19 that was why it was adjourned, because you had no

20 quorum. And it was left, it's in the transcript,

21 that today would just be the decision, based upon

22 the record that was established at the hearing.

23 MR. LOMBARDI: Valentino Lombardi,

24 Legal Counsel with the Department of Labor &

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1 Training. My understanding is that you have --

2 what's on the agenda for today is the -- what

3 violation, Mr. Luther?

4 MR. LUTHER: It would be the

5 continuation of Violation No. 3233.

6 MR. LOMBARDI: Okay.

7 MR. LUTHER: Do you want me to

8 read the violation for the record?

9 MR. LOMBARDI: Yes.

10 MR. LUTHER: The name of the

11 violator is Boysie Fortez, 73 Benedict Street,

12 Providence, Rhode Island 02907. Location of the

13 violation is 15 Sawyer Street, Providence,

14 Rhode Island. The violation is Rhode Island

15 General Law 5-65-2, Subsection 10, Contractors

16 registration.

17 On January 30th, 2007, the director of the
18 Department of Labor & Training, Adelita S. Orefice,
19 rendered a decision of appeal for Violation
20 No. 2983, stating that a \$950 fine be suspended
21 for a 12-month period pending any further
22 violations to Rhode Island General Law 5-65-2.

23 It has come to the department's attention
24 that the insurance certificate provided to this
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1 office did not cover the complete contract period
2 of the job that was contracted with Mr. John Foster
3 of 15 Sawyer Street, Providence, Rhode Island.

4 A hearing will be held on January 17 --
5 July 17, pardon me, 2007 at the Rhode Island
6 Department of Labor & Training, 1511 Pontiac
7 Avenue, Cranston, Rhode Island, at 9:00 in
8 Building 70, 2nd floor conference room to
9 determine if Mr. Boysie Fortez has violated Rhode
10 Island General Law 5-65-2, Subsection 10. Your
11 attendance is required.

12 Failure to appear will result in the
13 suspension of your Master Plumber License
14 No. MP01538.

15 A valid Certificate of Insurance is required
16 to operate a plumbing business in Rhode Island.
17 Please provide insurance certificate for the

18 dates of April 27, 2005 through July 17, 2007.

19 MR. LOMBARDI: And my
20 understanding is that the -- at the last meeting,
21 there was no quorum and the board took
22 testimony --

23 THE CHAIRMAN: That's correct.

24 MR. LOMBARDI: -- preserved

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1 testimony on the record. And now the board has
2 an opportunity to review that testimony. And
3 it's -- if the board has any questions or are
4 they ready to make a decision on that violation?

5 THE CHAIRMAN: I have a question.

6 The dates of the Certificate of Insurance
7 provided don't cover the period in question.

8 MR. LITTLE: Now, are you talking
9 about the first one?

10 THE CHAIRMAN: The one that he
11 just read.

12 MR. LITTLE: We had a hearing on
13 that. The board made a decision that it should
14 be dismissed because he provided an insurance
15 certificate.

16 Under the law, since -- that was on a
17 revocation. Under the statute on revocation,
18 this board decided to dismiss it. All the person

19 in charge had to do was dismiss it. That's what
20 the statute says. For some reason, that wasn't
21 done. She came out with an order of a \$950 fine.

22 Now, the statute says that the first offense
23 is \$500. There was nothing in the first one
24 about a fine, but it said that it was suspended

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1 pending a further violation.

2 The other thing I argued was, there has been
3 no violation since we had that hearing. There's
4 no reason to be here. I provided them with the
5 current insurance, you know, that covers him now,
6 which is what the statute requires.

7 If you read that transcript, there's not one
8 word in there about a violation subsequent to
9 that first hearing.

10 THE CHAIRMAN: Is there a second
11 violation, Mr. Luther? What was the date of the
12 violation?

13 MR. LUTHER: Original violation?

14 THE CHAIRMAN: Yeah.

15 MR. LUTHER: That would be
16 December of -- I believe the first hearing was
17 January of '07.

18 MR. LOMBARDI: It was in January
19 because the director issued her decision on

20 January 30th, so it had to be at your January
21 hearing that you heard the initial case.

22 MR. LUTHER: The original
23 violation, Mr. Chairman, was 12/18/2006,
24 Violation No. 2983.

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1 THE CHAIRMAN: What was the date
2 of the contract that's -- what was the date of
3 the contract that started this whole thing?

4 MR. LUTHER: The date of the
5 contract that was entered into with Mr. Fortez on
6 the original violation was 4/27/05.

7 THE CHAIRMAN: But the
8 insurance -- that's my point. The insurance
9 certificate that we've been provided doesn't
10 cover that period.

11 MR. LUTHER: That is correct. And
12 that's the reason why I asked Mr. Little if we
13 could reopen that hearing to --

14 MR. LOMBARDI: Well, first of all,
15 Mr. Little has nothing to do with the request for
16 a reopening. It's up to the board themselves to
17 determine whether or not there should be a
18 reopening of a prior determination, based on new
19 evidence presented that was not available at the
20 time that they made the determination to dismiss

21 the matter.

22 The issue arises in that there was a
23 revocation hearing in which the board determined
24 that there were no grounds for a revocation and
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1 dismissed it. But unfortunate -- for some
2 mistake, they had sent -- what was sent up to the
3 director included information concerning a
4 suspension with a fine, a potential fine if there
5 were any further violations.

6 The revocation statute does not call for
7 fines. It just calls for revocation. Only the
8 violation statute calls for fines. So that was a
9 miss -- whoever sent that up, that was a mistake.

10 THE CHAIRMAN: Okay.

11 MR. LOMBARDI: And if this -- what
12 should have been -- it appears that what should
13 have been filed for this -- what the board should
14 have considered for this hearing was a move to
15 reopen that revocation hearing, based upon the
16 fact that they had additional information that
17 was not available at the time. Basically, the
18 insurance certificate would have had the
19 proper -- which now have the proper dates on it.
20 So the board can consider that, that evidence, at
21 this time.

22 So -- but if the board does decide to
23 reopen, they would have to give the alleged
24 violator --

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1 THE CHAIRMAN: Time to produce new
2 evidence?

3 MR. LOMBARDI: No. Notice that
4 that is the hearing. The only thing that was on
5 the hearing today was this continuation of the
6 second violation, which doesn't --

7 THE CHAIRMAN: Which is a mistake.

8 MR. LOMBARDI: -- which appears to
9 be a mistake. That's the only thing that's on
10 the agenda today. And the board can't go forward
11 with the revocation hearing unless new notice is
12 given and the violator, alleged violator, has an
13 opportunity to be heard and confront the new
14 evidence.

15 THE CHAIRMAN: Okay. Does the
16 board have any questions on what's going on here?

17 MR. RILEY: Yeah. Just a point of
18 clarification, just so I'm clear. Apparently,
19 the information was sent up to the director, and
20 she suspended the fines. Unbeknownst to her --

21 THE CHAIRMAN: No. She actually
22 imposed the fine that we didn't recommend. We

23 recommended a suspension of --

24 MR. LITTLE: No. You recommended

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1 a dismissal.

2 THE CHAIRMAN: Right.

3 MR. LITTLE: The first hearing was

4 a recommendation for dismissal.

5 THE CHAIRMAN: You are correct.

6 MR. LITTLE: That's a specific --

7 THE CHAIRMAN: You are correct,

8 and it is just a recommendation, by the way. She

9 can --

10 MR. LITTLE: No. On the statute --

11 I'll give Val the statute. On a revocation

12 hearing, if you vote to dismiss it, the statute

13 says that's the only thing she can do.

14 MR. LUTHER: Mr. Chairman, just

15 for the record, the paperwork sent to the

16 director dated January 30th, 2007 was -- and the

17 reason for the appeal of Boysie Fortez, Violation

18 No. 2983 to the Board of Examiners of Plumbers,

19 the decision on the appeal -- and I'll read it

20 for the record.

21 "This matter came before the director of the

22 Rhode Island Department of Labor & Training on

23 the appeal of Mr. Boysie Fortez.

24 **Upon review of the testimony and evidence**

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1 **recorded, the findings of fact by the board and**
2 **the recommendation of the board that upon due**
3 **consideration thereof, the original fine of \$950**
4 **is hereby suspended for a 12-month period,**
5 **pending any further violations. If any violation**
6 **of Rhode Island General Law 5-65-2 shall occur**
7 **within the 12 months of the above date, the**
8 **suspended fine will be activated. Signed,**
9 **Ms. Adelita S. Orefice, Director."**

10 **What legal counsel has just told us is that**
11 **this fine should not have been on the original**
12 **suspension notice, and that the paperwork that**
13 **was sent up to the director was sent incorrectly.**

14 **Whereas, the recommendation of the board was**
15 **to dismiss the suspension of Mr. Fortez because**
16 **of the evidence provided at that particular point**
17 **in time.**

18 **At this time, we have evidence that we would**
19 **like to enter in to prove that the insurance**
20 **certificate provided was not in the time frame of**
21 **the contract and the deposit taken for that job.**

22 **MR. LITTLE: We have -- we had a**
23 **hearing where you people recommended it be**
24 **dismissed. If she made a mistake, that's her**

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1 problem.

2 We're here today because you filed a
3 petition saying that we're here for a \$950 fine.
4 That's the only thing here today. There's a
5 provision in there about a year. The first thing
6 is gone. There was no appeal, you pointed that
7 out to me last time. There was no appeal taken,
8 so her decision for the \$950 stands, that's what
9 we're here on today.

10 You can't go back to two years ago or last
11 year and start all over again. We're here today
12 on the basis of her decision that was unappealed,
13 so it's final. We're here today as to whether a
14 fine of \$950 should be given. And that's why I
15 argued from the time of the original decision
16 until now, there's been no further -- he just
17 read it. It says, "Any further violation."
18 There has been no further violation since the
19 last decision, so there's nothing to be done
20 today, other than, in my opinion, you should just
21 dismiss this thing.

22 But the point is, if you read the
23 transcript, there's no -- nothing happened since
24 the first decision.

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1 **THE CHAIRMAN:** My understanding is
2 the case -- because this is still pending and,
3 you know, whether a mistake was made or not, as
4 far as I'm concerned, the case is still open and
5 there's new evidence.

6 **MR. LITTLE:** I guess you can ask
7 your lawyer because if you've got a decision from
8 the director if you can open a case that happened
9 over last January -- how can they open a case
10 that's been determined?

11 **MR. LOMBARDI:** There's no rule
12 that prevents that from happening.

13 **MR. LITTLE:** There's a statute,
14 Val, that says that when they make a
15 recommendation --

16 **MR. LOMBARDI:** Mr. Little, there's
17 no rule and there's no statute that prevents a
18 reopening. There's nothing in the law that
19 prevents this board from reopening a
20 determination.

21 **MR. LITTLE:** The director has made
22 a decision on it, so you're going to overrule her
23 decision?

24 **MR. LOMBARDI:** We're opening it

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1 because every decision that's sent up to the

2 director is a recommendation. So if she does not
3 want to follow this recommendation on a
4 reopening, then she doesn't have to. Everything
5 that's sent up to the director is a
6 recommendation.

7 MR. NEWMAN: Mr. Chairman, I'd
8 like to make a recommendation to open this
9 hearing based on the new information about the
10 insurance certificate not corresponding to the
11 dates that the job was performed.

12 MR. LITTLE: Which one are you
13 reopening, the first one or this one? We had a
14 hearing already this year.

15 MR. LUTHER: That would be -- just
16 to clarify, Mr. Newman, you want to reopen the
17 original hearing of Violation No. 2983 --

18 MR. NEWMAN: Correct.

19 MR. LUTHER: -- which would be the
20 suspension hearing?

21 MR. NEWMAN: Correct.

22 MR. LUTHER: The revocation
23 hearing, pardon me.

24 THE CHAIRMAN: Do I have a second?

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1 MR. RILEY: I'll second it.

2 THE CHAIRMAN: Do I have any

3 discussion? Any questions? All those in favor,
4 aye? All those opposed? Ayes have it.

5 MR. LUTHER: Just for the record,
6 legal counsel has advised the board to renote
7 Boysie Fortez for a revocation hearing, which has
8 been reopened on this date for October -- the
9 meeting in October.

10 THE CHAIRMAN: Okay.

11 MR. LUTHER: Mr. Little will
12 receive paperwork to that fact.

13 MR. LITTLE: You're going to hear
14 from me before that, we'll all be in court on
15 this. You've just violated all the statutes,
16 Val. I can read you the --

17 MR. LOMBARDI: Mr. Little, file
18 what you have to file.

19 MR. LITTLE: Okay.

20 MR. LOMBARDI: Thank you.

21 MR. LUTHER: Mr. Chairman, the
22 next hearing is Robert Arello. Mr. Arello, can
23 you stand and be sworn in, please.

24 R O B E R T A R E L L O,

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1 first having been duly sworn by the Notary
2 Public, was examined and testifies as follows:

3 P A T R I C K L U T H E R,

4 first having been duly sworn by the Notary
5 Public, was examined and testifies as follows:

6 MR. LUTHER: You can have a seat
7 right here, Mr. Arello, please.

8 THE CHAIRMAN: Can you read the
9 violation?

10 MR. LUTHER: Yes, Mr. Chairman.
11 Date of the violation is 7/27/2007, Violation
12 No. 3243. The name of the violator is Arello, Inc.,
13 Robert Arello, 94 Wachusett Street, Holden,
14 Mass. 01520. The location of the violation
15 is the CVS, Route 44, Chepachet, Rhode Island;
16 violation, Rhode Island General Law 5-20-12,
17 Corporations and firms engaged in business.

18 On or about June 1st, 2007, Arello, Inc.
19 entered into a contract with D.F. Pray to install
20 lawn sprinklers at the above job location.
21 Arello, Inc. does not have a licensed individual
22 within its corporate structure. This is one
23 violation of the above-referenced Rhode Island
24 General Law 5-20-12.

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1 I did an investigation at the CVS in
2 Chepachet, and there was a company installing
3 lawn sprinklers. Mr. Arello's company entered
4 into a contract for the landscape package at the

5 CVS, which included the lawn sprinklers, which he
6 subbed to a company out of Massachusetts.

7 They were cited for operating without a
8 proper Rhode Island license, and it came to our
9 attention that they were subcontracting to
10 Mr. Arello.

11 I talked to the supervisor for D.F. Pray on
12 the site, and he had said that that package goes
13 out as a landscape irrigation package.

14 I advised them that D.F. Pray should
15 separate those packages from now on because
16 licenses are required for the installation of
17 lawn sprinklers, underground irrigation. They
18 said that they would pass that on to the proper
19 channels in their organization.

20 I contacted Mr. Arello, made him aware that
21 he was in violation of the law, and he was sent a
22 violation for \$500 for bidding that job with the
23 landscape and irrigation package together.

24 His contention to me was that D.F. Pray did

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1 not separate the package and that it was all one
2 bid. He's here today to address the board.

3 MR. ARELLO: Well, subsequently --
4 initially, I had hired an irrigation company that
5 did not have a license. I wasn't aware of a

6 license. When I heard of that, I hired a
7 licensed contractor that is licensed in
8 Rhode Island to do the irrigation.

9 And that's the way that -- I don't have a
10 license. The only thing I can't understand is,
11 if it's not my contract, I have to be licensed.
12 Even though I'm not going to do it, I'm going to
13 subcontract it to a licensed irrigation guy, does
14 that mean that I don't have the same rights as
15 D.F. Pray? So if they hire an irrigation guy,
16 the same guy I would hire, it's okay; but if I
17 hired them, it's not okay?

18 THE CHAIRMAN: Do you have a
19 Rhode Island contractor's license?

20 MR. ARELLO: I do not have an
21 irrigation license.

22 THE CHAIRMAN: No. A contractor's
23 license.

24 MR. ARELLO: No. In Rhode Island,

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1 no.

2 THE CHAIRMAN: You have no
3 Rhode Island license?

4 MR. ARELLO: No, I don't. So
5 that's where I can't understand because it was --
6 the way I got to believe was if D.F. Pray could

7 hire the same guy as me -- but I didn't know you
8 had to have a contractor's license. This is the
9 first time I heard of that.

10 MR. LUTHER: As a construction
11 manager in Rhode Island, you can hire -- you're
12 building the whole package, soup to nuts, right?

13 MR. ARELLO: Right.

14 MR. LUTHER: You can sub out the
15 different trades to properly licensed
16 individuals.

17 MR. ARELLO: Correct.

18 MR. LUTHER: As basically just a
19 landscape company --

20 MR. ARELLO: It was a
21 subcontractor.

22 MR. LUTHER: You're a
23 subcontractor to Pray?

24 MR. ARELLO: Right.

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1 MR. LUTHER: In Rhode Island, with
2 master licenses, you have to have a master
3 license to bid, solicit, advertise for any type
4 of work that's covered under the scope of the
5 master license, which would be the irrigation,
6 plumbing, heating, so forth and so on, and down
7 the line of all the trades that we handle here in

8 the Department of Labor.

9 As a landscaper, you're not allowed to bid
10 that job that has a master license requirement in
11 Rhode Island in order to sub that out to make
12 money on that.

13 MR. ARELLO: So an irrigation
14 contractor has to have a master license?

15 MR. LUTHER: They do.

16 MR. ARELLO: So the guy that I
17 hired had the license, but I have to get the
18 license, even though I didn't do the work?

19 THE CHAIRMAN: I don't think
20 that's entirely correct here. I think if you
21 have a contractor's license, I think -- I believe
22 you can bid that work as a --

23 MR. NEWMAN: Contractor.

24 THE CHAIRMAN: -- contractor and

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1 sub the work out to a licensed individual, even
2 as a subcontractor.

3 MR. NEWMAN: Mr. Luther, why isn't
4 the contractor that wasn't licensed in the State
5 of Rhode Island here?

6 MR. LUTHER: He has been fined.

7 MR. NEWMAN: He has been fined?

8 MR. LUTHER: Yes.

9 MR. NEWMAN: Okay.

10 MR. ARELLO: Who is that, Pray?

11 MR. LUTHER: No. The original --

12 the original -- The Irrigation Company was the
13 name of the company that you hired originally?

14 MR. ARELLO: Yes.

15 MR. LUTHER: They have been fined.

16 MR. ARELLO: They have been fined?

17 MR. LUTHER: Yes, for unlicensed
18 individuals doing installation.

19 MR. ARELLO: I didn't realize
20 that.

21 MR. LUTHER: And under your scope
22 of being the contractor of them, that's why
23 you're here.

24 MR. NEWMAN: So Mr. Arello should
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1 probably look into maybe getting a contractor's
2 license that would cover him so that he could bid
3 on that?

4 MR. LUTHER: I had mentioned to
5 Mr. Arello that he had been in the irrigation
6 business previously, and I did send applications
7 and material to you to obtain the license with
8 the grandfathering information that you need in
9 order to contract that work in Rhode Island.

10 MR. ARELLO: Right.

11 MR. NEWMAN: But if he would just
12 prefer to sub it out, he would have to determine
13 that a contractor's license would be sufficient;
14 is that correct?

15 MR. LUTHER: I'm not --

16 THE CHAIRMAN: Either license will
17 cover you as a contractor. If you have a general
18 contractor's license, you can get that with a
19 Certificate of Insurance, and you can sub
20 anything out.

21 MR. NEWMAN: That would be
22 something that Mr. Arello should look into.

23 MR. LUTHER: That would be
24 something that Mr. Arello would have to look into

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1 on his own. I don't think we should advise him
2 on what he needs to do in order to subcontract
3 work in Rhode Island.

4 THE CHAIRMAN: The same rights
5 though would apply if you had a trade license as
6 well. You can sub work with a trade license.

7 MR. NEWMAN: So if he were to have
8 his irrigation license, he could sub that job out
9 under his license?

10 THE CHAIRMAN: With either a

11 general contractor's license or a trade license,
12 you can sub the work out.

13 MR. ARELLO: I would rather get a
14 general contractor's license. Because if there's
15 a VERSA-LOK wall or a masonry wall which we would
16 subcontract out, right now, I guess I can't do
17 that either.

18 THE CHAIRMAN: Not without a
19 contractor's license.

20 MR. ARELLO: Yeah. I mean, so
21 just to get the irrigation license -- if there
22 was a choice, I would prefer one that would cover
23 all the trades.

24 THE CHAIRMAN: Well, if you've got
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1 a general contractor's license, that doesn't give
2 you -- you can't put the irrigation system in
3 yourself --

4 MR. ARELLO: No.

5 THE CHAIRMAN: -- you'd have to
6 sub it out.

7 MR. ARELLO: Right.

8 THE CHAIRMAN: I just want to make
9 sure you understood that.

10 MR. ARELLO: We've done them in
11 the past, but we don't do them anymore; we

12 subcontract them out.

13 **MR. NEWMAN:** Then you would have
14 to go to the state and have them advise you on
15 the proper way to do it.

16 **MR. LUTHER:** Basically, I think
17 that if Mr. Arello wanted to cover the
18 irrigation, which we are concerned with here, due
19 to the past experience, he could submit an
20 application to our department to be tested for a
21 license. With all the other general contractor's
22 stuff, that's something that he would have to do
23 on his own.

24 **MR. ARELLO:** Well, then I will

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1 just do that then.

2 **THE CHAIRMAN:** As to the fine
3 that's on the table --

4 **MR. LUTHER:** I think,
5 Mr. Chairman, we have guidelines to say that a
6 violation did occur and then vote on that, and
7 then separately what to do with the \$500 fine.

8 **MR. CARDARELLI:** Excuse me. Who's
9 D.F. Pray?

10 **MR. LUTHER:** The general
11 construction manager.

12 **MR. ARELLO:** They built probably

13 40 or 50 Walgreens and CVS's in Rhode Island.

14 MR. CARDARELLI: They hired you?

15 MR. ARELLO: They hired me.

16 MR. CARDARELLI: And you hired --

17 MR. ARELLO: I hired an irrigation
18 company that was not licensed.

19 MR. CARDARELLI: Who was that?

20 MR. LUTHER: The irrigation
21 company out of Mass., what was it, Cabral
22 Irrigation?

23 MR. ARELLO: Cabral came in after.

24 The minute I understood that I had to have a
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1 license, which I was not aware of, I dismissed
2 the original one and brought in a licensed one.
3 He finished the job, which was 90 percent of it.
4 So 10 percent was what I paid the original guy.
5 I told him that he couldn't work there anymore,
6 and the job got finished by a general contractor
7 in Rhode Island, and that's how it ended.

8 THE CHAIRMAN: I'll entertain a
9 motion as to whether the fine occurred -- as to
10 whether the violation occurred, unless there's
11 more questions.

12 MR. HUTTON: I'll make a motion
13 that he violated General Law -- Rhode Island

14 Law 5-20-12 and the violation which is
15 Rhode Island General Law 5-20-33 and that
16 he's guilty of violating those Rhode Island laws.

17 THE CHAIRMAN: Do I have a second?

18 MR. NEWMAN: Second.

19 THE CHAIRMAN: Any questions? All
20 those in favor, aye? Okay. As to the fine?

21 MR. NEWMAN: I recommend that it
22 be suspended for one year. And if he comes
23 before the board again, the violation gets
24 reinstated.

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1 THE CHAIRMAN: Is there any
2 discussion? Is there a second?

3 MR. RILEY: I'll second that.

4 THE CHAIRMAN: Any discussion?
5 All those in favor, aye? All those opposed?

6 MR. HUTTON: Nay.

7 THE CHAIRMAN: Let the record show
8 that Mr. Hutton opposed the motion.

9 This is a recommendation to the director,
10 and you'll get a decision in the mail.

11 MR. ARELLO: Okay. Thank you.

12 MR. LUTHER: The next violation is
13 James Whittaker. Mr. Whittaker, could you be
14 sworn in, please.

15 **J A M E S W H I T T A K E R,**
16 **first having been duly sworn by the Notary**
17 **Public, was examined and testifies as follows:**

18 **MR. LUTHER: Date 8/17/2007,**
19 **Violation No. 3271. Name of the violator,**
20 **James Whittaker, 1140 Hartford Avenue,**
21 **Providence, Rhode Island 02909. The location of**
22 **the violation is the Wildberry Apartments,**
23 **95 Archambault Street, West Warwick,**
24 **Rhode Island; violation 5-20-10, Work for**
0029

1 **which an apprentice certificate is required.**

2 **On June 29th, 2007, Merit Mechanical had**
3 **James Whittaker installing plumbing at the above**
4 **job location. Mr. Whittaker is registered as a**
5 **pipefitter/refrigeration, Apprentice No. 18481.**
6 **This is one violation of the above-referenced**
7 **Rhode Island General Laws. It is also a**
8 **violation of Rhode Island General Law 5-20-33.**
9 **The amount of the fine is \$500.**

10 **I did an inspection at the Wildberry**
11 **Apartments in West Warwick, and Mr. Whittaker was**
12 **drilling holes for the plumbing system. There**
13 **were two other licensed plumbers there installing**
14 **plumbing with Mr. Whittaker. He was properly**
15 **supervised, and he produced a**

16 pipefitter/refrigeration apprentice card.

17 I advised Mr. Whittaker that he needed a
18 plumbing card, which he has an application
19 submitted to this department to change his card
20 to plumbing. Mr. Whittaker said that he was
21 attending the plumbing/pipefitting -- the
22 plumbing educational course at Local 51 and that
23 he had been doing plumbing primarily or --
24 basically, he was doing just plumbing, and he had

0030

1 asked them to change his card to a plumbing card
2 from pipefitter/refrigeration because he wanted
3 to be a plumber, and the card had not been
4 changed at that particular point in time.
5 Basically, that's about it.

6 THE CHAIRMAN: All right. Any
7 questions from the board?

8 MR. HUTTON: Yeah, I've got some
9 questions. Now, were you also doing -- fitting
10 holes?

11 MR. WHITTAKER: No.

12 MR. HUTTON: Just plumbing?

13 MR. WHITTAKER: Just plumbing
14 holes. I went to URI a long time ago, and I
15 decided I wanted to be a plumber, told them, they
16 said, "Not a problem," and they put me in the

17 plumbing class.

18 I was unaware that I was supposed to switch
19 my license because the Local, they always hand
20 you the paperwork. They say, "Oh, you need to
21 get your license renewed," or whatever. They
22 always handle the licensing.

23 So as an apprentice, none of us really know
24 the codes or what is required. So they told me --

0031

1 Pat came in and told me that I had a pipefitters.
2 I was like, "Oh, boy." That was the first time
3 that I really realized that I was out of what
4 should be done. And if it was to my attention
5 that it should have been done, I would have done
6 it right then and there because it's only \$24. I
7 mean, it's not something that's expensive. And
8 that date is incorrect on that.

9 MR. LUTHER: Oh, it's July 29th,
10 you're right. Just for the record, the
11 inspection was July 29th, not June 29th; you were
12 on vacation that day.

13 MR. WHITTAKER: I was in Aruba.

14 MR. LUTHER: I didn't change the
15 date on that. We did send another form. On the
16 violation you received, it was July 29th.

17 MR. WHITTAKER: Uh-huh.

18 MR. LUTHER: Just for the record,
19 the violation occurred on July 29th, 2007.

20 MR. NEWMAN: I have a question.
21 Why isn't Merit being fined?

22 MR. LUTHER: Merit Mechanical was
23 cited and will be here at the next meeting.

24 THE CHAIRMAN: Any other

0032

1 questions?

2 MR. RILEY: He's now registered as
3 an apprentice plumber?

4 MR. LUTHER: The paperwork has
5 been submitted to our office. I'm not sure
6 whether he has received -- he hasn't received a
7 card, right?

8 MR. D'AMBROUSO: No.

9 MR. LUTHER: No, he has not.

10 MR. NEWMAN: How many years has he
11 been registered as an apprentice?

12 MR. LUTHER: Since the 14th day of
13 April, 2006.

14 MR. CHAMPAGNE: I have a question.
15 It says in the paperwork that you were
16 "installing plumbing." Were you?

17 MR. WHITTAKER: No. I was only
18 drilling holes.

19 MR. CHAMPAGNE: All day?

20 MR. WHITTAKER: Yup, all day.

21 MR. CHAMPAGNE: So I guess my
22 question is that this is incorrectly stated on
23 this violation, that's number one. He was not
24 installing plumbing.

0033

1 MR. LUTHER: The holes were for
2 the intent of the plumbing system.

3 MR. CHAMPAGNE: It makes no
4 difference.

5 MR. LUTHER: Well, that's your
6 opinion.

7 MR. CHAMPAGNE: That's my opinion.
8 I'll make a motion -- under the proper policy,
9 I'll make a motion to dismiss this, that he was
10 not in violation of the Rhode Island state law,
11 which is the international plumbing code. You
12 show me the particular article that he violated,
13 and I'll change my opinion. Right now, as far as
14 I can see, he was not installing plumbing, and he
15 shouldn't be here, and we should dismiss this
16 case.

17 THE CHAIRMAN: Is that a motion,
18 Mr. Champagne?

19 MR. CHAMPAGNE: Yes, if I'm in

20 order to make that motion right now.

21 THE CHAIRMAN: It would be whether
22 a fine occurred or not.

23 MR. LOMBARDI: A violation.

24 THE CHAIRMAN: Whether a violation

0034

1 occurred.

2 MR. CHAMPAGNE: Right. I'll make
3 a motion that the violation never occurred and
4 it's miswritten on the violation --

5 THE CHAIRMAN: Any questions?

6 MR. CHAMPAGNE: -- and I think we
7 should dismiss this.

8 THE CHAIRMAN: Do I have a second
9 to that?

10 MR. HUTTON: I'll second that.

11 THE CHAIRMAN: Any discussion?

12 MR. RILEY: Well, the intent was,
13 he was there doing plumbing. The holes were for
14 plumbing, right?

15 MR. WHITTAKER: But I wasn't
16 putting pipe in.

17 MR. RILEY: Somebody has to drill
18 the holes for the plumbing, but, I mean, you were
19 there as a plumber. The holes -- whether the
20 holes -- you weren't putting pipe in the holes,

21 but you were drilling holes for plumbing. I
22 mean, it's kind of splitting hairs here, aren't
23 we? He wasn't over there drilling holes for
24 e-boots or something. You were over there
0035

1 drilling holes for plumbing, so.

2 MR. CHAMPAGNE: On many jobs, we
3 hire contractors to drill holes, that's not a
4 violation. You can call up anybody you want
5 to --

6 MR. RILEY: That doesn't fall into
7 the purview of plumbing and/or heating.

8 MR. CHAMPAGNE: That's not what
9 we're talking about. We're talking about a
10 violation of installing -- this is what he was
11 charged with.

12 And, Val, you can -- is this -- like, do I
13 read it in black and white that he was installing
14 plumbing? That's all we can talk about because
15 that's the charge. He wasn't installing
16 plumbing, he was drilling a hole. We can have a
17 laborer drill a hole for you.

18 MR. RILEY: It's the semantics of
19 it.

20 MR. CHAMPAGNE: No. No. I
21 disagree.

22 MR. RILEY: But his role was
23 installing plumbing.

24 MR. CHAMPAGNE: The violation is
0036

1 installing plumbing, and he wasn't. Were you
2 there installing plumbing?

3 MR. WHITTAKER: No.

4 MR. CHAMPAGNE: Right. Are you
5 under oath?

6 MR. WHITTAKER: Yup.

7 MR. CHAMPAGNE: Were you
8 installing plumbing on that job?

9 MR. WHITTAKER: No.

10 MR. CHAMPAGNE: And that's what
11 the violation says.

12 MR. RILEY: So drilling holes
13 then --

14 MR. CHAMPAGNE: I'm not going to
15 read anything into it, Bill. I'm telling you
16 what I see in black and white. I see,
17 "Installing plumbing at this location."

18 MR. RILEY: So drilling --

19 MR. CHAMPAGNE: That's the charge,
20 and he's innocent.

21 MR. RILEY: So drilling holes or
22 cutting holes or cutting whatever, if you're not

23 putting anything in them holes, it's okay and

24 anybody can do it?

0037

1 MR. CHAMPAGNE: That's your take.

2 He's not here for us to discuss that.

3 MR. RILEY: That's what you're

4 saying.

5 MR. CHAMPAGNE: This is the
6 charge, "installing plumbing," that's the charge.

7 MR. RILEY: But, I mean, the point
8 is if I send somebody out to cut holes, his role
9 is to cut holes. It could be plumbing, heating,
10 whatever.

11 MR. NEWMAN: Electrical?

12 MR. CHAMPAGNE: Whatever it is.

13 MR. RILEY: So that doesn't count?

14 If they're for plumbing --

15 MR. CHAMPAGNE: I believe there's
16 a motion on the table. If there's a motion on
17 the table, we have to talk about the motion and
18 nothing else; and my motion still stands.

19 MR. LUTHER: It's under

20 discussion.

21 THE CHAIRMAN: It's under

22 discussion, you can ask anything you want.

23 MR. NEWMAN: My question is, is

24 there anything in the plumbing code that states
0038

1 if you are drilling or any variation of -- if you
2 are drilling a hole and it's marked for plumbing,
3 do you need to be a licensed apprentice plumber
4 or anything?

5 MR. CHAMPAGNE: In the state
6 plumbing code, which we use, the international
7 code, I dare you to open it up and --

8 MR. NEWMAN: That's what I'm
9 asking. I'm not saying that there is. I want to
10 know if there is to get a clarification.

11 MR. RILEY: So that would also
12 relate to --

13 MR. NEWMAN: Carrying showers?

14 MR. RILEY: -- digging or
15 trenching for plumbing?

16 MR. CHAMPAGNE: We're not talking
17 about that.

18 MR. RILEY: But that's not
19 installing plumbing. I could have someone
20 trenching for plumbing, but he's not plumbing
21 it -- he's not installing it.

22 MR. CHAMPAGNE: Trenching doesn't
23 fall under the purview of the code.

24 MR. RILEY: Trenching? Sure it

0039

1 does.

2 MR. CHAMPAGNE: So you can hire an
3 excavator to dig a hole for plumbing now?

4 MR. LUTHER: The angle of the
5 trenching and what has to be done, the trenching
6 and the backfilling is covered in the code.

7 MR. CHAMPAGNE: So from now on, we
8 need a licensed plumber to dig a trench to put a
9 pipe --

10 MR. LUTHER: No. Leo, I know
11 where you're going. I understand that your
12 installing plumbing was -- he was not installing
13 plumbing. He was drilling holes supervised by
14 two plumbers that were there drilling holes for
15 the plumbing system and that was the intent of
16 the violation, all right? Okay?

17 You have a motion on the floor that says he
18 was not installing plumbing, it has been
19 seconded, okay? All those are in favor.

20 THE CHAIRMAN: Uh-huh.

21 MR. LOMBARDI: No, you're not the
22 Chairman.

23 MR. LUTHER: Okay.

24 THE CHAIRMAN: Are there any other

0040

1 questions?

2 MR. CARDARELLI: Yeah. If he had
3 had a plumber's apprentice card, would this be a
4 different situation?

5 THE CHAIRMAN: Yes.

6 MR. CARDARELLI: It would be?

7 THE CHAIRMAN: Yes. He had a
8 pipefitters apprentice card, and he's working
9 with the plumbers.

10 MR. NEWMAN: Don't we need to have
11 some kind of evidence? Meaning, the code says
12 for different states what is proper and what is
13 improper.

14 THE CHAIRMAN: It's an
15 interpretation of the code.

16 MR. NEWMAN: What are we
17 interpreting?

18 THE CHAIRMAN: It's an
19 interpretation of the code. It doesn't say that
20 the holes have to be cut by a plumber. It
21 doesn't specifically say --

22 MR. NEWMAN: Does it infer to
23 anything? Is there anything in the code that
24 infers that -- again, I'm referring back to

0041

1 carrying a shower or tub, having a carpenter help

2 you carry it in. We decided that that was not
3 correct, I believe, at one of our past meetings.

4 MR. LUTHER: Well, is the
5 interpretation that you are suggesting is that
6 means that we can have the laborers or the
7 carpenters carry all of the pipes and fittings
8 in, too?

9 MR. NEWMAN: That's what I'm
10 trying to get a clarification on.

11 MR. LUTHER: Or take the toilets
12 from the truck and bring them into the bathrooms
13 and uncrate them and set them there on the floor.

14 MR. NEWMAN: That is not allowed.

15 MR. LUTHER: So --

16 MR. NEWMAN: That's the point I'm
17 trying to make. If we have other things that we
18 interpret, then we interpret everything in the
19 same direction.

20 THE CHAIRMAN: Yeah. Like I said,
21 it's not a black and white thing. It's what your
22 interpretation is of the code. Certainly
23 carrying pipe, carrying showers, you know,
24 obviously, we all agree that that's plumbers

0042

1 work. Cutting holes, if it's not structural, you
2 know, my interpretation is it is plumber's work.

3 MR. NEWMAN: It is plumbers work.

4 THE CHAIRMAN: But that's my
5 interpretation. That's my opinion, for what it's
6 worth. Any other questions?

7 MR. RILEY: Just -- nothing
8 against Mr. Whittaker, I'm just challenging
9 installing plumbing, that's all.

10 THE CHAIRMAN: All those in favor
11 of dismissing the violation, aye? All those
12 opposed?

13 MR. NEWMAN: Nay.

14 THE CHAIRMAN: Mr. Newman
15 disagrees. It's a recommendation to the
16 director, the motion carries.

17 MR. LUTHER: I think we have to
18 dismiss the \$500 fine, Mr. Chairman.

19 MR. LOMBARDI: There's no fine if
20 there's no violation.

21 MR. LUTHER: Okay. Thank you.

22 MR. WHITTAKER: I had one other
23 question I wanted to bring up. Now, I'm supposed
24 to be losing all of my hours that I've put in

0043

1 under the Local because I'm changing my license.

2 MR. LUTHER: That's something that
3 you'll have to take up with the state

4 apprenticeship counsel.

5 MR. WHITTAKER: That's something
6 totally different.

7 THE CHAIRMAN: I suggest that you
8 let the Local fight that battle.

9 MR. WHITTAKER: That's still in
10 process, I guess?

11 THE CHAIRMAN: I'm not sure, but
12 that's not for us to decide.

13 MR. WHITTAKER: Okay.

14 THE CHAIRMAN: Thanks for coming
15 in.

16 MR. LUTHER: That concludes the
17 hearings for today.

18 THE CHAIRMAN: I'd like to have a
19 motion to go into Executive Session.

20 MR. HUTTON: I'll make a motion.

21 THE CHAIRMAN: Second?

22 MR. NEWMAN: Second.

23 THE CHAIRMAN: All those in favor,
24 aye?

0044

1 THE COURT REPORTER: Do you want
2 me to write this?

3 MR. LOMBARDI: Yes. We can seal
4 the record after if we don't want it.

5 (EXECUTIVE SESSION, PAGES 46 - 55, PRODUCED UNDER
6 SEPARATE COVER)
7 (CLOSED AT 9:45 A.M.)

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1 CERTIFICATE

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5 I, Alesha M. Cerrito, Notary Public, do

6 hereby certify that I reported in shorthand the
7 foregoing proceedings, and that the foregoing
8 transcript contains a true, accurate, and
9 complete record of the proceedings at the
10 above-entitled hearing.

11

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand this 19th day of September, 2007.

14

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16

17

18 ALESHA M. CERRITO, NOTARY PUBLIC/CSR
19 MY COMMISSION EXPIRES SEPTEMBER 27, 2008.

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