



STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

OFFICE OF COMMISSIONER

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050336

Richard Vynalek, S.S.S.I.
Blue Hill Road
Durham, Connecticut 06427

Dear Mr. Vynalek: Lic # 000368

Having familiarized myself with the record, inter alia, all the evidence presented and the transcript of the proceeding, I hereby adopt the attached recommendation for decision from Attorney Harry H. Hefferman, Jr., as the Final Decision of the Department of Health Services.

17 April 1975

Date

Douglas S. Lloyd, M.D.

Douglas S. Lloyd, M.D., M.P.H.
Commissioner, State Dept. of
Health Services

attachment

cc: Attorney Christine B. Spak,
Chief, Hearings Office
Attorney Harry H. Hefferman, Jr.

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DSL/aj
0470P

No. 83-08-19-33-004

IN THE MATTER OF

RICHARD VYNALEK

Lic^A 000368

: STATE OF CONNECTICUT

: DEPARTMENT OF HEALTH SERVICES

December 14, 1984

RECOMMENDATION FOR DECISION

Pursuant to the statutes and regulations made and provided and pursuant to a Notice of Hearing dated November 21, 1984 a hearing was held on the 14th day of December at 9:00 a.m. (1984) at 150 Washington Street, Hartford, Connecticut. This was held pursuant to the Uniform Administrative Procedures Act and in particular Sections 4-177 and 4-178 thereof. The charges were brought pursuant to the provisions of Sections 19a-9, 19a-14, 19a-17 and 20-34(1)(f) in addition the charges claimed a violation of Section 19-13-B-103e of the Public Health Code of the State of Connecticut.

Two charges were brought against the respondent, Richard Vynalek (hereinafter called the respondent), the first relating to the alleged installation of a septic tank on property of Bengston on Brown Street, Middletown, Connecticut in approximately June of 1983 and the second being an alleged alteration or repair on property of the next-door neighbor, Porter on Brown Street at sometime prior thereto.

Present were a representative of the State Department of Health and a representative of the Department of Health of the

Town of Middletown both of whom testified along with the respondent who also testified. Various exhibits were submitted by the parties without objection in any case. — — —

FACTS

The respondent is an experienced installer of septic tanks and systems and fields and has worked in the Durham and Middletown area for many years. In 1983 he was called upon by the Porters to resolve their problem involving a toilet that would not flush. The respondent came and removed the effluent from the septic tank and used a snake to clean the pipe running from the house to the septic tank after which the system began to work properly. There was no claim that this work violated the regulations or state statutes in the sense of requiring a permit and indeed there was no violation. The question in the Porter case comes from a call-back by Mr. Porter who indicated that his toilet was not working again. Respondent correctly surmised that the problem might be in the pipe leading from the house to the tank. He excavated and found that the pipe was intact but he suspected that it had bent causing a settling condition from solids in the water, in effect creating a miniature septic tank in the pipe. He relaid the pipe and subsequently there was no further trouble. Although he billed for a piece of pipe on the billing, he said that actually that that was, "...how I have to bill", evidently to justify his prices and that actually he had not put a pipe in and that the lady of the house knew that. Neither

Mr. nor Mrs. Porter were subpoenaed by either side to testify.

The second case in time, and the one that was more important involved an emergency call by Mr. Bengston on a Friday indicating that his system didn't work and that he had a hole in his back yard. Respondent came to the property on Saturday morning and discovered that the septic tank had caved in. Bengston indicated that he had an extreme emergency in that a bridal shower was planned for the property for the following day. There was no system in Middletown at that time for emergency contact to a sanitarian for permission to proceed so respondent proceeded and replaced the tank.

In neither case did the respondent go for a permit. In the Porter case he felt that there was no need to get a permit and this does not seem to have been seriously pressed by the City at any time, which seemed to be more concerned about the failure to apply for a permit for the Bengston job. Respondent indicated that at the time he did the job he told the property owner that the property owner should get a permit which was required. State's Exhibit G was a letter from respondent to Ms Woodka, of the Department of Health, which stated that as of September 14th, some three months later that, "I recently talk (sic) to Mr. Bengston and he said he would go to the city hall and take out a permit if that is what they want" which is some suggestion that that is the first time that Mr. Vynalek entertained the concept of getting a permit for that emergency job although he testified that he said otherwise to Mr.

Bengston at the time of the incident. Neither Mr. nor Mrs. Bengston were subpoenaed by either side.

On December 6, 1984, less than 10 days before the hearing, respondent wrote to the City of Middletown Department of Health and indicated that he would henceforth obtain permits for his office for any job and stated that they would have the hearing ended as resolved and Mr. Wamester, Environmental Sanitarian for Middletown, so testified at the hearing. However, it is the State's position that it is the State's obligation and responsibility to prosecute or not to prosecute the claim despite the wishes of the original complainant which, by analogy to criminal practice, would appear to be true.

CONCLUSION

1. It is concluded that no penalty be assessed on the second count, the Porter case. This was basically a cleaning job which no one thought came within the permit purview and the ultimate work done by respondent to clean out the pipe the second time, even including the lifting and replacing of it, if an alteration or repair, was only so in the most technical sense and the issue should be found for the respondent on the second count.

2. With regard to the first count, the Hearing Officer agrees with the position of the State Department of Health that under the circumstances it was respondent's responsibility to get a permit as he is the professional in the case and is the one who is subject to the regulations and statutes of the State of

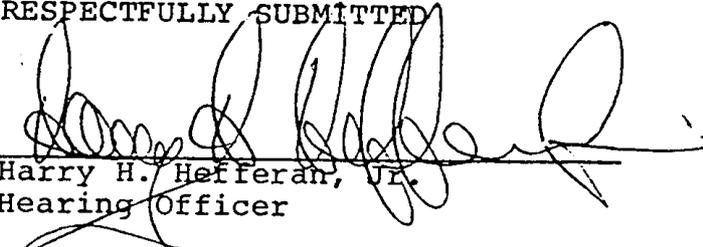
Connecticut and he simply cannot pass off his responsibilities to the homeowner by telling him to go and get the permit. Perhaps it sometimes occurs that way but it is the installers responsibility to see to it that the permit is obtained whether it be by the homeowner or the installer. Even after hearing from the Town of Middletown and the State of Connecticut respondent took no action to resolve this problem. He did communicate with Ms Woodka on September 14, 1983 (Exhibit G) but he never did take any action with the Town of Middletown for whatever reason. It should be found that the respondent is culpable in the matter of the first or Bengston case.

RECOMMENDATION FOR DISPOSITION

It is recommended that the issues be found for the respondent in the second count. It is recommended that the respondent be reprimanded for failing to see to it that a permit was obtained in the first count. It is further recommended that he be charged with a civil penalty of \$100.00.

It should be noted in the record that there was no criticism of the quality of the respondent's work in either case.

RESPECTFULLY SUBMITTED



Harry H. Hefferan, Jr.
Hearing Officer