

CONTRACTORS LICENSE BOARD
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

Minutes of Meeting

Date: Friday, March 24, 2023

Time: 9:00 a.m.

Place: King Kalakaua Conference Room, King Kalakaua Building
Department of Commerce and Consumer Affairs
335 Merchant Street, 1st Floor, Honolulu, Hawaii 96813

Present: Neal K. Arita, Chairperson
Paul K. Alejado, Member
Clyde K. Hayashi, Member
Eric Higashihara, Member
Joseph O'Donnell, Member
John Polischeck Jr., Member
Maurice Torigoe, Member
Candace Ito, Executive Officer
Lei Ana Green, Executive Officer
Kerrie Shahan, Executive Officer
Christopher Leong, Deputy Attorney General
Lausei Taua, Secretary

Excused: Jerry Nishek, Vice Chairperson

Guests: Michael W. D. Fonseca, Dawson Enterprises LLC/ Dawson Technical Inc.
Andreas L. Gaeta, Gaeta Construction and Consulting LLC
Shane E. K. Teves, Kore Construction LLC
Christopher B. Metzler, Island Signal and Sound Inc.
Lukas Petersons, Longhouse Development LLC
Mynor G. Velasquez Rodriguez, Power Fusion Inc.
Kenton Thomas Amshoff, Sustainable Hawaii LLC
Clint Hamada on behalf of Tyler M. Dillon
Nick Forchette on behalf of Skidabrader Group LLC
Ryan Takahashi, HEMEP

Call to Order: There being a quorum present, Chairperson Arita called the meeting to order at 9:01 a.m.

Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Hawaii Revised Statutes ("HRS") section 92-7(b).

Minutes: It was moved by Mr. Alejado, seconded by Mr. Torigoe and unanimously carried to approve the Application Committee Meeting Minutes of March 6, 2023 and the Board Meeting Minutes of February 24, 2023.

Amendments

to Agenda: It was moved by Mr. Polischek, seconded by Mr. Alejado, and unanimously carried to approve the following amendments to the agenda:

Under "Appearances Before the Board"

f. Shane E. K. Teves, RME
Kore Construction LLC

Delete "C-13 Electrical"
Add "B" General building

g. Christopher B. Metzler (Individual)

Delete Island Signal and Sound Inc. and C-13 Electrical
Add "A" General engineering and "B" General building

j. Kenton Thomas Amshoff, RME

Delete Sustainable Hawaii LLC
Add Sustainabuild Hawaii, LLC

Committee
Reports:

1. Scope of Activity Committee:
Paul Alejado and John Polischek, Jr., Co-Chairpersons

Tim Apicella

Requests a determination on whether a C-31d Tuckpointing and caulking license is the correct license for a contractor to hold to perform deep structural concrete spall repairs on a condominium spall repair project.

The Board reviewed the email inquiry and information, including the photos labeled (1) Bldg #4 (7th Floor) Spall #2 54" x 9", (2) Bldg #4 C Stack 41" x 3" and (3) Bldg #4 (5th Floor) 60" x 31" x 3" (60" length x 31" wide x 3" in depth), and the description of the C-31 Masonry classification and its subclassifications.

Recommendation: Based solely on the information provided, the C-31 Masonry, C-31a Cement concrete, or C-31d Tuckpointing and caulking contractor may perform deep structural concrete spall repairs on the condominium spall repair project.

It was moved by Mr. Arita, seconded by Mr. Polischek, and unanimously carried to approve the above scope recommendation.

Chapter 91, HRS,
Adjudicatory
Matters:

Chairperson Arita called for a recess from the Board's meeting at 9:05 a.m. to discuss and deliberate on the following adjudicatory matters pursuant to HRS chapter 91.

1. Settlement Agreements

- a. In the Matter of the Contractors' Licenses of Atlas Construction, Inc., and Bruce Kim; CLB 2021-234-L.

On or about October 31, 2019, Atlas Construction, Inc. ("Respondent Atlas") entered into a written contract with a homeowner to build a new construction residence in Hawaii ("Project"). The written contract failed to include the names and license numbers of subcontractors to be used on the Project. However, Bruce Kim and Respondent Atlas ("Respondents") subsequently provided the subcontractor information upon request by the homeowner.

On or about September 10, 2020, Respondent Atlas entered a subcontractor agreement with Lilia Construction LLC to grade and level the property and pour the foundation, driveway and sidewalks for payment of \$47,741.12.

Professional and Vocational Licensing records show Lilia Construction LLC did not hold a valid, active contractors license at the time of the subcontractor agreement. However, Lilia Eviota, the member/manager of Lilia Construction LLC, did hold an active sole proprietor contractors license at the time of contracting (CT 30877).

On or about November 11, 2020, Respondent Atlas entered into a subcontractor agreement with CJ's Tile and Marble to install tile and grout at the Project for payment of \$7,643.10.

Professional and Vocational Licensing records show Charles E. Williams II dba CJ's Tile and Marble previously held a contractors license (CT 29354), but the license expired and was forfeited effective November 30, 2016.

RICO alleges Respondent Atlas subcontracted with unlicensed entities and/or persons to perform work on the Project that requires a license.

RICO alleges Respondent Atlas failed to list the subcontractors and their license information in the initial contract for the Project.

If proven at an administrative hearing, the allegations would constitute violations of the following laws and rules:

- HRS § 444-17(17) (entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter);
- HAR § 16-77-80(a)(5) (written contract shall include the approximate percentage of work to be subcontracted and the names and license numbers of all subcontractors); and
- HAR § 16-77-71, 16-77-75 (RME responsible for acts and omissions of contracting entity)

Respondents shall jointly and severally pay an administrative fine \$4,000.00.

- b. In the Matter of the Contractors' Licenses of James M. Murray, and JM Finish Carpentry LLC, doing business as Ohana Construction; CLB 2022-45-L.

RICO alleges that on or about April 7, 2021, Complainant signed a written contract to have James M. Murray, and JM Finish Carpentry LLC, doing business as Ohana Construction ("Respondents") replace a roof and do some plumbing work at a residence in Hawaii in exchange for \$11,577.32. Complainant paid Respondents \$5,788.66.

The contract did not include the following disclosures: lien and bond rights, Contractor's Right to Repair Act, the project's start and end dates, the scope of the work, the license numbers and classifications of the contractors, and the list of subcontractors.

If proven at an administrative hearing the allegations would constitute violations of the following laws and rules:

- HRS § 444-25.5(b) (failure to include Contractor's Right to Repair Act);
- HAR § 16-77-80(a)(1) (failure to include the license numbers and classifications of the contractors in the contract);
- HAR § 16-77-80(a)(3) (failure to include the date work is to commence and the number of days for completion in the contract);
- HAR § 16-77-80(a)(4) (failure to include the scope of the work to be performed in the contract); and
- HAR § 16-77-80(a)(5) (failure to include the approximate percentage of work to be subcontracted and the names and license numbers of all subcontractors in the contract)

Respondents agree to pay a fine, jointly and severally, in the amount of \$2,500.00.

- c. In the Matter of the Contractors' License of Northwest Exteriors Inc., doing business as Windows Hawaii a Division of Northwest Exteriors; Thomas M. Orr, RME; CLB 2022-441-L

RICO alleges that Northwest Exteriors, Inc., doing business as Windows Hawaii a Division of Northwest Exteriors and Thomas M. Orr's ("Respondents") homeowner contracts did not include all required homeowner disclosures. Thomas M. Orr ("Respondent Orr") did not sign or initial all of Respondents' contracts, and Respondent Orr was not in residence in the State of Hawaii during Respondents' contractor activity.

If proven at an administrative hearing the allegations would constitute violations of the following laws and rules:

- HRS § 444-25.5(b) (required disclosures in homeowner contracts);
- HAR § 16-77-71(a)(2) (RME shall sign or initial all contracts);
- HAR § 16-77-71(a)(4) (RME shall be in residence in Hawaii during the period a project is under construction); and
- HAR § 16-77-80 (required disclosures in homeowner contracts)

Respondents agree to pay a fine in the amount of \$8,000.00.

After discussion, it was moved by Mr. Polischek, seconded by Mr. Alejado, and

unanimously carried to approve the Settle Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order in the above cases.

Following the Board's review, deliberation, and decisions in these matters, pursuant to HRS chapter 91, Chairperson Arita announced that the Board was reconvening to its open meeting at 9:14 a.m.

Executive
Session:

At 9:15 a.m., it was moved by Mr. Polischek, seconded by Mr. Alejado and unanimously carried to enter into executive session pursuant to HRS §92-5(a)(1), to consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in HRS §26-9, and to consult with Christopher Leong, Deputy Attorney General, on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities pursuant to HRS section 92-5(a)(4).

At 2:06 p.m. was moved by Mr. Polischek, seconded by Mr. Alejado, and unanimously carried to move out of executive session and to reconvene to the Board's regular order of business.

Appearances
Before the
Board:

- a. John Aguon-Kona, RME
Martin Steel Constructors Inc.
C-41 Reinforcing steel

Mr. Aguon-Kona was not present. It was moved by Mr. Higashihara, seconded by Mr. Polischek, and unanimously carried to defer Mr. Aguon-Kona's appearance to a subsequent meeting.

- b. Tyler Apple, RME
Alberici Constructors Inc.
"A" General engineering

Mr. Apple was not present. It was moved by Mr. Higashihara, seconded by Mr. Polischek and unanimously carried to deny Alberici Constructors Inc. and Mr. Apple's applications for licensure in the "A" General building classification in accordance with HAR section 16-77-11(a)(4) and HRS sections 444-12(a) and 436B-10(a)(9) for failing to provide the additional information requested by the Board.

- c. Michael W. D. Fonseca, RME
Dawson Enterprises LLC
"B" General building

Mr. Fonseca withdrew the applications for Dawson Enterprises LLC and Michael W. D. Fonseca, RME.

- d. Michael W. D. Fonseca, RME
Dawson Technical Inc.
"B" General building

Mr. Fonseca withdrew the applications for Dawson Technical Inc. and Michael W. D. Fonseca, RME.

- e. Andreas L. Gaeta, RME
Gaeta Construction & Consulting LLC
“B” General building

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to approve Gaeta Construction & Consulting LLC and Mr. Gaeta’s applications for licensure in the “B” General building classification.

- f. Shane E. K. Teves, RME
Kore Construction LLC
“B” General building

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to defer Kore Construction and Mr. Teves’s application for licensure in the “B” General building classification pending the submittal of (1) a revised project list, verifying forty-eight months of his on-site supervision and direction of his own employees constructing buildings from the “ground-up”, which includes: (a) the trades performed in-house with his own employees and the trades that were subcontracted to other licensed contractors; and (b) amended “Amount of Supervisory Experience” as it should only include the actual amount of time spent on-site supervising his own employees performing work in the broad scope of the “B” General building classification. Do not include time spent supervising work that is not within the scope of the “B” General building classification and supervising subcontractors; and (2) a signed and notarized Experience Certificate from the RME of Coastal Construction Co, Inc.

- g. Christopher B. Metzler (Individual)
“A” General engineering
“B” General engineering

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to defer Mr. Metzler’s applications for licensure in the: (1) “A” General engineering classification pending the submittal of a revised project list verifying forty-eight months of his on-site supervision and direction of his own employees performing projects in the broad scope of the “A” General engineering classification (e.g. roadways, bridges, water lines, bringing utilities into a building) which includes: (a) the trades performed in-house with his own employees and the trades that were subcontracted to other licensed contractors; (b) a more detailed description of the “A” General engineering projects and the work he supervised; and (c) an amended “Amount of Supervisory Experience” as it should be commensurate with the number of workers (employees) that he supervised, the “Detailed Description of the Work You Supervised”, and the “Contract Amount”; and (2) “B” General building classification pending the submittal of: (a) a revised project list, verifying forty-eight months of his on-site supervision and direction of his own employees constructing buildings from the “ground-up”, which includes: (i) the trades performed inhouse with his own employees and the trades that were subcontracted to other licensed contractors; (ii) additional projects that he supervised more than ten years ago; (iii) a more detailed

description of the work performed by his employees under his supervision for each project; (iv) an amended "Amount of Supervisory Experience" as it should only include the actual amount of time spent on-site supervising his own employees performing work in the broad scope of the "B" General building classification. Do not include time spent for design, ordering materials, scheduling, or downtime for rainouts or waiting for delivery of materials, supervising work outside the scope of the "B" General building classification or supervising subcontractors; and (b) signed and notarized Experience Certificates from Logan Fellhauer and Randy Potochney that describe his on-site supervision and direction of his employees in their own words.

- h. Lukas Peterson, RME
Longhouse Development LLC
"B" General building

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to approve Longhouse Development LLC and Mr. Peterson's applications for licensure in the "B" General building classification.

- i. Mynor G. Velasquez Rodriguez, RME
Power Fusion Inc.
C-13 Electrical

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to deny Power Fusion Inc. and Mr. Velasquez Rodriguez's applications for licensure in the C-13 Electrical classification in accordance with HAR section 16-77-11(a)(4), and HRS sections 444-12(a) and 436B-10(a)(9) for failing to provide the additional information requested by the Board; and HRS section 444-11(a)(2), and HAR sections 16-77-11(a)(2) and 16-77-18(a) for lack of experience.

- j. Kenton Thomas Amshoff, RME
Sustainabuild Hawaii LLC
"B" General building

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to defer Sustainabuild Hawaii LLC and Mr. Amshoff's applications for licensure in the "B" General building classification pending the submittal of: (1) a revised project list, verifying forty-eight months of his on-site supervision and direction of his own employees constructing buildings from the "ground-up", which includes: (a) the trades performed in-house with his own employees and the trades that were subcontracted to other licensed contractors; (b) additional projects supervising his employees constructing new stand-alone structures; (2) a copy of his Building Construction Management diploma; and (3) a signed and notarized Experience Certificate from his superintendent at DPR Construction.

Committee
Reports:

- 2. Applications Committee Report
Lei Ana Green, Executive Officer
 - a. Ekahi Tile & Stone LLC

Juan L. Berdon, RME
C-51 Tile contractor

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to approve Ekahi Tile & Stone LLC and Juan L. Berdon's applications for licensure in the C-51 Tile classification.

- b. Siemens Energy Inc.
Matthew L. Byers, RME
"A" General engineering

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to approve Siemens Energy Inc. and Matthew L. Byer's applications for licensure in the "A" General building classification.

- c. Tyler M. Dillon, RME
Layton Construction Company, LLC
"B" General building

Clint Hamada, Esquire, Damon Key Leong Kupchak Hastert, appeared before the Board on behalf of Mr. Dillon.

After discussion, it was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to amend the basis for the Board's denial of Mr. Dillon's application for licensure in the "B" General building classification stated in its October 1, 2021 letter to the following:

- pursuant to HRS sections 436B-10(a)(9) and 444-12(a), the applicant's failure to furnish any additional information bearing upon the issuance of the license as the Board shall require; and
- pursuant to HAR section 16-77-11(a)(4), the applicant's failure to provide satisfactory proof that he met the requirements provided in HRS chapter 444 or HAR chapter 16-77 other than those stated in HAR section 16-77-11(a)(1)-(3).

3. Conditional License Report
Candace Ito, Executive Officer

- a. Kings Island Contracting LLC
Jason A. Lehmkuhl, RME
"B" General building

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to approve Kings Island Contracting LLC and Jason A. Lehmkuhl's applications for licensure in the "B" General building classification subject to semi-annual reports on financial matters.

- b. United Contractors LLC
Viliami F. Namoa, RME
"B" General building

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to approve United Contractors LLC and Viliami F.

Namoa' s applications for licensure in the "B" General building classification subject to semi-annual reports on financial matters.

4. Applications Committee

Applications Committee Recommendations

- a. Request for Change in Business Status
- b. Request for Waiver of Bond Requirement
- c. Applications for Licensure

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried, to approve, defer, deny, or withdraw the license applications as indicated on the Applications Committee Attachment in the following categories as attached to the meeting minutes.

5. Owner-Builder Exemption Applications

- a. Daniel and Lisa Scroggins
- b. Ken Church and Joan Hidal

It was moved by Mr. Higashihara, seconded by Mr. Polischeck, and unanimously carried to approve a., and defer b. pending the submittal of requested documents, of the above owner-builder exemption applications.

6. Examination Committee

Neal Arita, Chairperson

- a. Contractors Examination Summaries

The Contractors Examination Summary for January and February 2023 were distributed to the Board for their information.

2023 Legislation:

Relating to Procurement

- a. H.B. 542, H.D. 2

Allows bidders to clarify or correct immaterial or technical information required as part of a bid submission for up to twenty-four hours after the bid submission deadline. Requires that bids for construction be opened no sooner than twenty-four hours after the deadline for the submission of bids. Defines "immaterial or technical information". Repeals 6/30/2026.

H.B. 542, H.D. 2 crossed over to the Senate and the Committee on Government Operations ("GVO") held a hearing on March 14, 2023. The Board submitted testimony in opposition.

GVO voted to defer this measure indefinitely.

Resolutions

- b. S.R. 213 / S.C.R. 146 H.R. 54 / H.C.R. 52

Requesting the Department of Commerce and Consumer Affairs and the Contractors License Board to Ensure that the Contractors License Board Includes At least Two Members with Expertise in Specialty Structural Contracting.

Messrs. Hayashi and O'Donnell recused themselves.

Executive Officer Ito stated that the Board has opposed similar bills in the past for the following reasons:

1. Given that the contractor rules set forth over 90 different sub-specialty classifications, the Board believes that disproportionate board representation in any one subspecialty is problematic.
2. The Board believes that it does have the expertise to evaluate the experience of applicants in the following classifications and has been licensing contractors in the C-6 Carpentry framing, C-31 Masonry, C-32 Ornamental, guardrail, and fencing, C-35 Pile driving, pile and caisson drilling, and foundation, C-38 Post tensioning, C-41 Reinforcing steel, C-48 Structural steel, and C-56 Welding classifications for decades.
3. The Board is not aware of any incidents of structural failures or structural contracting issues.
4. It is unnecessary to have at least two specialty contractor members licensed in at least one of the eight classifications in the 4th whereas paragraph because the complement of general contractor and specialty contractor members on the Board provide a broad range of contracting expertise and experience to address structural contracting issues that may arise.

Chairperson Arita asked the Board if they would be comfortable if anyone else asked to have two members in another specialty classification added to the Board composition given that the objective is to have diverse representation on the Board. He stated that he understands what the iron workers want to accomplish; however, the Board's responsibility is to protect the public. Chairperson Arita stated that his position is to oppose this resolution because he believes that diversity is important and there should not be more representation for certain classifications on the Board.

Mr. Polischek stated that in his years of serving on the Board there has always been a good amount of diversity on the Board. He felt that if certain classifications get more representation on the Board, the Board will be unbalanced and opposes these resolutions. Mr. Hayashi stated that historically the Board testifies in opposition to this kind of resolution. It was moved by Mr. Higashihara, seconded by Chairperson Arita, to oppose S.R. 213, S.C.R. 146, H.R. 54, and H.C.R. 52 for the reasons stated above. With Messrs. Hayashi and O'Donnell recusing themselves and five votes in favor, the motion was not carried.

Fund: Recovery Fund Report:
Zale T. Okazaki

None.

Next Meeting: Friday, April 21, 2023

Adjournment: There being no further business to discuss, the meeting was adjourned at 2:32 p.m.

Reviewed and approved by:

Taken and recorded by:

/s/ Candace Ito
Candace Ito
Executive Officer

/s/ Lausei Taua
Secretary

4/19/23

Minutes approved as is.

Minutes approved with changes. See minutes of .