STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Public Health Hearing Section

In re: Marvin Klash, *d/b/a* JOM Contracting Services **Petition No. 2011-23**

MEMORANDUM OF DECISION

Procedural History

On January 18, 2012, the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") against Marvin Klash *d/b/a* J&M Contracting Sales ("respondent") notifying him that the Department was seeking disciplinary action against his lead contractor license number 002241 ("the license") for failing to pay a civil penalty ordered in the June 21, 2011 Amended Memorandum of Decision for petition number 2009-2009340 ("the June 21, 2011 Decision"). Rec. Exh. 1.

On January 23, 2012, the Department issued a Notice of Hearing ("the Notice") scheduling a hearing for March 7, 2012. In the Notice, the Commissioner of the Department appointed the undersigned to rule on all motions, determine findings of fact and conclusions of law, and issue an order. Rec. Exhs. 2.

On March 7, 2012, an administrative hearing was held to adjudicate the Charges. The hearing was conducted in accordance with Chapter 54 of Statutes, and §§19a-9-1, *et seq.*, of the Regulations of Connecticut State Agencies ("the Regulations"). Respondent neither appeared at the hearing nor requested a continuance. Attorney Linda Fazzina represented the Department.

During the hearing, the Department made an oral Motion to Deem the Allegations Admitted for respondent's failure to file an answer. The Motion was granted.

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. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst.. v. S&H computer Systems, Inc.,* 605 F. Supp. 816 (M.D. Tenn. 1985).

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 lead contractor license number 002241.

2. In paragraph 2 of the Charges, the Department alleges that on June 21, 2011, the Department issued an Amended Memorandum of Decision that ordered respondent to pay a civil penalty.

3. In paragraph 3 of the Charges, the Department alleges that to date, respondent has not paid the civil penalty ordered in the June 21, 2011 Decision.

4. In paragraph 4 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §§19a-17 and 20-481 of the Connecticut General Statutes ("the Statutes").

Findings of Fact

1. The Department provided respondent reasonable and adequate written notice of the allegations contained in the Charges and the hearing scheduled for March 7, 2012. Rec. Exh. 1, 2; Dept. Exh. 1; Tr., pp. 3-5.

2. Respondent did not file an answer to the allegations contained in the Charges, nor did respondent appear for the hearing. Tr., pp. 2-7.

3. Pursuant to the undersigned's ruling on March 7, 2012, granting the Department's oral Motion to Deem the Allegations Admitted, the allegations are deemed admitted and true. Tr., p. 6.

4. On June 21, 2011, the Department issued an Amended Memorandum of Decision for petition number 2009-2009340 that ordered respondent to pay a civil penalty. Tr., p. 6.

5. As of March 7, 2011, respondent had not paid the civil penalty ordered in the June 21, 2011 Decision. Tr., pp. 6, 7.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence. *Goldstar Medical Services, Inc., et al. v. Department of Social Services,* 288 Conn. 790 (2008); *Swiller v. Comm'r. of Public Health,* CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, reh'g den., 451 U.S. 933 (1981); *Bender v. Clark,* 744 F. 2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.,* 627 F. 2d 240, 243 (D.C. Cir. 1980); all as cited in *Bridgeport Ambulance Service, Inc. v. Connecticut Dept. of Health Services,* No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989).

Pursuant to §§19a-14, 19a-17 and 19a-14a of the Statutes, the Department has the authority to discipline a lead contractor license. Furthermore, pursuant to §19a-17 of the Statutes, the Department may assess a lead contractor a civil penalty of up to $25,000 per

incident for violating any of the statutes and regulations governing asbestos abatement or licensure.

Section 20-481 of the Statutes provides, in pertinent part, that "the Department may take any action set forth in section 19a-17 against a person or entity issued a license or certificate pursuant to sections 20-474 to 20-482, inclusive, and subsections (e) and (f) of the section 19a-88 for reasons including, but not limited to. . . wrongful conduct in professional activities."

In accordance with Section 19a-9-20 of the Regulations, a hearing shall proceed, "at the time and place specified in the notice of hearing, notwithstanding any failure of the respondent to file an answer within the time provided. If no answer has been timely filed, the allegations shall be deemed admitted."

On June 21, 2011, respondent was ordered to pay a civil penalty pursuant to §§19a-17 and 20-481 of the Statutes. The Department alleged in the Charges that respondent failed to pay the civil penalty, as ordered by the June 21, 2011 Decision. Respondent failed to file an answer to the Charges or appear for the hearing. Therefore, the allegations were deemed admitted in accordance with §19a-9-20 of the Regulations. Thus, a preponderance of the evidence establishes that respondent failed to comply with the legal requirements of the June 21, 2011 Decision and failed to pay the civil penalty, which constitutes "wrongful conduct in professional activities" in violation of §20-418 of the Statutes.

Order

Based on the record in this case, the above Findings of Fact and Conclusions of Law, this Hearing Officer orders that:

1. Respondent's license number 002241 is hereby SUSPENDED until the civil penalty, as ordered in the June 21, 2011 Decision, is paid.
2. Respondent shall pay the civil penalty ordered in the June 21, 2011 Decision by certified or cashier's check payable to the "Treasurer, State of Connecticut." The check shall reference Petition Number 2009-2009342 on its face and shall be addressed and sent to:

Francesca Provenzano, Health Program Supervisor
State of Connecticut Department of Public Health
450 Capitol Avenue, MS #51LED
P.O. Box 34038
Hartford, Connecticut 06134-0308

3. Once the civil penalty is paid, as stated above, the suspension of license number 002241 will be immediately lifted.[1]
4. The Hearing Officer reserves the right to provide alternative disciplinary action pursuant to §20-481 of the Statutes should respondent fail to comply with this Order.
5. This Order is effective upon signature.

Stacy M Schulman, Esq., Hearing Officer

3/26/2012
Date

[1] If respondent has already paid the full amount of the civil penalty ordered in the June 21, 2011 Decision, then the imposition of suspension on respondent's license is moot.

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 26th day of March 2012 certified mail return receipt requested and first class mail:

Marvin Klash *d/b/a* JOM Contracting Sales
61 Scott Drive
Bloomfield CT 06002

and E-Mail to:

Matthew Antonetti, Principal Attorney
Legal Office, MS#12LEG
Department of Public Health
410 Capitol Avenue
P. O. Box 340308
Hartford CT 061343-0308

Janice E. Wojick, Hearings Liaison