STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING SECTION

December 29, 2010

Attilio DiLoreto
301 Tolland Turnpike
Willington CT 06279

CMRRR# 91 7108 2133 3932 0601 6146
& First Class Mail

Matthew Antonetti, Principal Attorney
Legal Office - MS#12LEG
Department of Public Health
410 Capitol Avenue
P. O. Box 340308
Hartford CT 06134-0308

Via E-Mail: matthew.antonetti@ct.gov

RE: Attilio DiLoreto **Petition No. 2010-8**

Dear Mr. DiLoreto and Attorney Antonetti:

Enclosed please find a copy of the Final Memoranda of Decision rendered by Hearing Officer Alfreda Gaither in the above-referenced case.

Respectfully,

Janice E. Wojick, Hearings Liaison
Public Health Hearing Section, MS#13PHO
Tel. (860) 509-7648 FAX (860) 509-7553

c: J. Robert Galvin, M.D., M.P.H., M.B.A., Commissioner
Michael J. Purcaro, Chief of Administration
Lynn Rioux, Paralegal Specialist, Office of the Attorney General
Ellen Blaschinski, Branch Chief, Regulatory Services Branch
Suzanne Blancaflor, Section Chief, Environmental Health
Linda Fazzina, Staff Attorney, Legal Office

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING SECTION

Attilio DiLoreto
License No. 005825

Petition No. 2010-8
December 29, 2010

MEMORANDUM OF DECISION

Procedural Background

On September 28, 2010, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") against Attilio DiLoreto, subsurface sewage disposal system installer ("respondent") Rec. Exh.1. The Charges allege that respondent violated §20-341f(d) of the Connecticut General Statutes ("the Statutes"). Rec. Exh. 1.

Respondent's address of record on file with the Department is 301 Tolland Turnpike, Willington, CT, 06279. Rec. Exh. 3.

On September 27, 2010, the Department requested address information from the United States Postal Service (USPS"). On September 30, 2010, USPS, Willington, CT branch, responded to the Department's request for information, stating that mail is delivered to respondent at the address of record.

On October 13, 2010, the Department issued a Notice of Hearing ("the Notice") and the Charges by certified mail, return receipt requested, and by first class mail, in which the Commissioner appointed this Hearing Officer to hear this matter, to rule on all motions, and determine findings of fact and conclusions of law, and issue an Order. Rec. Exh. 2.

On November 5, 2010, the certified mail was returned as "unclaimed." The first class mail was not returned. Rec. Exh. 3.

Respondent did not file an Answer to the Charges. Rec. Exh. 3.

On November 16, 2010, an administrative hearing was held. Respondent failed to appear and was not represented by counsel. Attorney Linda Fazzina represented the Department.

On November 16, 2010, the Department moved to Deem the Allegations Admitted ("the Motion") pursuant to §19a-9-20 of the Regulations of Connecticut State Agencies ("the Regulations"). Tr. p. 7. On the record, the Motion was granted, upon sufficient proof of service on respondent. Rec. Exh. 3; Tr. p. 7.

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

Allegations

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut subsurface sewage disposal system installer license number 005825.

2. In paragraph 2 of the Charges, the Department alleges that in or about December 2009, respondent received and cashed a check, in the amount of $5,500.00, as the first installment for the repair of a subsurface sewage disposal system at 56 Cedar Swamp Road, Storrs, CT. Subsequently, respondent failed to repair the system and/or provide the property owner with a refund.

3. In paragraph 3 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to §20-341f(d) of the Statutes.

Findings of Fact

1. The Department provided respondent with reasonable and adequate written notice of the public hearing. Rec. Exhs. 2, 3; Tr. pp. 4-7.

2. Respondent did not attend the hearing, and he did not request a continuance. Tr. p. 2.

3. The allegations contained in paragraphs 1 through 3, inclusive, of the Charges, as set forth above, are deemed admitted and true.

Discussion and Conclusions of Law

In bringing this action, the Department seeks disciplinary action pursuant to §19a-17 of the Statutes, against respondent's license, based on allegations that respondent violated §20-341f(d) of the Statutes. The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S. Ct. 999, *reh'g denied,* 451 U.S. 933, 101 S.Ct. 2008, 68 L. Ed. 2d 318 (1981); *Goldstar Medical Services, Inc. v. Dept. of Social Services,* 288 Conn. 790, 820-82 (2008); *Swiller v. Commissioner of Public Health,* Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. 705601 (October 10, 1995, *Hodgson, J.*).

Since respondent did not file an Answer, the allegations were deemed admitted. §19a-9-20 of the Regulations.

Section 20-341f(d) of the Statutes provides that: "[t]he Department may take action under section 19a-17 for any of the following reasons: (1) the license holder . . .has engaged in fraud or material deception in the course of professional services or activities; . . ."

Section 19a-17(7) of the Statutes provides that: "...the Department . . . may take any of the following actions, . . . upon finding the existence of good cause: [i]n those cases involving persons . . . licensed . . . pursuant to section[s] 20-341d, . . . require that restitution be made to an injured property owner; . . ."

Since the allegations were deemed admitted and true, it was found that on August 15, 2009, respondent gave Ms. Samantha Abdullah ("the property owner"), a written estimate of $19,050.00 to repair a subsurface sewage disposal system at 56 Cedar Swamp Road, Storrs, Connecticut. On December 2, 2009, respondent informed the property owner that the Eastern Highlands Health District in Mansfield ("Local Health") had approved the repair plan and that the work could begin. On December 2, 2009, the property owner gave respondent a check for $5500.00 as the first installment. Respondent cashed the check on the same day. In January 2010, the property owner learned that despite respondent's representations to the contrary, he had not submitted a septic system repair plan to Local Health for its approval. Dept. Exh. 1, pp. 1, 4.

By January 13, 2010, the property owner had made numerous attempts to reach respondent by phone or email since no repair plan had been approved and respondent had not begun the repair as promised. The property owner requested a refund of her installment payment. He did not respond. Dept. Exh. 1, p. 5. On January 19, 2010, the property owner's attorney sent correspondence to respondent, demanding that the work be performed in conformance with respondent's contract with the property owner. Again, respondent did not respond. Dept. Exh. 1; p. 6. Even after the Department received the property owner's February 8, 2010 complaint and contacted respondent in writing and spoke with him on the telephone, he did not complete the work as promised or refund the property owner's money. On March 16, 2010, the Department notified respondent that it was formally investigating the property owner's complaint against him and requested that he provide the Department with certain information in response. Dept. Exh. 1, pp. 7-8. Respondent did not respond to the Department's request for information.

Based on respondent's material misrepresentations to the property owner and his failure to fulfill his contractual obligations, he has engaged in fraud or material deception in the course of his professional services or activities, in violation of §20-341f(d) of the Statutes. Therefore, respondent's conduct is sufficient grounds on which to impose disciplinary action on his license pursuant to §19a-17 of the Statutes and to require that restitution is made to the property owner in accordance with §19a-17(7) of the Statutes.

Order

Based on the record in this case, the above findings of fact and conclusions of law, the license no. 005825 issued to Attilio DiLoreto shall be revoked and restitution in the amount of $5500.00 be made to the property owner, Ms. Samantha Abdullah.

Alfreda Gaither

Alfreda Gaither, Esq.
Hearing Officer

12/29/2010
Date

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing final Memorandum of Decision was sent this 29th day of December 2010, certified mail return receipt requested and first class mail to:

Attilio DiLoreto, SSI
301 Tolland Turnpike
Willington CT 06279

and by E- Mail to:

matthew.antonetti@ct.gov
Matthew Antonetti, Principal Attorney
Legal Office, MS#12LEG
Department of Public Health
410 Capitol Avenue
P. O. Box 340308
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