



STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

OFFICE OF COMMISSIONER

NOTE
This case was
not put on
briefly at ~~the~~
statute in
1985

Robert Milefski, S.S.I.
c/o Rothstein & Einhorn
Attorneys at Law
121 Broadway
Norwich, Connecticut 06360

Dear Mr. Milefski:

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 Laurence P. Rubinow as the Final Decision of the Department of Health Services, with the following exception:

page 3, para. 4.: "Conn. Gen. Stat. Section 23-41f(d)(2) should be corrected to read "Conn. Gen. Stat. Section 20-341f(d)(2)."

17 April 1985
Date

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

cc: Attorney Christine B. Spak,
Chief, Hearings Office
Attorney Laurence P. Rubinow

DSL/aj
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STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES
DIVISION OF MEDICAL QUALITY ASSURANCE
BEFORE HEARING OFFICER LAURENCE P. RUBINOW

In the Matter of Robert Milefski
Subsurface Sewage Installation License No. 002270

February 11, 1985

On November 21, 1984, a hearing was held before Laurence P. Rubinow, Hearing Officer, on the Statement of Charges brought by the Connecticut Department of Health Services ("Petitioner") against Robert Milefski ("Respondent"), a person licensed to install subsurface sewage disposal systems.

PROPOSED FINDINGS OF FACT

This Hearing Officer makes the following proposed findings of fact:

1. By notice dated September 28, 1984, the Respondent was duly served with a notice of a hearing to be held on November 8, 1984, at 9:00 a.m. at 150 Washington Street, Hartford, Connecticut. The hearing was continued to November 21, 1984, at 9:00 a.m. with the consent of Respondent.
2. By document dated September 28, 1984, the Respondent was duly served with a Statement of Charges brought by the Petitioner against the Respondent.
3. The Respondent appeared at the hearing on November 21, 1984, at 9:00 a.m. and was represented by counsel.

4. At all pertinent times herein, the Respondent was a licensed installer of subsurface sewage systems, license No. 002270, with an address at 1795 Norwich-New London Turnpike, Uncasville (Montville), Connecticut 06382.
5. In 1978, the Respondent installed a leaching system on property owned by Michael Diodato, 24 Occum Lane, Uncasville, Connecticut.
6. At numerous times subsequent to the installation of the leaching system, Michael Diodato experienced problems with the system, including the failure of the system.
7. The releasing holes in the distribution pipes in the leaching system installed by the Respondent were facing to the side or upward.
8. Because the releasing holes in the distribution pipes were not facing downward, the pipes became full of dirt and sludge.
9. The dirt and sludge backed up into the distribution box and caused the system to fail.
10. The leaching system installed by the Respondent on the property of Michael Diodato was not installed in accordance with established practices.
11. One of the charges against the Respondent is that the leaching system installed by the Respondent on the property owned by Michael Diodato was not inspected by the Town Sanitarian of the Town of Montville during the installation period. This charge was not supported by the evidence introduced at the hearing, and this charge is not found proved.

PROPOSED CONCLUSIONS OF LAW

1. Pursuant to Conn. Gen. Stat. Section 19a-14(c), the Department of Health Services has all powers and duties normally vested with a board in administering regulatory jurisdiction over a subsurface sewage system installer.

2. The Respondent was given reasonable notice of the hearing, and the notice complied with the requirements of Conn. Gen. Stat. Section 4-177.

3. The hearing was conducted pursuant to Conn. Gen. Stat. Section 4-177 and in accordance with the legally adopted Regulations of the Department of Health Services.

4. In 1978, the Respondent violated the provisions of Conn. Gen. Stat. Section 23-41f(d)(2) in that he engaged in negligent conduct in the installation of a subsurface sewage disposal system on property owned by Michael Diodato.

5. The charges brought against the Respondent and the hearing held pursuant to Conn. Gen. Stat. Section 4-177 on said charges are not "actions" within the purview of Conn. Gen. Stat. Section 52-576 or Conn. Gen. Stat. Section 52-584, and those statutes are not applicable.

6. The Hearing Officer did not consider an affidavit designated Exhibit A attached to the Respondent's brief dated December 14, 1984, because that Exhibit was not introduced at the hearing and the Department of Health Services did not have an opportunity to cross-examine the affiant on any information contained in said Exhibit A. Connecticut Natural Gas Corp. v. PUCA, 183 Conn. 128, 140, 439 A.2d 282 (1981); Lindy v. Welfare Commissioner, 32 Conn. Sup. 606, 608 (1975).

7. Good cause exists for the Petitioner to take disciplinary action against the Respondent pursuant to the provisions of Conn. Gen. Stat. Section 19a-17.

PROPOSED RECOMMENDED DECISION

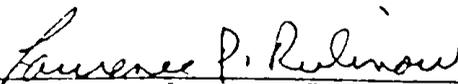
The Hearing Officer finds that the Respondent, in his capacity as a subsurface sewage disposal system installer, engaged in negligent conduct in the installation of distribution pipes in a subsurface sewage disposal system, causing said system to fail, in violation of Conn. Gen. Stat. Section 20-341f(d)(2).

The Hearing Officer further finds that the Respondent in his capacity as a subsurface sewage disposal system installer did not engage in conduct in violation of Section 19-13-B103e of the Public Health Code of the State of Connecticut.

PROPOSED ORDER

Pursuant to Conn. Gen. Stat. Section 19a-17(a)(4), the Hearing Officer recommends that an order enter issuing a letter of reprimand to the Respondent.

Respectfully Submitted,



Laurence P. Rubinow
Administrative Hearing Officer