

2011 JAN 24 P 1: 45

HEARINGS OFFICE



CONTRACTORS LICENSE BOARD
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the)	CLB 2003-121-L; CLB 2003-165-L, and
Contractor's License of)	CLB 2003-280-L
)	
KAWAIHAE MILLWORK, INC., and)	BOARD'S FINAL ORDER
GLEN N. FELTON, RME,)	
)	
Respondent.)	
)	

BOARD'S FINAL ORDER

On November 30, 2010, the duly appointed Hearings Officer submitted his proposed Findings of Fact, Conclusions of Law and Recommended Order in the above-entitled matter to the parties. The parties were given an opportunity to file written exceptions, however no exceptions were filed.

Upon review of the entire record of this proceeding, the Contractors License Board ("Board") adopts the Hearings Officer's recommended decision as the Board's Final Order and finds and concludes that Respondent violated HRS §§ 436B-16(a), 436B-19(2), 444-17(2) and 444-25.5(b) and (d), and HAR §§ 16-77-8, 16-77-80(a)(1), (3), (5) and (7). The Board also orders that the workmanship charges be dismissed without prejudice.

For the violations found, the Board orders that Respondents each pay a fine in the amount of \$2,500.00 within 120 days of the Board's Final Order. In the event Respondents do not pay their respective fines within the required period, the Board further orders that payment of the fine is a condition for relicensure.

DATED: Honolulu, Hawaii, JAN 21 2011

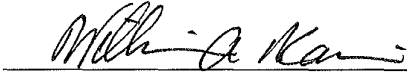
F.M. SCOTTY ANDERSON
Chairperson



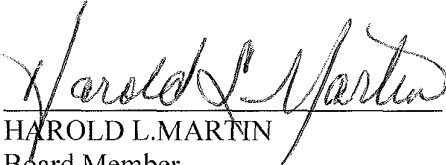
NEAL ARITA
Vice Chairperson



ERIC CARSON
Board Member



WILLIAM A. KAMAI
Board Member



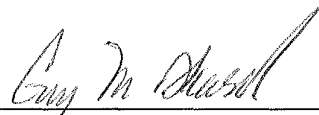
HAROLD L. MARTIN
Board Member



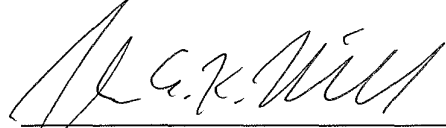
RONALD K. OSHIRO
Board Member



DARYL SUEHIRO
Board Member



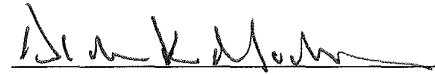
GUY M. AKASAKI
Board Member



JOHN E. K. DILL
Board Member



RANDALL B. C. LAU
Board Member



ALDON K. MOCHIDA
Board Member

DENNY R. SADOWSKI
Board Member



GERALD YAMADA
Board Member



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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CONTRACTORS LICENSE BOARD
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

HEARINGS OFFICE

In the Matter of the Contractor's
Licenses of

KAWAIHAE MILLWORK, INC., and
GLEN N. FELTON, RME,

Respondents.

CLB-2003-121-L; CLB-2003-165-L; and
CLB-2003-280-L

HEARINGS OFFICER'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER

**HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER**

I. CHRONOLOGY OF CASE

On November 13, 2006, the State of Hawai'i, Department of Commerce and Consumer Affairs, ("Petitioner"), by and through its attorney John T. Hassler, filed Petitioner's Motion for Partial Summary Judgment in the above-captioned matter.

On November 24, 2006, Kawaihae Millwork, Inc., and Glen N. Felton ("Respondent Kawaihae" and "Respondent Felton", respectively, and "Respondents" collectively), by and through their attorney Rodney Uchida filed their Memorandum in Opposition to Motion for Summary Judgment.

On November 28, 2006, at 8:55 a.m., the hearing on Petitioner's Motion was conducted by the undersigned Hearings Officer. Petitioner was represented by its attorney John T. Hassler. Respondents were not present but were represented by their attorney Rodney Uchida.

On March 1, 2007, the undersigned Hearings Officer issued his Recommended Order Granting Petitioner's Motion for Partial Summary Judgment.

By letter dated October 5, 2007, Mr. Hassler withdrew all counts in the First Amended Petition for Disciplinary Action that were not subject to Petitioner's Motion for Partial Summary Judgment.

By letter dated January 29, 2009, Rodney Uchida, Esq., informed Mr. Hassler that Mr. Uchida no longer represented Respondents.

On June 17, 2009, a Status Conference was conducted in the above-captioned matter.

On June 24, 2009, the hearing was reconvened by telephone to address the appropriate sanctions to be imposed for the violations that had been found. Mr. Hassler appeared for Petitioner, and Mrs. Ernestine Felton (Respondent Felton's wife and corporate officer of Respondent Kawaihae) appeared for Respondents.

Having reviewed and considered the matters presented by the parties, as well as the entire record of this proceeding, the Hearings Officer hereby sets forth the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Respondent Felton was licensed as a general contractor by the Contractors License Board ("Board") on January 8, 1974, License No. CT 6901.

2. Respondent Kawaihae was licensed as a general contractor by the Board on March 25, 1981, License No. CT 10931.

3. On or about August 18, 1997, Respondent Kawaihae registered the trade name "Kawaihae Concrete" with the Business Registration Division of the Department of Commerce and Consumer Affairs, State of Hawai'i.

4. At no time did Respondent Kawaihae register the trade name "Kawaihae Concrete" with the Board, nor was "Kawaihae Concrete, Inc." ever licensed as a contractor by the Board.

5. On or about August 9, 1999, Respondent Felton, as president of "Kawaihae Concrete, Inc.", entered into a one-page contract with Renata and Paolo Roberti in which Kawaihae Concrete, Inc. and/or Respondent Felton agreed to construct a home on TMK 4-4-005-017-001 located near Honokaa, Hawai'i. The August 9, 1999 contract:

- a) did not explain in detail the lien rights of all parties performing under the contract;

- b) did not explain the Robertis' right to demand bonding on the project, or how the bond would protect the Robertis, or the approximate expense of the bond;
- c) did not disclose the approximate percentage of work to be subcontracted;
- d) did not disclose the date work was to commence and the number of days for completion; and
- e) did not disclose Respondent Kawaihae's name, license number or classification, and in fact identified the contractor as "Kawaihae Concrete, Inc."

6. On or about July 3, 2001, Respondent Kawaihae entered into a one-page contract with Jim and Joyce Gregory in which Respondents agreed to construct a home on TMK 7-5-05:20 (Third Division) on the Island of Hawai'i. The July 3, 2001 contract:

- a) did not include the license number and classification of Respondent Kawaihae;
- b) did not explain in detail the lien rights of all parties performing under the contract;
- c) did not explain the Gregorys' right to demand bonding on the project, how the bond would protect the Gregorys, or the approximate expense of the bond;
- d) did not disclose the approximate percentage of work to be subcontracted; and
- e) did not disclose the date work was to commence and the number of days for completion.

7. On or about June 9, 2004, an arbitration award was entered against Respondent Felton in a private arbitration proceeding, *Glen N. Felton v. Helen J. Thomas Maddock*. According to the arbitration award, on May 6, 2003, Respondent Felton entered into a contract with Ms. Maddock to retrofit a seawall on property located at TMK 6-9-04: 10 on the Island of Hawai'i. In the arbitration proceeding, Ms. Maddock alleged that Respondent Felton breached the contract by failing to complete the project in a reasonable time. The arbitrator found that Respondent Felton's actions constituted a repudiation or anticipatory breach of the contract. The arbitrator awarded \$1,354.08 in damages and \$12,500.00 in attorney's fees against Respondent Felton and in favor of Ms. Maddock.

8. Respondent Kawaihae's contractor's license expired and was forfeited effective September 30, 2004.

9. Respondent Felton's contractor's license expired and was forfeited effective September 30, 2004.

10. On or about January 4, 2005, a final judgment was entered against Respondent Felton in a proceeding to confirm the arbitration award in *Helen Maddock v. Glen Felton*, Hawai'i Third Circuit Court, Special Proceeding no. 04-1-00014.

11. At no time did Respondent Felton notify the Board of the award entered against him. At no time did Respondent Felton notify the Board of the final judgment entered against him in *Helen Maddock v. Glen Felton*, Hawai'i Third Circuit Court, Special Proceeding no. 04- 1-00014.

III. CONCLUSIONS OF LAW

1. Because "Kawaihae Concrete, Inc." was not licensed as a contractor by the Board, and because Respondent had not registered the trade name "Kawaihae Concrete" with the Board, Respondents violated the provisions of Hawai'i Administrative Rules ("HAR") §16-77-8.

2. By failing to properly identify Respondent Kawaihae by name, license number and license classification(s) in its contract with the Robertis, Respondents violated the provisions of HAR §16-77-80(a)(1).

3. Because the entity "Kawaihae Concrete, Inc." is not duly incorporated in the State of Hawai'i, by entering into a contract under the name "Kawaihae Concrete, Inc.", Respondents violated the provisions of Hawai'i Revised Statutes ("HRS") §436B-19(2).

4. By failing to make statutorily-mandated disclosures in the contract with the Robertis, Respondents violated the provisions of HRS §444-25.5(b), and by extension HRS §444-17(2) through 444-25.5(d), as well as HAR §16-77-80(a)(3), (5) and (7).

5. By failing to make statutorily-mandated disclosures in the contract with the Gregorys, Respondents violated the provisions of HRS §§444-17(2), 444-25.5(b), and HAR §16-77-80(a)(1), (3), (5) and (7).

6. By failing to report the arbitration award in *Felton v. Maddock*, and the subsequent judgment in *Maddock v. Felton*, S.P. No. 04-1-00014, Respondent Felton violated the provisions of HRS §436B-16(a).

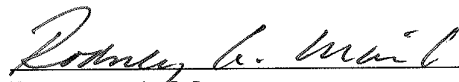
III. RECOMMENDED ORDER

First, based upon request of the Petitioner, the Hearings Officer recommends that the Board dismiss the workmanship charges against Respondents without prejudice.

For the reasons set forth above, the Hearings Officer would recommend that the Board grant Petitioner's Motion for Partial Summary Judgment and find and conclude that Petitioner proved by a preponderance of the evidence that Respondents violated the provisions of HAR §§16-77-8 and 16-77-80(a)(1),(3), (5) and (7); as well as HRS §§436B-16(a); 436B-19(2), 444-17(2); and 444-25.5(b) and (d).

For the violations found above, and based upon the Petitioner's recommendations, the Hearings Officer recommends that Respondents each pay a fine of \$2,500.00 within 120 days from the date of the Board's final order.¹ In the event that Respondents do not pay their respective fines within the required period, the Hearings Officer would recommend that the payment of the fines be a condition for Respondents to be relicensed, in the event that Respondents seek relicensure at some future point.

DATED: Honolulu, Hawai'i, November 30, 2010.


RODNEY A. MAILE
Special Hearings Officer
Department of Commerce
and Consumer Affairs

¹ Given Respondent Felton's advanced age, health issues, and financial constraints, the imposition of any monetary penalties will likely have an immediate adverse impact on Respondent Felton, as well as Mrs. Felton. Additionally, Petitioner did not seek restitution because the complainants in these cases have already initiated their own respective legal proceedings against Respondents to recover restitution and/or damages.



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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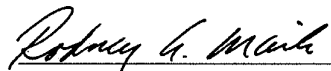
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