



STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

OFFICE OF COMMISSIONER

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David Pavis, Section Chief
Public Health Hearing Office

IN RE:

STATE DEPARTMENT OF
HEALTH SERVICES

NO. 871026-33-008

U.

ARNE I. NIELSON

FEBRUARY 28, 1990

Handwritten: Lic # 002747

MEMORANDUM OF DECISION

I hereby adopt the recommended decision of the hearing officer in this matter (see attached) with the exception that the first full paragraph at the top of page 4 of the proposed memorandum of decision is amended to read as follows:

C.G.S. Section 20-341f(d) authorizes the Department to take action under Section 19a-17. That section provides for a maximum civil penalty of up to one thousand dollars.

Handwritten signature of Dennis F. Kerrigan

Dennis F. Kerrigan
Deputy Commissioner
Department of Health Services

IN RE:

STATE DEPARTMENT OF
HEALTH SERVICES

NO. 871026-33-008

v.

ARNE I. NIELSON

DECEMBER 19, 1989

Lic # 002747

MEMORANDUM OF RECOMMENDED DECISION

The undersigned was designated by the Commissioner on May 11, 1989 to serve as hearing officer in the above-captioned matter and to recommend findings of fact, conclusions of law, and a proposed Order upon the conclusion of the hearing.

On August 15, 1989 the Department issued a Notice of Hearing and Statement of Charges, expressed in Two Counts, to the Respondent, and assigned October 19, 1989 as the date for the hearing on same. Respondent received the Notice and Statement of Charges (See Dept. Exh. #1).

The Respondent did not file any written responses to the charges, but did appear on October 19, 1989 and participated in the hearing. Mr. Nielson chose not to be represented by counsel.

The findings of fact, conclusions of law, and recommended decision herein contained are based on the evidence presented at the hearing, and on the exhibits and other documentary evidence presented (Departments Exhibits 1-8).

The Statement of Charges are expressed in Two Counts, dealing respectively with Lot 6 (First Count) and Lot 7 (Second Count) of Pine Mountain Circle Development in Barkhamsted, Connecticut. Each Count alleges three violations by the Respondent: (1) Engaging in work as a subsurface sewage disposal system installer while his license was expired;

(2) failure to maintain the 15 foot embankment surrounding the leaching area; and (3) a failure to cover the leaching system with at least six (6) inches of soil. The latter two requirements are embodied in the Technical Standards For The Design And Construction Of Subsurface Sewage Disposal Systems which are incorporated by reference in State Req. §19-13-B103D and are mandated therein (Tr. p.8).

As to the first allegation, the record shows, and the Respondent admitted (Tr. 61-62) that he did not have a license from the period June 1986 through July 1987, the relevant period herein. This License had been first issued in May 1981 (Dept. Ex #6).

With regard to the second allegation, the Department withdrew this charge as it applied to Lot No. 7 in the Second Count. (Tr. p. 70). However, Respondent admitted (Tr. p. 65) that he had not installed the required 15 foot embankment on Lot No. 6 as alleged in the First Count. The Respondents' explanation of this failure is based on the claimed refusal of the homeowner to sufficiently clear his property for him to complete the embankment. According to the Respondent, the homeowner was short of cash and agreed to do some of the required clearing work himself in order to keep the cost of the job down (See Tr. ppg. 65-68). As a consequence the Respondent bid the project on that basis, and when the homeowner refusal to perform on his end the Respondent would not have been paid for completing the job himself.

With respect to the third allegation, namely that the Respondent failed to cover the leaching systems on both Lots 6 and 7 with a minimum of 6 inches of top soil, as required by the standards, the evidence,

including the testimony of the Respondent (Tr. pg. 71), was that an inadequate amount was initially provided on Lot 7. The Respondent asserts that he immediately rectified his error upon hearing of a complaint.

According to the testimony, it appears that a sufficient amount of top cover, albeit barely so, was initially installed on Lot 6, and that some of that was inadvertently scraped off on a later occasion (Tr. pg. 69).

Throughout the hearing the Respondent replied to the allegations in a direct manner. The record would appear to support the States' own conclusion (Tr. p. 84) that the Respondent did not intentionally proceed with these projects with a desire not to meet the standards of the Code. However, the record also shows that in a number of instances the Respondent was very casual about his obligations, such as in renewing his license and in effectively delegating some of his responsibilities to the homeowner (Lot 6). He appeared to be willing, for among other things, cost considerations, to operate very close to the minimum requirements established under the Code.

It is therefore my finding that the State has established the allegations made in Paragraph 3a and 3b of the First Count, and Paragraphs 3a and 3c of the Second Count. As noted previously, the State withdrew at the hearing the allegation contained in Paragraph 3b of the Second Count, and I find that insufficient evidence exists to sustain the allegation contained in Paragraph 3c of the First Count.

The State did not ask at the hearing for the revocation or suspension of the Respondents' license, and the record would not appear in any event

to support such an action.

Under C.G.S. §20-341(L), a licensee may be fined not more than \$100.00 for each violation.

RECOMMENDATION

It is my recommendation that the Commissioner find the the Respondent committed four separate violations of Chapter 393a of the Connecticut General Statutes as enunciated in Paragraphs 3a and 3b of the States First Count, and Paragraphs 3a and 3c of the Second Count, and that the Respondent be fined FIFTY (\$50.00) DOLLARS for each violation, or a total of TWO HUNDRED (\$200.00) DOLLARS, and that the commissioner further censure and reprimand the Respondent for his conduct as described hereinabove.

Respectfully submitted,


Gordon T. Allen
Hearing Officer