

NO Appeal

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STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH AND ADDICTION SERVICES

In Re: Department of Public Health and Addiction Services
vs.
John P. Moore, S.S.I.
Petition No. 940110-33-002

To: Attorney Dale King
P.O. Box 898
Stonington, CT 06378

FINAL MEMORANDUM OF DECISION

In accordance with Connecticut General Statutes Section 4-179, the attached proposed Memorandum of Decision dated April 18, 1995 by hearing officer Daniel Shapiro is hereby adopted as the final decision of the Commissioner of the Department of Public Health and Addiction Services in this matter. A copy of the proposed final decision is attached hereto and incorporated herein. Accordingly, Respondent is ordered to pay a civil penalty in the amount of one hundred dollars (\$100.00) within two weeks of the date of this decision in the manner set forth in the proposed final decision.

5/10/95
Date

Yvette Melendez Thiesfield
Yvette Melendez Thiesfield
Acting Commissioner
Department of Public Health and
Addiction Services

cc: John P. Moore, S.S.I. - Certified mail no. Z 025 243 612
Richard J. Lynch, Assistant Attorney General
David J. Pavis, Staff Attorney
Stephen A. Harriman, Bureau Chief
Stanley K. Peck, Director, MQA
Donna Buntaine Brewer, Chief, PHHO
Kathie Pirolo, Board Liaison
Bonnie Pinkerton, Nurse Consultant, PHHO

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH AND ADDICTION SERVICES
BUREAU OF HEALTH SYSTEM REGULATION
DIVISION OF MEDICAL QUALITY ASSURANCE

John P. Moore, S.S.I.
License No. 003570
215 Lambtown Road
Ledyard, CT 06339

Petition No. 940110-33-002

PROPOSED FINAL DECISION

PROCEDURAL BACKGROUND:

On December 20, 1994, the Commissioner of Public Health and Addiction Services appointed this Hearing Officer to hear this case, and to recommend findings of fact, conclusions of law, and a proposed order upon the conclusion of the hearing. (Hearing Officer Exhibit 1).

The Department of Public Health and Addiction Services ("Department") brought a Statement of Charges against John P. Moore, Subsurface Sewage Disposal System Installer ("Respondent") dated May 25, 1994. (Department Exhibit 1). The Statement of Charges alleged in one (1) count that the Respondent violated §20-341f(d) of the Connecticut General Statutes in the spring of 1988 by modifying, constructing and/or installing a subsurface sewage disposal system at 21 Green Avenue, Pawcatuck, Connecticut without first obtaining the proper permits. The Department further alleged that during the spring of 1988, respondent was not licensed as a subsurface sewage disposal system installer.

Prior to the initiation of the instant charges, the Department offered the Respondent the opportunity to attend a compliance conference scheduled on March 2, 1994 to demonstrate that no adverse finding against him should be found. (Department Exhibit 2). The Respondent attended the compliance conference with his attorney, Dale King.

The Department served the Notice of Hearing and Statement of Charges on the Respondent and Attorney Dale King by certified mail, return receipt requested. (Department Exhibit 1). On October 28, 1994, the Department received signed domestic return receipt cards from Respondent and Attorney King. (Department Exhibit 1). Respondent did not file an Answer to the Statement of Charges.

The only administrative hearing on this matter was held as scheduled on January 27, 1995, in accordance with Chapter 54 of the Connecticut General Statutes; and §19-2a-1, et seq., of the Regulations of Connecticut State Agencies. All transcript references will refer to the January 27, 1995 hearing date. The Respondent appeared at the hearing with Attorney King. Attorney David Pavis represented the Department. Both the Department and the Respondent presented evidence and conducted cross-examination of witnesses.

This Proposed Final Decision is based entirely on the record and sets forth this Hearing Officer's recommended findings of fact and conclusions of law, and proposed order.

ALLEGATIONS:

1. In paragraph 1 of the Statement of Charges, the Department alleged that John P. Moore is the holder of Connecticut subsurface sewage disposal system installer license number 003570.

2. In paragraph 2a of the Statement of Charges, the Department alleged that during the spring of 1988, Respondent modified, constructed and/or installed a subsurface sewage disposal system at 21 Green Avenue in Pawcatuck, Connecticut, without first obtaining the proper permits.

3. In paragraph 2b of the Statement of Charges, the Department alleged that during the spring of 1988, Respondent was not licensed as a subsurface sewage disposal system installer.

4. In paragraph 3 of the Statement of Charges, the Department alleged that the conduct described in paragraphs 2 and 3 above violates §20-341f(d) of the Connecticut General Statutes.

FINDINGS OF FACT:

5. Respondent is the holder of Connecticut subsurface sewage disposal system installer license number 003570.

6. Respondent was hired in the spring of 1988 by Joaquim DaSilva to assist in digging garage footings and in removing and installing a septic tank at the DaSilva's residence on Green Avenue in Pawcatuck, Connecticut. (Department Exhibits 4 and 5).

7. Neither Joaquim DaSilva nor Respondent obtained a permit for the removing and installing of a new septic tank at the DaSilva's residence. (Transcript p. 38). Respondent assumed that the permits had already been obtained by Mr. DaSilva. (Transcript p. 66).

8. On February 29, 1988, a building permit was granted by Stonington building official Thomas W. Watkins to Joaquim and Tammy DaSilva to construct an addition at their residence on Green Avenue. (Department Exhibit 5, p. 4). Said building permit is unrelated to the permit needed to install a new septic tank.

9. Respondent assisted in the installation of a new septic tank at 21 Green Avenue in Pawcatuck, Connecticut, in the spring of 1988. (Department Exhibit 4, p. 3; Transcript p. 65).

10. Respondent did not have a license as a subsurface sewage disposal system installer in the spring of 1988. (Transcript p. 67).

11. Respondent did obtain a subsurface sewage disposal system installer license in October of 1988. (Transcript p. 67).

DISCUSSION AND CONCLUSIONS OF LAW:

The Department did not sustain its burden with regard to paragraph 2a of the Statement of Charges. Although no permit was issued for the installation of a new septic tank at 21 Green Avenue, the Department failed to provide sufficient evidence that it was the responsibility of the subsurface sewage system installer to obtain the permit.

The regulations and technical standards for subsurface sewage disposal systems state in §19-13-B103e(c)(1), "No investigation, inspection or approval of a subsurface sewage disposal system shall be made, or permit issued without an application by the owner in accordance with the following requirements." (emphasis added). In addition, Respondent provided credible, persuasive evidence that he assumed that the permits had been obtained by the owner of the property, Joaquim DaSilva. Mr. DaSilva had obtained all other necessary permits.

Connecticut General Statutes §20-341f provides in relevant part, "No person shall engage in, practice or offer to perform the work of a subsurface sewage disposal system installer, as defined in section 20-341a, ... unless he has first obtained an apprentice's permit under subsection (b) of section 20-341d or a license under section 20-341e;"

The Department sustained its burden of proof with regard to paragraph 2b of the Statement of Charges. Respondent testified that he did not obtain a license as a subsurface sewage disposal system installer

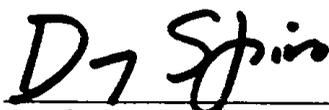
until October of 1988. (Transcript p. 67). The work performed by Respondent on Green Avenue was completed in the spring of 1988. Accordingly, the Respondent violated §20-341f.

Connecticut General Statute §20-341l provides in relevant part, "Any person who engages in or practices the work or occupation of subsurface sewage disposal system installer ... without having first obtained a license for such work ... shall be fined not more than one hundred dollars for each such violation."

PROPOSED ORDER:

Based on the record in this case, the above findings of fact and conclusions of law, Respondent is assessed a civil penalty of one hundred dollars (\$100.00). The Respondent must pay the one hundred dollar (\$100.00) penalty by certified check, made payable to Treasurer, State of Connecticut, sent to the Public Health Hearing Office, Department of Public Health and Addiction Services, 150 Washington Street, Hartford, CT 06106. The certified check shall include the Department petition number on its face for identification purposes.

Respectfully submitted,



Daniel Shapiro
Hearing Officer



Date