



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

HEARINGS OFFICE

2009 MAR 23 P 2:18

DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

In the Matter of the)	CLB 2004-417-L
Contractor's License of)	
)	BOARD'S FINAL ORDER
SIONE M. FUNAKI, individually and)	
doing business as FUNAKI)	
MASONRY CONTRACTOR,)	
)	
Respondent.)	

BOARD'S FINAL ORDER


On January 27, 2009, the duly appointed Hearings Officer submitted her 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. A copy of the Hearings Officer's recommended decision sent to Sione M. Funaki, dba Funaki Masonry Contractor ("Respondent") was returned marked "Attempted, Not Known, Unable to Forward".


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 Hawaii Revised Statutes §§ 444-17(3), 444-17(11), 444-25.5, 436B-19(1) and 436B-19(17) and Hawaii Administrative Rules §§ 16-77-79, 16-77-80 and 16-77-97.

For the violations found, the Board orders that Respondent's contractor's license be revoked and that Respondent pay a fine in the amount of \$2,000.00. Respondent is also ordered to pay restitution in the amount of \$5,000.00. Respondent is required to return all indicia of licensure to the Board. Indicia of licensure include wall certificates and pocket identification cards issued to Respondent indicating licensure. Payments of the fine and


restitution, as well as any other conditions the Board may deem to be appropriate, are conditions of relicensure.

DATED: Honolulu, Hawaii, MAR 20 2009.


F.M. SCOTTY ANDERSON
Vice Chairperson



NEAL ARITA
Board Member


ERIC CARSON
Board Member


RANDALL B.C. LAU
Board Member

RONALD K. OSHIRO
Board Member



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Board Member

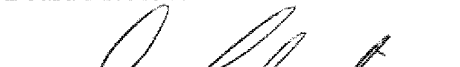

TADY T. ARISUMI
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JOSEPH S. KINDRICH, II
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Board Member

GERALD YAMADA
Board Member



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2009 JAN 27 A 10: 26

HEARINGS OFFICE

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

In the Matter of the)	CLB 2004-417-L
Contractor's License of)	
)	HEARINGS OFFICER'S FINDINGS OF
SIONE M. FUNAKI, individually and)	FACT, CONCLUSIONS OF LAW AND
doing business as FUNAKI)	RECOMMENDED ORDER
MASONRY CONTRACTOR,)	
)	
Respondent.)	
_____)	

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

I. INTRODUCTION

On June 12, 2008, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner") filed a petition for disciplinary action against the contractor's license of Sione M. Funaki, dba Funaki Masonry Contractor ("Respondent"). The matter was set for hearing pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92, 436B and 444, and the Notice of Hearing and Pre-Hearing Conference ("Notice") was transmitted to the parties. Respondent did not receive a copy of the Petition and Notice sent to his last known address. Subsequently, upon Petitioner's request and for good cause shown, Petitioner was granted leave to serve Respondent by publication of the Notice. Notice was published in the *Honolulu Star-Bulletin* on September 8 and September 15, 2008 for a hearing on October 21, 2008.

On October 21, 2008, the hearing was conducted by the undersigned Hearings Officer. Daria A. Loy-Goto, Esq. represented Petitioner. Respondent failed to enter an appearance. Since proper service was made, the hearing proceeded as scheduled.

Having reviewed and considered the evidence and arguments presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT

1. Respondent was licensed by the Contractors License Board (“Board”) as a C-31 (masonry) specialty contractor on August 23, 1995. Respondent’s license number is CT 19929 and his license was forfeited on June 12, 2006 after Respondent’s bond was cancelled.

2. On August 12, 2004, Respondent submitted a proposal to Gilbert K. Kaohu (“Complainant”) to perform remodeling work at his residence in Kapolei, Hawaii. Thereafter, Complainant entered into a verbal contract with Respondent to perform the renovation work which consisted of tearing down an existing garage, pouring a new concrete slab, installing concrete pillars to support elevated living quarters, constructing a concrete masonry unit wall at the end of the garage and removing a fruit tree. The contract price was \$11,000.00.

3. On August 13, 2004, Complainant paid Respondent a down payment of \$2,000.00. Respondent started work on August 13, 2004.

4. On August 16, 2004, Complainant paid Respondent a second payment of \$4,000.00.

5. In a document entitled “Addendum to Contract”, Respondent acknowledged that he was paid \$6,000.00.

6. On August 18, 2004, Respondent told Complainant that he was leaving Hawai’i due to the death of a family member in Tonga, but would return the following Wednesday to complete the project. Respondent also asked Complainant to pay him the balance of the contract before he left.

7. On August 18, 2004, Complainant paid Respondent a final payment of \$5,000.00. In a document entitled “Finalized Addendum to Contract”, Respondent acknowledged receiving all funds for the project, and that the things to finish upon his return from Tonga was: “Kill fruit tree and remove root, clean up pillars, remove forms and final clean up.”

8. Respondent did not return to complete the project.

9. Complainant later discovered that the concrete masonry wall Respondent built had not been constructed with rebar or fill and was unstable. Also, the concrete slab had been unevenly poured, and was only three or four inches thick in most areas.

10. The work Respondent performed had to be redone as part of Complainant's remodeling project.

11. Complainant was not provided with a written contract and was not advised of lien rights or bond rights.

III. CONCLUSIONS OF LAW

Petitioner has charged Respondent with violating HRS §§ 444-17(3), 444-17(11), 444-25.5, 436B-19(1) and 436B-19(17) and Hawaii Administrative Rules ("HAR") §§ 16-77-79, 16-77-80 and 16-77-97.

Based on the evidence presented, the Hearings Officer finds that Respondent violated HRS §§ 444-17(3) and 444-17(11) by abandoning and failing to complete Complainant's project for the agreed price without reasonable or legal excuse. The Hearings Officer also finds that Respondent failed to provide Complainant with a written contract and Respondent did not provide Complainant with the required homeowner disclosures, in violation of HRS § 444-25.5 and HAR §§ 16-77-79 and 16-77-80. Respondent also violated HRS § 436B-19(1) by failing to maintain the required bond. Lastly, the Hearings Officer finds that Respondent did not perform the work on Complainant's project in a workmanlike manner, in violation of HAR § 16-77-97.

For the violations found, the Hearings Officer concludes that Respondent violated HRS § 436B-19(17).


IV. RECOMMENDED ORDER

Based on the above, the Hearings Officer recommends that the Board find and conclude that Respondent violated HRS §§ 444-17(3), 444-17(11), 444-25.5, 436B-19(1) and 436B-19(17) and HAR §§ 16-77-79, 16-77-80 and 16-77-97.

For the violations found, the Hearings Officer recommends that Respondent's license be revoked, that he pay restitution to the Complainant in the amount of \$5,000.00 and

that he be fined \$2,000.00. Respondent will be required to return all indicia of licensure to the Executive Officer of the Board. Indicia of licensure include wall certificates and pocket identification cards issued to Respondent indicating licensure. The Hearings Officer also recommends that payment of the fine and restitution be made conditions of relicensure.

DATED: Honolulu, Hawaii, JAN 27 2009.



SHERYL LEE A. NAGATA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs