

**BEFORE THE BOARD OF REGISTRATION
OF MONTGOMERY COUNTY, MARYLAND**

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
100 Maryland Avenue, Suite 200
Rockville, Maryland 20850
240 777-6660**

IN THE MATTER OF:

**JRK CONTRACTOR LLC t/a JRK BUILDERS
RESPONDENT**

Resident Agent Fernando Guedes, Sr.

**ORDER TO SHOW CAUSE WHY
BUILDING CONTRACTOR'S LICENSE
#BC 218983 SHOULD NOT BE REVOKED**

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OZAH Case No. CP 18-01
Order to Show Cause Regarding:
OCP Complaint # 16-OC-047597
OCP Complaint # 16-OC-048789
OCP Complaint # 17-OC-057291

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Before: Martin L. Grossman, Hearing Examiner
Director, Office of Zoning and Administrative Hearings

HEARING EXAMINER'S REPORT, RECOMMENDATION AND PROPOSED ORDER

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I. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The above-captioned case – *In the matter of JRK Contractor LLC t/a JRK Builders* – was initiated by the Office of Consumer Protection (hereinafter, “OCP”) on March 20, 2018, by a certification (Exhibit 1) to the Montgomery County Board of Registration (the “Board”). By this action, OCP sought to have the Board revoke Building Contractor’s License #BC 218983, conditionally held by JRK Contractor LLC (hereinafter, “JRK” or the “Respondent”), for alleged violations of Montgomery County law. The Board of Registration is the County agency with authority to revoke a Building Contractor’s License under County Code Chapter 31C.

On March 21, 2018, the Board of Registration referred the matter to the Office of Zoning and Administrative Hearings (OZAH) by an “Order and Referral for Hearing” (Exhibit 2). The Referral Order indicates that three complaints before the Office of Consumer Protection had been certified to the Board for a public hearing (Exhibit 1). Those complaints are OCP Complaint # 16-OC-047597; OCP Complaint # 16-OC-048789; and OCP Complaint # 17-OC-057291. The Referral Order directed that the Office of Zoning and Administrative Hearings hold a hearing pursuant to the Montgomery County Administrative Procedures Act (MCAPA) and submit a written recommendation and order to the Board.

Pursuant to this Referral Order from the Board, an Order to Show Cause why Building Contractor’s License #BC 218983 should not be suspended or revoked was issued on March 22, 2018 (Exhibit 3), and it was served on the Respondent’s agent, Fernando Guedes, Sr., by a process server, on April 5, 2018 (Exhibit 4). The Order to Show Cause specified that a hearing on the license issue would be held by OZAH in the Council Office Building on May 18, 2018, at 9:30 a.m.

In addition, on April 18, 2018, a Notice of Show Cause Hearing was issued by the Hearing Examiner, setting the hearing for May 18, 2018 (Exhibit 5), and the notice was sent by certified

mail to both of Respondent's agents, Fernando Guedes, Jr. and Fernando Guedes, Sr. As required by MCAPA § Sec. 2A-6, the written notice contained, *inter alia*, the following information:

- (a) A copy of the charging documents (*i.e.*, Attachments 1 through 4)
- (b) Time, place and date of hearing.
- (c) That the parties may be represented by counsel or represent themselves (however, the Hearing Examiner notes that corporations must be represented by counsel in most cases. See, e.g., Md. Rule 2-131(a)(2)).
- (d) That the parties have the opportunity to present witnesses, cross-examine witnesses and present supporting documentation.
- (e) That there are pre-hearing procedure requirements as set forth in Montgomery County Code Section 2A-7.
- (f) That the parties may request a continuance of the hearing by written request if made not less than five (5) days prior to the date of hearing.
- (g) That a verbatim record and transcript of the hearing will be made by OZAH.
- (h) That there is a right, subject to the provisions of the state public information law, to inspect and copy at the requesting party's own expense documents of any party, administrative authority or investigating governmental agency involved where such inspection is not otherwise prohibited by law.

The notice to Fernando Guedes, Jr. was received by him on April 20, 2018, as evidenced by a signed certified mail receipt (Exhibit 6(a)). The notice mailed to Fernando Guedes, Sr., who had already been served by a process server with the Order to Show Cause (Exhibit 4), was returned to OZAH as unclaimed on June 15, 2018, after numerous attempts at delivery listed on the front of the envelope (Exhibit 6(b)).

On April 27, 2018, the County attorney, Erin Ashbarry, Esquire, filed her Pre-hearing Submission on behalf of Montgomery County's OCP (Docket No. 7), listing her intended witnesses and submitting a number of documents the County intended to rely on at the hearing.

The hearing proceeded, as scheduled, on May 18, 2018. The County appeared through its attorney, but despite the OCP Order to show cause (Exhibit 3) and OZAH's Notice of Hearing (Exhibit 5), the Respondent failed to appear at the hearing or request a continuance thereof.¹ The

¹ The Respondent also failed to respond to a subpoena for its records issued by the Hearing Examiner (Docket No. 8(a)), but the County did not produce evidence that the subpoena was served, nor seek its enforcement, so the ostensible failure to produce records is not an issue in this case.

County agreed with the Hearing Examiner at the outset that the County has both the burden of going forward with the evidence and the ultimate burden of proof in this case. Tr. 7. The County also agreed that even though the Respondent failed to appear at the hearing, there should not be an entry of default in this case, but rather the County should proceed to put on its evidence.² Tr. 10-11. Therefore, the County proceeded with its case.

The County called seven witnesses –

1. Eric Friedman, Director, OCP, regarding OCP’s investigations of complaints against the Respondent, JRK;
2. James Sackett, Manager, Residential Inspections, Montgomery County Department of Permitting Services (DPS), regarding Notices of Violation issues by the Department of Permitting Services for the residences being constructed by JRK;
3. Mr. Doug Kammerer regarding OCP Complaint # 16-OC-047597 (4503 Elm Street, Bethesda, Maryland);
4. Ms. Holly Kammerer regarding OCP Complaint # 16-OC-047597 (4503 Elm Street, Bethesda, Maryland);
5. Mr. Scott Davis, regarding OCP Complaint # 16-OC-048789 (5608 McLean Drive, Bethesda, Maryland).
6. Mr. Jon Williams, regarding OCP Complaint # 17-OC-057291 (5612 McLean Drive, Bethesda, Maryland); and
7. Mr. Christopher Coyne, regarding OCP Complaint # 17-OC-057291 (5612 McLean Drive, Bethesda, Maryland);

The County also introduced numerous exhibits at the hearing (Exhibits 1 through 39) in support of its argument that the Respondent’s building contractor’s license should be revoked. All the exhibits proffered by the County were admitted without objection. At the conclusion of the

² The Hearing Examiner noted that the sanctions provided in MCAPA Section 2A-8(j) do not include a sanction of default. The County attorney pointed out that Section 2A-10(g) does allow for an “informal disposition” by default, but she preferred to go forward with the evidence in light of the nature of this case. The Hearing Examiner agrees, especially in light of the Board’s referral order, which directs OZAH to conduct a public hearing “in which all outstanding issues shall be litigated . . .” Exhibit 2.

hearing, it was agreed that the County would submit three additional exhibits (an email exchange and two home inspection reports) that were referenced and authenticated by the witnesses at the hearing. Tr. 124. Also, the County was given until June 1, 2018, to submit Proposed Findings of Fact and Conclusions of Law in lieu of an oral closing argument. The Respondent was given until June 11, 2018 to respond, and the County was given until June 15, 2018 to reply to any filing by the Respondent. The record was set to close on June 15, 2018. Tr. 127-132.

On May 30, 2018, the County filed a Motion for additional time to file its post-hearing brief and to correspondingly modify the schedule for replies and the closing of the record. On May 31, 2018, the Hearing Examiner granted the County's motion and adopted the following new schedule requested by the County attorney (Docket No. 13):

June 15, 2018	County's proposed findings of fact and conclusions of law due
June 25, 2018	Respondent's response due
June 29, 2018	County's reply due and record closes at close of business

The County submitted the referenced three additional exhibits on June 15, 2018 as required (Exhibits 40, 41 and 42), and they were admitted by the Hearing Examiner as exhibits authenticated during the testimony at the hearing. Tr. 57-60; 79-82; 90; and 109-111. In addition, the County timely submitted its Proposed Findings of Fact and Conclusions of Law on June 15, 2018. The Respondent did not file any response, and the record closed, as scheduled, on June 29, 2018.

II. THE EVIDENCE

The evidentiary record in this case consists of the testimony of the witnesses at the May 18, 2018 hearing (as recorded in the official transcript of the proceedings); the exhibits admitted into evidence by the Hearing Examiner (Exhibits 1 through 42); and the County's proposed Findings of Fact and Conclusions of Law, which have been adopted by the Hearing Examiner

and are attached hereto in Appendix I. The admitted Exhibits are contained in a binder with a cover sheet listing the exhibits and noting their admission into evidence

The evidence in this case is overwhelming and one-sided, in that the Respondent chose not to appear, nor to submit any evidence. Moreover, the testimony and documentary evidence in this case amply demonstrate the accuracy of the County's allegations in support of revoking the Respondent's Building Contractor's License #BC 218983. In response to a question by the Hearing Examiner during the hearing, both Eric Friedman, the Director of the Office of Consumer Protection, and the County attorney stated that they seek revocation of the license, not merely suspension. Tr. 47.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a careful review of the entire record of this case, the Hearing Examiner makes the following findings of fact and conclusions of law:

1. The Board of Registration has jurisdiction to hear and decide this case under Montgomery County Code Section 31C-8(b);
2. The Complainant is the Montgomery County Office of Consumer Protection, as represented by the County Attorney, and the Respondent is JRK Contractor LLC t/a JRK Builders;
3. The Respondent is the holder of Building Contractor's License #BC 218983, issued to the Respondent on April 9, 2015 by the Office of Consumer Protection (Exhibit 11), and conditionally renewed by the Board of Registration on April 4, 2017 (Exhibits 24 and 26);
4. The Office of Consumer Protection has received a complaint against the Respondent from each of the owners of 4503 Elm Street, (OCP Case #16-OC-047597); 5608 McLean Drive, (OCP Case #16-OC-048789); and 5612 McLean Drive, (OCP Case #17-OC-057291) alleging that Respondent violated Chapter 11, Consumer Protection; Chapter 31C, New Home Warranty and Builder Licensing; and Chapter 8, Buildings, of the Montgomery County Code. (Exhibits 1 and 3; Tr. 32-63);
5. The Board of Registration designated the Office of Zoning and Administrative Hearings (OZAH) to conduct the hearing under the Administrative Procedures Act (Exhibit 2);
6. The Respondent was duly served with an Order to Show Cause why it's Building Contractor's License #BC 218983 should not be suspended or revoked and a Notice of the Hearing set for

May 18, 2018 before an OZAH Hearing Examiner (Exhibits 3, 4, 5 and 6);

7. The Office of Zoning and Administrative Hearings held a hearing under the Administrative Procedures Act, as noticed on May 18, 2018; evidence was presented by the County in support of its claim that Respondent had violated the provisions of the Montgomery County Code and State Law (Tr. 1-133); and the record closed on June 29, 2018, after post-hearing filings by the County.
8. The Respondent was given an opportunity to appear at the hearing to respond to the allegations, but failed to do so (Exhibits 3, 4, 5 and 6; and Tr. 6-7);
9. The proposed Findings of Fact and Conclusions of Law submitted by the County on June 15, 2018 (Docket No. 15), accurately summarized the evidence and pertinent legal authorities in this case. Those proposed Findings of Fact and Conclusions of Law are hereby adopted by the Hearing Examiner, except as specifically noted herein,³ and are incorporated herein by reference. A copy of the County's submission, compressed into single-spacing to save some trees, is attached as Appendix I hereto.
10. Based on this record, the Hearing Examiner hereby finds that the Respondent has violated Montgomery County Code Chapter 31C, and the State of Maryland's Custom Home Protection Act ("CHPA" - Md. Code, Real Property §§10-501– 509), as described below:
 - a. County Code § 31C-8(b)(1): Respondent made a misrepresentation of material fact in the application for license or renewal by misrepresenting the correct name of the licensee's Resident Agent. On the license application form (Exhibit 23, at p. 2), JRK lists Fernando Guedes, Jr. as the resident agent, and gives his address as 18311 Fable Dr., Boyds MD 20841. This address contrasts with the address listed for the resident agent of JRK with the State of Maryland (Exhibits 18 and 39). There, the resident agent is listed as "Fernando L. Guedes" at the address 18317 Tapwood RD, Boyds MD 20841.

On the other hand, the Hearing Examiner cannot conclude from the evidence of record (Exhibits 18, 23 and 39 and Tr. 47-52) that this misstatement of the resident agent's address was intentional, especially since Fernando Guedes, Sr., is also listed on the license application, albeit as the "Vice President/Member name," at the correct address of the resident agent -- 18317 Tapwood RD, Boyds MD 20841. In the opinion of the Hearing Examiner, this mix-up of the resident agent's name and address would not, in and of itself, justify revocation of the license in question. Rather, at most, it would be grounds for suspension of the license until the defect was cured. Nevertheless, in view of the other findings listed herein, the Hearing Examiner recommends revocation of JRK's license;⁴

³ While the County's filing accurately portrayed the facts and the pertinent law, the Hearing Examiner disagrees with two of the conclusions reached by the County – that the misstatement of the resident agent's address itself warrants revocation of the license under County Code § 31C-8(b)(1) and that the evidence is sufficient to establish a conversion of building materials in violation of Code § 31C-8(b)(13). Nevertheless, as discussed in the text above, the overwhelming evidence of other violations by the Respondent amply supports the recommendation for revocation of the license in question.

⁴ The County's attorney argued at the hearing that the misstatement of the name and address of the resident agent was a material fact in an application for a builders license, and it was therefore grounds for the revocation of the

- b. County Code § 31 C-8(b)(2): Respondent committed fraud in connection with building activity conducted under the requirements of this Chapter by forging the homeowner's signature on a building permit application with regard to the construction of a home at 5608 McLean Drive, Bethesda, MD 20814. Scott Davis, the co-owner of the property at 5608 McLean Drive, Bethesda, Maryland, testified that he entered into a contract with JRK on December 22, 2014 for work on his home (Exhibit 7), but that he never signed an application for a building permit (Exhibit 8); nor did he authorize anyone to sign his name thereto. Tr. 92-95. Nevertheless, signatures purporting to be his, were affixed to the permit application filed by JRK with the Department of Permitting Services, and one of those signatures inaccurately asserts that he would serve as the "general contractor" for the proposed construction;
- c. County Code § 31C-8(b)(4): Respondent violated the Building Code (County Code Section 8-1 *et seq.*)⁵ and other laws of the County or State, as evidenced by:
 - 1) the Notice of Violation (Exhibit 27) issued to JRK on September 8, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 4503 Elm Street, for improper garage fire separation, improper drainage slope, improper gas piping, improper attic access and improper basement insulation, all in violation of the Building Code and Residential Building Permit #712492 (Exhibit 14), as testified to at the hearing (Tr. 65-72) and as documented by a professional inspection report (Ex. 40);
 - 2) the Notice of Violation (Exhibit 28) issued to JRK on September 8, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 4503 Elm Street, for constructing a retaining wall without obtaining the required permit in violation of the Building Code, as testified to at the hearing (Tr. 65-72);
 - 3) the Notice of Violation (Exhibits 35 and 35-A), issued to JRK on December 28, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 5612 McLean Drive, Bethesda, MD 20814, for improper installation of stone veneer, in

license pursuant to Code Section 31C-8(b)(1) and COMCOR, Section 31C.00.01.03.4(b). . . "[F]or purposes of legal proceedings, correct identity of a resident agent is essential in order to ensure adequate notice of legal proceedings against the entity." Tr. 51. However, Eric Friedman, OCP's Director, testified in response to questions by the Hearing Examiner, that the address mix-up would not itself warrant revocation. Tr. 49-50.

MR. GROSSMAN: But aside from . . . that little confusion aspect, did it have any substantive impact on any failures by JRK to perform their duties under the -- the builders contracts?

MR. FRIEDMAN: No. I don't think so. I think that the only concern would be in terms of knowing who is -- who is the real agent -- resident agent for purposes of process of service or things of that sort. But in terms of -- of constructing homes or whether they complied with or violated building codes and things of that sort, that confusion I don't think would address folks' concerns.

MR. GROSSMAN: So I take it that if, in fact, JRK had done a perfect job in constructing these homes, that the confusion about the resident agent wouldn't be a grounds for rev- -- or you wouldn't seek revocation of their license over that?

MR. FRIEDMAN: No. I think that would be correct.

⁵ Chapter 8 of the Montgomery County Code constitutes the County's Building Code, which incorporates the latest edition of the ICC International Building Code and other applicable codes through COMCOR Regulations 08.00.02.01, *et seq.* Footnotes 3, 4 and 5 on Page 9 of the attached Appendix I cite specific references to applicable Building Code provisions.

- violation of the Building Code and Residential Building Permit #729629 (Exhibit 16), as testified to at the hearing (Tr. 65-72) and documented by a professional inspection report (Exhibit 42);
- 4) JRK entering contracts with Scott and Evelyne Davis on December 22, 2014 (Exhibit 7) and Douglas and Holly Kammerer on March 17, 2015 (Exhibit 9) to build their homes, when at the time of contracting, JRK did not have a Building Contractor's license issued by OCP. A Building Contractor's license was first issued to JRK thereafter on April 9, 2015 (Exhibits 11 and 36). Entering into these contracts therefore violated County Code § 31C-2(a)(1), which provides that, "A builder must not engage in the business of constructing new homes or act in the capacity of a building contractor in the County unless the builder is licensed by [OCP]." JRK held itself out as being available to construct new homes to both the Davises and the Kammerers when it entered contracts to construct their homes and engaged in the business of erecting new homes while not licensed to do so;⁶ and
 - 5) failing to place funds in an escrow account pursuant to the State of Maryland's Custom Home Protection Act, a/k/a CHPA (Md. Code Ann., Real Property §§10-501 – 509), with regard to the construction of the Kammerers' home at 4503 Elm Street, Bethesda, MD 20815. The home JRK agreed to build is a "custom home" under the CHPA, as it is a single family dwelling constructed to be the Kammerers' residence on land owned by the Kammerers.⁷ See CHPA § 10-501(c). The contract between the Kammerers and JRK was a custom home contract, as it was a contract worth in excess of \$20,000 to furnish labor and materials in the construction of a custom home. See CHPA § 10-501(e). CHPA § 10-504(a)(1) mandates that "a custom home builder ... shall place the consideration [paid] into an escrow account." The testimony establishes that, despite inquiry from the Kammerers, JRK failed to ever produce any information or confirm that they in fact held the funds in an escrow account. Tr. 75-79 and 86-87. As noted by the County attorney, JRK also failed to make certain disclosures in the contract (Exhibit 9) that are required by CHPA §§10-505 – 506.
- d. County Code § 31 C-8(b)(7): In violation of this provision, Respondent failed to file an amendment to its February 23, 2017 application to renew its Building Contractor's License (Exhibit 23), within 30 days of the filing of lawsuits against JRK, even though the filing of those lawsuits constituted a material change to the information provided by JRK on the application. Section VI, Item 4 of the renewal application (Exhibit 23) requires the applicant to disclose whether it is party to any pending litigation. The application notifies the individual who signs off on the application of the obligation to update *any* changes to

⁶ See also COMCOR §31C.00.01.03.1 ("A builder must not engage in the business of erecting or otherwise creating a new home unless licensed with [OCP]"); and § 31C.00.01.03.2 ("For the purpose of these regulations, the term 'engaging in the business of erecting or otherwise creating a new home' includes constructing any new home for sale, acting as prime contractor to construct any new home for another person or advertising or holding oneself out as constructing or being available to construct a new home or homes... The term also includes a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of sale to a purchaser.")

⁷ Fernando Guedes, Jr, admitted the home constructed was a "custom home" in JRK's responses to requests for admissions. (Exhibit 36 at p. 4).

the information within 30 days. (Exhibit 23, Section IX) After JRK filed this renewal application, it was named as a defendant in two different actions – one filed by the Kammerers on October 25, 2017 (Exhibit 31), and one filed by Davises on December 28, 2017 (Exhibit 38). Both suits addressed JRK’s performance or lack thereof under homebuilder contracts, and are material to JRK’s status as a new home builder in the County. JRK failed to notify OCP of either suit. Tr. 60-63. Under County Code § 31C-8(b)(7), this failure to notify OCP of this material change to its application is grounds to suspend or revoke JRK’s license; and

- e. County Code § 31C-8(b)(13): Respondent allegedly diverted construction materials that were paid for by Messrs. Williams and Coyne for the completion of a construction project in their home, located at 5612 McLean Drive, Bethesda, Maryland, and used the property for another project, with intent to defraud Messrs. Williams and Coyne. Both Mr. Williams and Mr. Coyne testified that they purchased and owned these construction materials (grey Hardie board shingles, a palette of slate, and stone pavers), and they told JRK’s agent, Fernando Guedes, Jr, that the materials were to remain at 5612 McLean for their future use. Tr. 104, 106-108, 114-115. Nevertheless, those materials disappeared from their premises, without their permission, and they believe that they were relocated to a project at 6002 Roosevelt Street, in Bethesda, also being worked on by JRK (Exhibit 37). Messrs. Williams and Coyne further testified that they spotted “similar materials” at 6002 Roosevelt that they “believed to be” the materials missing from their property, and that despite asking JRK’s agents, they have not been compensated for the missing materials. Tr. 108, 114-118.

The County concluded, in its Proposed Findings of Fact and Conclusions of Law,⁸ that,

More likely than not, this testimony establishes that the materials at 6002 Roosevelt Street were the materials from 5612 McLean. JRK did not ever compensate Mr. Williams or Mr. Coyne for these materials.

While the Hearing Examiner does not disagree with the County’s “more likely than not” deduction, he cannot conclude that such a determination of likeliness is sufficient to warrant a formal finding that the materials observed at 6002 Roosevelt were actually the same as those missing from 5612 McLean and that they were improperly converted by JRK’s agents. The County could have proved the point by taking discovery from JRK under MCAPA Section 2A-7(b)(4), thereby questioning the source of the materials located at 6002 Roosevelt and asking for evidence regarding their purchase. The County apparently did not do so, and if it did attempt such discovery, it did not ask the Hearing Examiner to enforce any such requests, nor introduce such evidence at the hearing. Without more proof, which could easily have been obtained, the Hearing Examiner does not feel there is sufficient evidence for him to make a finding that the materials in question were improperly converted by JRK. The Hearing Examiner therefore does not rely on this alleged violation of County Code § 31C-8(b)(13) in reaching his findings, conclusions and recommendation that JRK’s License should be revoked. There is ample evidence, as outlined above, supporting this recommendation without relying on the missing materials issue.

⁸ Docket No. 15, pp. 20-21; Appendix I to this Report, at Appendix I p. 11.

IV. CONCLUSION ON THE MERITS OF THE CASE

Based on the overwhelming evidence in this record, the Hearing Examiner finds and concludes that the Respondent has violated CHPA (Md. Code Ann., Real Property §§10-501 – 509), and repeatedly violated Montgomery County Code Chapter 31C, warranting revocation of its Building Contractor’s License # BC 218983. This was not a close case.

V. ISSUE REGARDING NOTICE OF APPEAL RIGHTS

There is one more issue that should be addressed – what notice should be given to the Respondent regarding the availability of appellate review in this case? Three applicable statutory provisions and a Board of Appeals Rule provide information on the question of the appropriate procedure for seeking appellate review in this matter.

Montgomery County Code Section 31C-8(c)(2), provides that “The builder may appeal a decision of the Board [of Registration] to the Montgomery County Board of Appeals.” Board of Appeals Rule 2.1 specifies that “Unless the applicable law specifies a shorter time, an appeal from an administrative decision must be filed within 30 days after the day the decision was mailed. The required forms must be obtained at the office of the Board of Appeals.”

In addition, the Montgomery County Administrative Procedures Act, Code Section 2A-11(a), provides:

A party aggrieved by a final decision in a case governed by this Article may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. A party aggrieved by the decision of the Circuit Court may appeal that decision to the Court of Special Appeals.

At the hearing, the Hearing Examiner raised the question with the County attorney as to whether the two quoted statutory provisions are in conflict, since one (Montgomery Code §31C-8(c)(2)) mentions appeals to the Board of Appeals and the other (MCAPA §2A-11(a)) provides for judicial review in the Circuit Court, and beyond. Tr. 8-10, 124-126.

The County, in its Proposed Findings of Fact and Conclusions of Law, addressed this issue,⁹ arguing that the proper route for the Respondent to follow in appealing any decision of the Board of Registration in this matter is to file an appeal to the Board of Appeals. The County's rationale for its opinion is that the decision of the Board of Registration is the final decision in this matter, not the Report and Recommendation of the Hearing Examiner.

Although the Hearing Examiner agrees with the outcome of the County's analysis (*i.e.*, that an appeal to the Board of Appeals would be the appropriate first step in challenging a final decision of the Board of Registration), the Hearing Examiner finds that the County's analysis actually begs the question. No one has asserted that the Report and Recommendation of the Hearing Examiner is a final decision in this case, and the fact that it is not the final decision is not dispositive on the question of the appropriate route of appellate review from the Board of Registration's final decision. Both Montgomery Code §31C-8(c)(2)) and MCAPA §2A-11(a) are clearly referencing the decision of the Board of Registration, not the Report and Recommendation of the Hearing Examiner, so the question remains whether a Respondent's route for appellate review is to the Board of Appeals, as specified in Code §31C-8(c)(2)), or to the courts as specified in MCAPA §2A-11(a).

The Hearing Examiner concludes that the appropriate route of appellate review would be for the Respondent to first timely appeal any final decision of the Board of Registration to the Board of Appeals, and thereafter, if necessary, to timely appeal any final decision of the Board of Appeals to the Circuit Court. The Hearing Examiner reaches this conclusion based on MCAPA §2A-3(a), which resolves statutory conflicts in favor of specific agency statutes, and on two legal principles – the principle of statutory interpretation that an effort should be made to harmonize two

⁹ Docket No. 15, pp. 21-22; Appendix I to this Report, Appendix I pp. 11-12.

ostensibly conflicting statutory provisions and the principle of administrative law that litigants should exhaust their administrative remedies before resorting to the courts.

MCAPA §2A-3(a) provides: “Where any provision of this article conflicts with a substantive provision of an act pertaining to a particular agency, the latter shall prevail.” This suggests that the provisions of Chapter 31C of the Code, which govern the Board of Registration, should prevail over the provisions of the MCAPA which generally pertain to all agencies. This conclusion is buttressed by the case law governing the two above-mentioned principles.

The first principle (harmonizing statutory schemes) is well summarized by the Maryland Court of Appeals in *Montgomery County v. Robinson*, 435 Md. 62, 76-77, 76 A.3d 1159, 1168 (2013):

. . . [w]hen the statute is part of a larger statutory scheme, it is axiomatic that the language of a provision is not interpreted in isolation; rather, we analyze the statutory scheme as a whole considering the 'purpose, aim, or policy of the enacting body.'" *Anderson v. Council of Unit Owners of Gables on Tuckerman Condo.*, 404 Md. 560, 572, 948 A. 2d 11, 19 (2008) (quoting *Serio v. Baltimore Cnty.*, 384 Md. 373, 390, 863 A. 2d 952, 962 (2004); *Drew v. First Guar. Mortgage Corp.*, 379 Md. 318, 327, 842 A. 2d 1, 6 (2003)). Moreover, we interpret statutes within a statutory scheme with reference to one another even if the statutes were enacted at different times and do not refer to each other. *Gov't Employees Ins. Co. & GEICO v. Ins. Com'r*, 332 Md. 124, 132, 630 A.2d 713, 717 (1993). We attempt, in that regard, to harmonize the statutes with each other and within the scheme without rendering any language or portion of the statutes meaningless, surplusage, superfluous, or nugatory. *Id.*

Some additional language in the *GEICO* case, cited in *Robinson*, above, is also instructive, *Gov't Employees Ins. Co. & GEICO v. Ins. Com'r*, 332 Md. 124, 132-133, 630 A.2d 713, 717-718 (1993):

Even though two statutes may require conflicting results with regard to their common subject, they are not thereby necessarily rendered irreconcilable. Where provisions of one of the statutes deal with the common subject generally and those of the other do so more specifically, the statutes may be harmonized by viewing the more specific statute as an exception to the more general one. [Citations omitted.] . . . See Norman J. Singer, Sutherland, *Statutory Construction*, § 51.05 (4th ed. 1986) (footnotes omitted):

Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling.

Applying this case law to the situation at bar, the statutory provisions in question can be readily reconciled, especially when one takes into account the administrative review principle that litigants should exhaust their administrative remedies before resorting to the courts. As stated by the Maryland Court of Appeals in *Hughes v. Moyer*, 452 Md. 77, 100, 156 A.3d 770, 783 (2017), “As a general rule, if there is an available primary administrative remedy, it must be exhausted before a party may seek relief from a court.”

Given the preference for exhausting administrative remedies before a party may seek relief in court, the most sensible way to reconcile the statutory schemes is to require the Respondent to first administratively appeal any final decision of the Board of Registration to the Board of Appeals, in accordance with Code §31C-8(c)(2)), and thereafter resort to the courts, in accordance with the MCAPA §2A-11(a).

This interpretation is also in accord with the teachings of the *Robinson* case to seek harmonization of the statutory provisions, and it is consistent with the teachings of the *GEICO* case since the more specific statutory scheme is Code §31C-8(c)(2)), which applies only to Board of Registration cases, while the MCAPA is a general administrative procedures act that applies to many agency reviews. Thus, following the teachings of the *GEICO* case, we should apply the more specific statute, which calls for an appeal, if any, first to the Board of Appeals.

Ultimately, it is the Respondent that must make that choice, but it is appropriate for the Board of Registration to refer the Respondent to all the applicable provisions, so that it can make its decision with notice that these provisions exist. The Hearing Examiner’s proposed order (Appendix II) contains such a proposed notice provision.

In sum, the Hearing Examiner recommends, if the Board revokes Respondent's license, that it give notice of the applicable statutory provisions, with a suggestion that, should the Respondent elect to seek appellate review in this matter, it should consult with counsel as to which appellate route is appropriate in this case, and pursue it in a timely manner. The last listed recommendation below provides suggested language, which is also included in the Proposed Order.

VI. RECOMMENDATIONS

Based on the foregoing findings and conclusions and after a thorough review of the entire evidence of record, the Hearing Examiner recommends that the Board of Registration incorporate the following elements into a final order, a draft of which is attached hereto as Appendix II, and, based on this record, revoke the Respondent's Building Contractor's License #BC 218983, as specified below:

1. The Board of Registration has jurisdiction to hear and decide this case under Montgomery County Code Section 31C-8(b);
2. The Complainant is the Montgomery County Office of Consumer Protection, as represented by the County Attorney, and the Respondent is JRK Contractor LLC t/a JRK Builders;
3. The Respondent is the holder of Building Contractor's License #BC 218983, issued to the Respondent on April 9, 2015 by the Office of Consumer Protection (Exhibit 11), and conditionally renewed by the Board of Registration on April 4, 2017 (Exhibits 24 and 26);
4. The Office of Consumer Protection has received a complaint against the Respondent from each of the owners of 4503 Elm Street, (OCP Case #16-OC-047597); 5608 McLean Drive, (OCP Case #16-OC-048789); and 5612 McLean Drive, (OCP Case #17-OC-057291) alleging that Respondent violated Chapter 11, Consumer Protection; Chapter 31C, New Home Warranty and Builder Licensing; and Chapter 8, Buildings, of the Montgomery County Code. (Exhibits 1 and 3; Tr. 32-63);
5. The Board of Registration designated the Office of Zoning and Administrative Hearings (OZAH) to conduct the hearing under the Administrative Procedures Act (Exhibit 2);
6. The Respondent was duly served with an Order to Show Cause why it's Building Contractor's License #BC 218983 should not be suspended or revoked and a Notice of the Hearing set for May 18, 2018 before an OZAH Hearing Examiner (Exhibits 3, 4, 5 and 6);

7. The Office of Zoning and Administrative Hearings held a hearing under the Administrative Procedures Act, as noticed on May 18, 2018; evidence was presented by the County in support of its claim that Respondent had violated the provisions of the Montgomery County Code and State Law (Tr. 1-133); and the record closed on June 29, 2018, after post-hearing filings by the County.
8. The Respondent was given an opportunity to appear at the hearing to respond to the allegations, but failed to do so (Exhibits 3, 4, 5 and 6; and Tr. 6-7);
9. The proposed Findings of Fact and Conclusions of Law submitted by the County on June 15, 2018 (Docket No. 15), accurately summarized the evidence and pertinent legal authorities in this case. Those proposed Findings of Fact and Conclusions of Law were adopted by the Hearing Examiner, except as specifically noted in his Report and Recommendation,¹⁰ and are incorporated herein by reference, with the exceptions noted by the Hearing Examiner. A copy of the County's submission, compressed into single-spacing, is attached as Appendix I to the Hearing Examiner's Report and Recommendation.
10. On July 6, 2018, the Hearing Examiner timely submitted a Report and Recommendation to the Board of Registration, finding that the Respondent had violated CHPA (Md. Code Ann., Real Property §§10-501 – 509), and repeatedly violated Montgomery County Code Chapter 31C. The Hearing Examiner therefore recommended revocation of the Respondent's Building Contractor's License # BC 218983;
11. Based on this record and the Report and Recommendation of the Hearing Examiner, which is incorporated herein by reference, the Board of Registration hereby finds that the Respondent has violated Montgomery County Code Chapter 31C, and the State of Maryland's Custom Home Protection Act ("CHPA" - Md. Code, Real Property §§10-501– 509), as described below:
 - a. County Code § 31C-8(b)(1): Respondent made a misrepresentation of material fact in the application for license or renewal by misrepresenting the correct name of the licensee's Resident Agent. On the license application form (Exhibit 23, at p. 2), JRK lists Fernando Guedes, Jr. as the resident agent, and gives his address as 18311 Fable Dr., Boyds MD 20841. This address contrasts with the address listed for the resident agent of JRK with the State of Maryland (Exhibits 18 and 39). There, the resident agent is listed as "Fernando L. Guedes" at the address 18317 Tapwood RD, Boyds MD 20841.

On the other hand, the Board of Registration cannot conclude from the evidence of record (Exhibits 18, 23 and 39 and Tr. 47-52) that this misstatement of the resident agent's address was intentional, especially since Fernando Guedes, Sr., is also listed on the license application, albeit as the "Vice President/Member name," at the correct address of

¹⁰ While the County's filing accurately portrayed the facts and the pertinent law, the Hearing Examiner disagreed with two of the conclusions reached by the County – that the misstatement of the resident agent's address itself warrants revocation of the license under County Code § 31C-8(b)(1) and that the evidence is sufficient to establish a conversion of building materials in violation of Code § 31C-8(b)(13). Nevertheless, the overwhelming evidence of other violations by the Respondent amply supports the revocation of the license in question.

the resident agent -- 18317 Tapwood RD, Boyds MD 20841. In the opinion of the Board of Registration, this mix-up of the resident agent's name and address would not, in and of itself, justify revocation of the license in question. Rather, at most, it would be grounds for suspension of the license until the defect was cured. Nevertheless, in view of the other findings listed herein, the Board of Registration revokes JRK's license;¹¹

- b. County Code § 31 C-8(b)(2): Respondent committed fraud in connection with building activity conducted under the requirements of this Chapter by forging the homeowner's signature on a building permit application with regard to the construction of a home at 5608 McLean Drive, Bethesda, MD 20814. Scott Davis, the co-owner of the property at 5608 McLean Drive, Bethesda, Maryland, testified that he entered into a contract with JRK on December 22, 2014 for work on his home (Exhibit 7), but that he never signed an application for a building permit (Exhibit 8); nor did he authorize anyone to sign his name thereto. Tr. 92-95. Nevertheless, signatures purporting to be his, were affixed to the permit application filed by JRK with the Department of Permitting Services, and one of those signatures inaccurately asserts that he would serve as the "general contractor" for the proposed construction;
- c. County Code § 31C-8(b)(4): Respondent violated the Building Code (County Code Section 8-1 *et seq.*)¹² and other laws of the County or State, as evidenced by:
 - 1) the Notice of Violation (Exhibit 27) issued to JRK on September 8, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 4503 Elm Street, for improper garage fire separation, improper drainage slope, improper gas piping, improper attic access and improper basement insulation, all in violation of the Building Code and Residential Building Permit #712492 (Exhibit 14), as testified to at the hearing (Tr. 65-72) and as documented by a professional inspection report (Ex. 40);
 - 2) the Notice of Violation (Exhibit 28) issued to JRK on September 8, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 4503 Elm

¹¹ The County's attorney argued at the hearing that the misstatement of the name and address of the resident agent was a material fact in an application for a builders license, and it was therefore grounds for the revocation of the license pursuant to Code Section 31C-8(b)(1) and COMCOR, Section 31C.00.01.03.4(b). . . . "[F]or purposes of legal proceedings, correct identity of a resident agent is essential in order to ensure adequate notice of legal proceedings against the entity." Tr. 51. However, Eric Friedman, OCP's Director, testified in response to questions by the Hearing Examiner, that the address mix-up would not itself warrant revocation. Tr. 49-50.

MR. GROSSMAN: But aside from . . . that little confusion aspect, did it have any substantive impact on any failures by JRK to perform their duties under the -- the builders contracts?

MR. FRIEDMAN: No. I don't think so. I think that the only concern would be in terms of knowing who is -- who is the real agent -- resident agent for purposes of process of service or things of that sort. But in terms of -- of constructing homes or whether they complied with or violated building codes and things of that sort, that confusion I don't think would address folks' concerns.

MR. GROSSMAN: So I take it that if, in fact, JRK had done a perfect job in constructing these homes, that the confusion about the resident agent wouldn't be a grounds for rev- -- or you wouldn't seek revocation of their license over that?

MR. FRIEDMAN: No. I think that would be correct.

¹² Chapter 8 of the Montgomery County Code constitutes the County's Building Code, which incorporates the latest edition of the ICC International Building Code and other applicable codes through COMCOR Regulations 08.00.02.01, *et seq.* Footnotes 3, 4 and 5 on Page 9 of Appendix I, attached to the Hearing Examiner's Report, cite specific references to applicable Building Code provisions.

- Street, for constructing a retaining wall without obtaining the required permit in violation of the Building Code, as testified to at the hearing (Tr. 65-72);
- 3) the Notice of Violation (Exhibits 35 and 35-A), issued to JRK on December 28, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 5612 McLean Drive, Bethesda, MD 20814, for improper installation of stone veneer, in violation of the Building Code and Residential Building Permit #729629 (Exhibit 16), as testified to at the hearing (Tr. 65-72) and documented by a professional inspection report (Exhibit 42);
 - 4) JRK entering contracts with Scott and Evelyne Davis on December 22, 2014 (Exhibit 7) and Douglas and Holly Kammerer on March 17, 2015 (Exhibit 9) to build their homes, when at the time of contracting, JRK did not have a Building Contractor's license issued by OCP. A Building Contractor's license was first issued to JRK thereafter on April 9, 2015 (Exhibits 11 and 36). Entering into these contracts therefore violated County Code § 31C-2(a)(1), which provides that, "A builder must not engage in the business of constructing new homes or act in the capacity of a building contractor in the County unless the builder is licensed by [OCP]." JRK held itself out as being available to construct new homes to both the Davises and the Kammerers when it entered contracts to construct their homes and engaged in the business of erecting new homes while not licensed to do so;¹³ and
 - 5) failing to place funds in an escrow account pursuant to the State of Maryland's Custom Home Protection Act, a/k/a CHPA (Md. Code Ann., Real Property §§10-501 – 509), with regard to the construction of the Kammerers' home at 4503 Elm Street, Bethesda, MD 20815. The home JRK agreed to build is a "custom home" under the CHPA, as it is a single family dwelling constructed to be the Kammerers' residence on land owned by the Kammerers.¹⁴ See CHPA § 10-501(c). The contract between the Kammerers and JRK was a custom home contract, as it was a contract worth in excess of \$20,000 to furnish labor and materials in the construction of a custom home. See CHPA § 10-501(e). CHPA § 10-504(a)(1) mandates that "a custom home builder ... shall place the consideration [paid] into an escrow account." The testimony establishes that, despite inquiry from the Kammerers, JRK failed to ever produce any information or confirm that they in fact held the funds in an escrow account. Tr. 75-79 and 86-87. As noted by the County attorney, JRK also failed to make certain disclosures in the contract (Exhibit 9) that are required by CHPA §§10-505 – 506.
 - d. County Code § 31 C-8(b)(7): In violation of this provision, Respondent failed to file an amendment to its February 23, 2017 application to renew its Building Contractor's

¹³ See also COMCOR §31C.00.01.03.1 ("A builder must not engage in the business of erecting or otherwise creating a new home unless licensed with [OCP]"); and § 31C.00.01.03.2 ("For the purpose of these regulations, the term 'engaging in the business of erecting or otherwise creating a new home' includes constructing any new home for sale, acting as prime contractor to construct any new home for another person or advertising or holding oneself out as constructing or being available to construct a new home or homes...The term also includes a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of sale to a purchaser.")

¹⁴ Fernando Guedes, Jr, admitted the home constructed was a "custom home" in JRK's responses to requests for admissions. (Exhibit 36 at p. 4). .

License (Exhibit 23), within 30 days of the filing of lawsuits against JRK, even though the filing of those lawsuits constituted a material change to the information provided by JRK on the application. Section VI, Item 4 of the renewal application (Exhibit 23) requires the applicant to disclose whether it is party to any pending litigation. The application notifies the individual who signs off on the application of the obligation to update *any* changes to the information within 30 days. (Exhibit 23, Section IX) After JRK filed this renewal application, it was named as a defendant in two different actions – one filed by the Kammerers on October 25, 2017 (Exhibit 31), and one filed by Davises on December 28, 2017 (Exhibit 38). Both suits addressed JRK’s performance or lack thereof under homebuilder contracts, and are material to JRK’s status as a new home builder in the County. JRK failed to notify OCP of either suit. Tr. 60-63. Under County Code § 31C-8(b)(7), this failure to notify OCP of this material change to its application is grounds to suspend or revoke JRK’s license; and

- e. County Code § 31C-8(b)(13): Respondent allegedly diverted construction materials that were paid for by Messrs. Williams and Coyne for the completion of a construction project in their home, located at 5612 McLean Drive, Bethesda, Maryland, and used the property for another project, with intent to defraud Messrs. Williams and Coyne. Both Mr. Williams and Mr. Coyne testified that they purchased and owned these construction materials (grey Hardie board shingles, a palette of slate, and stone pavers), and they told JRK’s agent, Fernando Guedes, Junior, that the materials were to remain at 5612 McLean for their future use. Tr. 104, 106-108, 114-115. Nevertheless, those materials disappeared from their premises, without their permission, and they believe that they were relocated to a project at 6002 Roosevelt Street, in Bethesda, also being worked on by JRK (Exhibit 37). Messrs. Williams and Coyne further testified that they spotted “similar materials” at 6002 Roosevelt that they “believed to be” the materials missing from their property, and that despite asking JRK’s agents, they have not been compensated for the missing materials. Tr. 108, 114-118.

The County concluded, in its Proposed Findings of Fact and Conclusions of Law,¹⁵ that,

More likely than not, this testimony establishes that the materials at 6002 Roosevelt Street were the materials from 5612 McLean. JRK did not ever compensate Mr. Williams or Mr. Coyne for these materials.

While the Board of Registration does not disagree with the County’s “more likely than not” deduction, it cannot conclude that such a determination of likeliness is sufficient to warrant a formal finding that the materials observed at 6002 Roosevelt were actually the same as those missing from 5612 McLean and that they were improperly converted by JRK’s agents. The County could have proved the point by taking discovery from JRK under MCAPA Section 2A-7(b)(4), thereby questioning the source of the materials located at 6002 Roosevelt and asking for evidence regarding their purchase. The County apparently did not do so, and if it did attempt such discovery, it did not ask the Hearing Examiner to enforce any such requests, nor introduce such evidence at the hearing. Without more proof, which could easily have been obtained, the Board of Registration does not feel there is sufficient evidence for it to make a finding that the materials in

¹⁵ Docket No. 15, pp. 20-21; Appendix I to the Hearing Examiner’s Report, Appendix I, p. 11.

question were improperly converted by JRK. The Board of Registration therefore does not rely on this alleged violation of County Code § 31C-8(b)(13) in reaching its findings, conclusions and decision that JRK's License should be revoked. There is ample evidence, as outlined above, supporting this decision without relying on the missing materials issue.

12. Based on the overwhelming evidence in this record, the Board of Registration finds and concludes that the Respondent has violated CHPA (Md. Code Ann., Real Property §§10-501 – 509), and repeatedly violated Montgomery County Code Chapter 31C, warranting revocation of its Building Contractor's License # BC 218983. Therefore, the Board of Registration hereby revokes Respondent's Building Contractor's License # BC 218983.

13. The Respondent is hereby notified that three statutory provisions and a Board of Appeals Rule bear on the question of the proper procedure for seeking appellate review in this matter.

Montgomery County Code Section 2A-11(a) provides that *"A party aggrieved by a final decision in a case governed by this Article may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. A party aggrieved by the decision of the Circuit Court may appeal that decision to the Court of Special Appeals."*

However, MCAPA §2A-3(a) provides: *"Where any provision of this article conflicts with a substantive provision of an act pertaining to a particular agency, the latter shall prevail."* You are hereby further notified that there is a specific statutory provision that applies to cases arising from Board of Registration decisions in this type of case. Montgomery County Code Section 31C-8(c) provides that *"The builder may appeal a decision of the Board to the Montgomery County Board of Appeals."*

Board of Appeals Rule 2.1 specifies that *"Unless the applicable law specifies a shorter time, an appeal from an administrative decision must be filed within 30 days after the day the decision was mailed. The required forms must be obtained at the office of the Board of Appeals."*

While it is the opinion of the Board of Registration that the appropriate avenue for review from this Board's decision is with the Board of Appeals in the first instance under Code Section 31C-8(c), if the Respondent elects to seek appellate review in this matter, it should consult with counsel as to which appellate route is appropriate in this case, and pursue it in a timely manner.

Dated: July 6, 2018

Report, Recommendation and Proposed Order
Respectfully submitted,



Martin L. Grossman
Hearing Examiner
Director, Office of Zoning and Administrative Hearings

Copies to:

Ralph Mollet, Chairperson

Montgomery County Board of Registration

Eric Friedman, Director, Montgomery County Office of Consumer Protection

Erin Ashbarry, Esquire, Associate County Attorney

JRK Contractor LLC t/a JRK Builders

c/o Fernando Guedes Jr., 18311 Fable Drive, Boyds, MD 20841 and

c/o Fernando Guedes Sr., 18317 Tapwood Road, Boyds, MD 20841

APPENDIX I TO THE HEARING EXAMINER’S REPORT AND RECOMMENDATION

**BEFORE THE BOARD OF REGISTRATION
OF MONTGOMERY COUNTY, MARYLAND**

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

Stella B. Werner Council Office Building
100 Maryland Avenue, Suite 200
Rockville, Maryland 20850

IN THE MATTER OF:

**JRK CONTRACTOR LLC t/a JRK
BUILDERS,**

Respondent

*
*
* OZAH Case No. CP 18-01
* Order to Show Cause Regarding:
* OCP Complaint #16-OC-047597
* OCP Complaint # 16-OC-048789
* OCP Complaint # 17-OC-057291

**MONTGOMERY COUNTY, MARYLAND’S POST-HEARING PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

As instructed by the Hearing Examiner, Mr. Martin Grossman, at the conclusion of the hearing in this case on May 18, 2018, Montgomery County, Maryland, through its undersigned counsel, submits the following proposed findings of fact and conclusions of law:

I. FINDINGS OF FACT

JRK Contractor, LLC Forms Under Maryland Law

In January 2010, “Fernando Guedes” filed Articles of Organization for “JRK Contractor LLC” with the Maryland State Departments of Assessments and Taxation. (Ex. 18) A year later, on January 10, 2011, an “Articles of Amendment for a Limited Liability Company” was filed for JRK Contractor, LLC, to state the LLC’s Charter is amended to reflect that Fernando Guedes, Junior is a co-owner of the company. (Ex. 18) Finally, in October 2012, JRK Contractor LLC filed a trade name application with SDAT, listing a trade name as “JRK Builders.” (Ex. 18)

Throughout these findings of fact, “JRK Contractor LLC,” and “JRK Builders,” will be referred to collectively as “JRK.”

All homeowners that entered into contracts with JRK testified that the two individuals who communicated with them on behalf of JRK were Fernando Guedes, Junior, and Fernando Guedes, Senior. (Tr. 75-76, 86, 93, 103, 115)

**Prior To Applying For A County License To Build New Homes, JRK Enters Two
Contracts To Build New Homes In the County And Forges The Signature Of A
Homeowner On the Application For A Residential Building Permit**

On December 22, 2014, JRK (using the name “JRK Builders / Contractor LLC”) signed a contract with Scott Davis for construction services at the property located at 5608 McLean Drive, Bethesda, Maryland (“5608 McLean”). (Ex. 7)

Several months later, on February 10, 2015, the Montgomery County Department of Permitting Services ("DPS") received an Application for a Residential Building Permit for the property for 5608 McLean ("the Application"). (Ex. 8) On the Application, Scott Davis allegedly signed three attestations: 1) that all information in the application is accurate, 2) that he will use the building as a residence and that he will serve as the general contractor, and 3) that he understands that all proposed construction must comply with approved plans. (Ex. 8) The only other name that appears on the Application is that of Fernando Guedes, signing as the "Authorized Agent." (Ex.8)

Mr. Davis testified that he did not sign the Application, he did not authorize anyone to sign his name to the document, and he did not authorize anyone to submit the document on his behalf to DPS. (Tr. 93-94) In fact, he did not ever see the document at any time remotely close to the document's date. (Tr. 93) Mr. Davis recalled filling out documents two days prior to the Application, and two days after the Application. (Tr. 94) Mr. Davis would not have signed off on the Application as he is not a general contractor and does not have background in general contracting. (Tr. 94-95)

On March 17, 2015, JRK – using the name "JRK Builder / Contractor LLC" – JRK signed a contract with Douglas Kammerer for work on property at 4503 Elm Street, Chevy Chase, Maryland ("4503 Elm"). (Ex. 9) The contract was for the construction of a single family home at 4503 Elm. (Tr. 75) Mr. Kammerer owned the land at 4503 Elm Street at the time of the contract and continues to own it now. (Tr. 75) Under the contract, Mr. Kammerer agreed to pay JRK \$797,517 in connection with the construction of the home, a price that was later reduced by \$50,000. (Ex. 9 at 10; Tr. 76-77, 84) Ultimately, Mr. Kammerer confirmed he issued payment to JRK in excess of \$39,875.85, which would be 5% of the initial contract value. (Tr. 84)

Both Mr. Kammerer and his wife, Holly Kammerer, spoke to JRK about whether JRK held Mr. Kammerers' funds paid for the construction of the home at 4503 Elm in escrow. (Tr. 77-79, 86-87) Mr. Kammerer specifically asked whether an escrow account had been created, and JRK's response was not to worry about it and that JRK took care of it. (Tr. 78) Mr. Kammerer asked for documentation of the escrow account but never received any. (Tr. 78-79) Ms. Kammerer recalled a conversation in September 2015 with Fernando Guedes, Junior about whether an escrow account existed. (Tr. 86) Mr. Guedes told Ms. Kammerer to not worry about it, and that it was covered. (Tr. 86-87) Ms. Kammerer noted that the conversation occurred at 4503 Elm, where their prior residence had just been demolished to clear the property for construction of the new home under the contract with JRK. Mr. Guedes arrived in September 2015 at 4503 Elm in a new Corvette Stingray, and wearing new designer clothing, which differed from how she had observed him prior to that time. (Tr. 86)

Two Days After Signing The Kammerer Contract, JRK Submits A Building Contractor's License Application to OCP

On March 19, 2015, "JRK Contractor LLC" submitted a Building Contractors License Application to OCP. (Ex. 10) The license application reflected Fernando Guedes, Senior was the resident agent and the "President," and Fernando Guedes, Junior was a "Vice President / Member Name." (Ex. 10 at 2) Fernando Guedes Junior and Senior are listed as the only two

persons holding a financial interest of 10% or more in JRK. (Ex. 10 at 2) Section VI of the Application asks whether the applicant has any pending law suits or outstanding unsatisfied judgments. (Ex. 10 at 4) Section IX notes the requirement that if there are any changes in the information provided, OCP must be notified within 30 days of the change. (Ex. 10 at 5) This statement reiterates the requirement of the Montgomery County Code at Chapter 31C-2(c) that, “[a] builder must amend the license within 30 days of any material change in the information provided in the most recent application or amendment.” The application also provides in Section IX, “[b]y signing this application, I do solemnly declare and affirm under the penalties of perjury, that the contents of this application are true and correct.” (Ex. 23 at 5)

Based upon the application, OCP issued JRK Building Contractor's License No. BC218983. (Ex. 11)

JRK Receives Building Permits From DPS for 5608 McLean, 4503 Elm, and a Third Property – 5612 McLean

Pursuant to the applications submitted to the County's Department of Permitting Services (“DPS”), JRK received Building Permits for 5608 McLean and 4503 Elm in July 2015. (Ex. 13, 14)

In August 2015, JRK submitted for, and received in March 2016, a building permit for a property at 5612 McLean Drive, Bethesda, Maryland (“5608 McLean”). (Ex. 15, 16)

OCP Receives Complaints from Mr. Kammerer and Mr. Davis Regarding JRK, and OCP Initiates A Director's Complaint Against JRK

On September 8, 2016, approximately 18 months after he signed a contract with JRK for construction of a new home at 4503 Elm, Mr. Kammerer filed a complaint against JRK with OCP. (Ex. 17) OCP assigned this Complaint No. 16-OC-047597. (Ex. 17) Mr. Kammerer complained of continued delays in performing in a timely manner, resulting in financial harm to Mr. Kammerer. (Ex. 17 at 3) Mr. Kammerer also testified generally that JRK did not complete the house as specified in the contract. (Tr. 79) The Kammerers hired an inspector, who provided a 69-page report on issues with the home. (Tr. 79) Once JRK decided to not fix the items, Mr. Kammerer decided to file the complaint with the County. (Tr. 80)

Mr. Davis submitted a complaint regarding JRK to OCP on October 24, 2016. (Ex. 20) Mr. Davis's complaint at that time with respect to JRK was false advertising. (Ex. 20, Tr. 96) OCP assigned this Complaint No. 16-OC-048789. (Ex. 20) Mr. Davis testified that JRK claimed to have over 30 years of experience, but in fact the LLC was recently formed. (Tr. 96) Additionally, Mr. Davis took issue with JRK's claim that they did all the work themselves and did not subcontract any work. (Tr. 96)

In addition to the complaints by Mr. Davis and Mr. Kammerer, the Director of OCP, Eric Friedman, notified that he initiated a Director's Complaint against JRK. (Ex. 21) The basis for the Director's Complaint included information received from DPS, and the information received in the two complaints received about JRK that month. (Ex. 21 at 2)

JRK Signs Contract To Construct Home At 5612 McLean for Mr. Williams and Mr. Coyne in December 2016

In December 2016, JRK – using the name “JRK Builders and Contractors, LLC” – entered into a contract with Jon Williams and Christopher Coyne to build a house at 5612 McLean Drive for \$2.5 million. (Ex. 22 at 19; Tr. 102-03) As discussed below, JRK’s performance under this contract will become the basis for the third and final complaint OCP receives regarding JRK.

JRK Submits Application To Renew Building Contractors License to OCP in February 2017

OCP received JRK’s application to renew its building contractors license on February 23, 2017. (Ex. 23) The application was submitted on behalf of “JRK Contractor LLC dba JRK Builders.” (Ex. 23 at 1) Once again, only two individuals were listed as owning 10% or more of JRK: Fernando Guedes, Junior, and Fernando Guedes, Senior. (Ex. 23 at 2)

The renewal application lists JRK’s resident agent as Fernando Guedes Junior, 18311 Fable Drive, Boyds, Maryland 20841. (Ex. 23 at 2) Although the renewal application similarly required attestation to all facts under penalties of perjury (Ex. 23 at 5), this information was not correct. When OCP initially received complaints regarding JRK in October 2016, OCP checked JRK’s corporate information with the State of Maryland Department of Assessments and Taxation (“SDAT”). (Ex. 18) SDAT as of October 2016 showed the resident agent for JRK as Fernando Guedes at 18317 Tapwood Road, Boyds, Maryland 20841, in contract with the Fable Drive address provided on the renewal application. (Ex. 18 at 1) Additionally, as of May 17, 2018, SDAT still reflected a Mr. Guedes at Tapwood Road as JRK’s resident agent. (Ex. 39)

The Board of Registration for Building Contractors conditionally approved the renewal application. (Ex. 24) Specifically, the conditional license required JRK to provide inspection reports for homes JRK was currently building, which included 5612 McLean Drive. (Ex. 26)

Mr. Davis Attempts To Resolve Outstanding Issues With JRK’s Performance Through Mediation Facilitated by OCP

In an attempt to resolve issues with JRK’s performance, Mr. Davis and JRK participated in mediation services offered by OCP. (Ex. 25; Tr. 97) The mediation agreement, signed May 4, 2017, shows Mr. Davis’s signature. (Ex. 25; Tr. 97) The mediation resulted in a settlement agreement. (Ex. 38; Tr. 98-99) The settlement agreement also shows Mr. Davis’s signature. (Ex. 38; Exhibit 2 at 3; Tr. 98-99)

In September 2017, DPS Issues Two Notices of Violations For 4503 Elm Street To JRK, Which JRK Files To Remediate

On September 8, 2017, James Sackett of the County’s DPS issued two Notices of Violation to JRK in connection with the construction at 4503 Elm Street. The first, No. 388939, found a violation of County Code Section 8-10(a), as there was an unsafe condition on the property. (Ex. 27) While the violation lists multiple issues, Mr. Sackett highlighted in his testimony the fact that there was a ventilation shaft between the garage and the home, presenting a fire separation issue. (Ex. 27; Tr. 68) Mr. Sackett also issued on September 8, 2017, Notice of Violation No. 388677 for a violation of County Code Section 8-24(a). (Ex. 28) This second

Notice of Violation found that JRK failed to obtain a permit for the construction of a six-foot retaining wall at 4503 Elm. (Ex. 28; Tr. 69)

Although OCP, Mr. Sackett, and Mr. Kammerer discussed these Notices of Violation with JRK, and JRK contracted with Mr. Kammerer to "assume full responsibility" for work performed contrary to applicable laws (Ex. 9 at 14, Article XVIII), JRK failed to remediate the issues in these violations. (Ex. 29, Tr. 57-58, 69, 80-81)

In October 2017, The Kammerers File Suit Against JRK

The Kammerers filed a four-count complaint against JRK,

¹ Fernando Guedes, Junior, and Fernando Guedes, Senior, in Montgomery County Circuit Court on October 25, 2017. (Ex. 30, 31) The complaint alleges breach of contract, violation of the Maryland Consumer Protection Act (Md. Code Ann., Comm. Law § 13-101, *et seq.*), fraud, and constructive trust fund statute (Md. Code Ann., Real Property § 9-201 *et seq.*). (Ex. 31 at 15-22) Again, despite its obligations to update information on its building contractors license application within 30 days of any changes, JRK failed to notify OCP of this lawsuit. (Tr. 60-61)

Fernando Guedes, Jr. filed Responses to Plaintiffs' Requests for Admissions of Fact in the case. (Ex. 36) Mr. Guedes, Jr. admitted that:

- He and Fernando Guedes, Sr. formed JRK Contractor LLC in Maryland; (Ex. 36 at 1)
- The website for JRK included photographs of houses that JRK had not constructed; (Ex. 36 at 2)
- Before March 15, 2015, JRK used subcontractors on some of its home improvement and constructions projects, and he used subcontractors on the Kammerers' house; (Ex. 36 at 2, 5, 7)
- At the time JRK entered the contract to construct the home for the Kammerers, JRK did not have a license to build a new custom home in Montgomery County; (Ex. 36 at 3)
- JRK agreed to build a new custom home for the Kammerers; (Ex. 36 at 4) and
- JRK caused the improper installation of an attic pull-down unit at 4503 Elm. (Ex. 36 at 8) This was one of the grounds for the Notice of Violation No. 388939. (Ex. 27)

Although JRK and the Guedes defendants retained counsel, that attorney moved to withdraw his representation on May 4, 2018. (Ex. 30, Docket No. 44)

On May 29, 2018, the Kammerers voluntarily dismissed their claims against JRK and Guedes Defendants without prejudice.

Mr. Williams Files A Complaint With OCP Against JRK In November 2017 Regarding JRK's Performance At 5612 McLean

On November 11, 2017, OCP received yet another complaint against JRK from Mr.

¹ The JRK defendant in the action "JRK Builders A/K/A JRK Contractor, LLC A/K/A JRK Builders, LLC." (Ex. 31)

Williams in connection with JRK's construction of the home at 5612 McLean. (Ex. 32) Mr. Williams detailed multiple complaints against JRK, including misrepresentation of JRK's building experience, untimely performance, and taking money to build the home and then spending it on a "lavish lifestyle." (Ex. 32 at 3-4) OCP assigned the Complaint No. 17-OC-057291.

Mr. Williams and his husband, Christopher Coyne, testified at the May 18, 2018, hearing regarding one of the items identified in their complaint. Specifically, both testified that JRK – through Fernando Guedes, Junior – was repeatedly advised that surplus building materials (consisting of shingles, slate, and stone pavers) that Mr. Williams and Mr. Coyne owned at 5612 McLean in the summer of 2017 were not to be removed. (Tr. 104, 106-07, 114) Mr. Williams and Mr. Coyne both informed Mr. Guedes, Jr. that they wished to retain the materials – which they owned – on their property at 5612 McLean for future use. (Tr. 106-07, 114-15) Despite these conversations, and the fact that Mr. Williams and Mr. Coyne owned the materials, they disappeared from 5612 McLean. (Tr. 107-08, 115) Both Mr. Williams and Mr. Coyne observed those materials at another property under construction by JRK at 6002 Roosevelt Avenue, Bethesda, Maryland. (Ex. 37; Tr. 108, 115-17). JRK did not compensate Mr. Williams and Mr. Coyne for the materials after they left 5612 McLean. (Tr. 108, 116-18) Mr. Williams told Fernando Guedes, Junior, and Fernando Guedes, Senior, that Mr. Williams believed the materials were moved to the Roosevelt Avenue property, and they did not disagree with Mr. Williams. (Tr. 108)

OCP remained in contact with JRK as to whether it fulfilled the conditions for its conditional license. On November 15, 2017, four days after receiving the complaint against JRK by Mr. Williams, OCP emailed Fernando Guedes, Jr., to request documentation required for the conditional license. (E. 33)

JRK Fails To Perform Under The Settlement Agreement With Mr. Davis, Who Sues For And Obtains A Confessed Judgment Against JRK

JRK failed to perform under the settlement agreement it entered into with Mr. Davis. (Tr. 98) Mr. Davis filed suit against JRK on December 13, 2017, pursuant to the terms of the settlement agreement, and received a confessed judgment against JRK. (Ex. 34, Docket Entry 6; Ex. 38; Tr. 99)

Despite its obligation under the terms of its building contractors license to update OCP of any changes in information within 30 days, JRK did not notify OCP of the suit by Mr. Davis. (Tr. 63)

DPS Issues JRK A Third Notice Of Violation For Construction At 5612 McLean

On December 28, 2017, Mr. Sackett issued to JRK Notice of Violation No. 392671 in connection with the improper installation of stone veneer at 5612 McLean. (Ex. 35, 35A) This improper installation violated County Code 8-26, in that it failed to comport with the manufacturers' instructions for installation. (Ex. 35)

Mr. Williams and Mr. Coyne spoke to JRK about this Notice of Violation multiple times; JRK refused to remediate the issue. (Tr. 108-09, 118-19) Mr. Williams and Mr. Coyne had to

hire a third party to address the issue, and in fact when the stone veneer installed by JRK was removed two weeks prior to the May 18, 2018, hearing, a gallon of water leaked out and the plywood behind the stone veneer was saturated and moldy. (Tr. 110) There is also a leak of water into the basement of the home. (Tr. 110)

As Of May 18, 2018, Mr. Williams and Mr. Coyne Were Still Not Able to Inhabit 5612 McLean, Despite Spending \$1 Million Over The Purchase Price To Remediate Issues Created By JRK

Mr. Williams and Mr. Coyne were still not able to reside at 5612 McLean as of May 18, 2018; they entered their contract for the construction of the home 17 months earlier in December 2016. (Tr. 112) Mr. Coyne is presently listed as the “primary builder” of the property, and he and Mr. Williams retained counsel to communicate with JRK on their behalf. (Tr. 119) After having already paid JRK \$2.5 million, Mr. Williams estimated to date that he and Mr. Coyne expended \$1,054,000 to remediate the issues with the home at 5612 McLean. (Tr. 111)

II. CONCLUSIONS OF LAW

JRK signed contracts to perform construction services for three separate homeowners, to construct one of the most valuable and personal assets in most peoples' lives: their home. Rather than perform as promised, JRK failed to build homes in a timely manner or consistently with the building code. JRK repeatedly failed to abide by its obligations under County and State law. Multiple grounds exist to revoke JRK's building contractors license.

A. Violation of Montgomery County Code 31C-8(b)(1): JRK Misrepresented Material Facts On Application To Renew Its Builders' License

County Code § 31C-8(b)(1) provides that a material misstatement on an application for a homebuilders' license is grounds to revoke a license. Here, JRK misrepresented the name of its resident agent on its application for a building contractors license renewal. (Ex. 23 at 2) SDAT showed the resident agent in October 2016 and May 2018 as residing at 18317 Tapwood Road, Boyds, Maryland. The address provided on the renewal application was 18311 Fable Drive, Boyds, Maryland.

This was a material misstatement. County Regulation (COMCOR) 33.00.01.03.4(b), mandates that any corporate entity registering as a homebuilder permit must identify the corporation's resident agent on the application. *See* COMCOR 31C.00.01.03.3.4(b) (mandating that application for builder's license submit to OCP must name and provide home address for corporation's resident agent). Under the Maryland Rules, service of process is effectuated by service on an LLC by serving the LLC's resident agent, *see* Md. Rule 2-124(h), and State law requires identification of a resident agent for a limited liability corporation. *See* Md. Code Ann., Corps. & Ass'ns § 4A-210(a)(2) (stating that a limited liability corporation must appoint a resident agent). Appointment of a resident agent is essential to obtain service and provide notice of legal proceedings. Indeed, Maryland courts “take a strict, narrow approach to service; they treat defective service of process as a jurisdictional defect and actual knowledge of the proceedings on the part of the defendant will not cure that defect.” *Trademark Remodeling, Inc. v. Rhines*, 853 F. Supp. 532, 541 (2012) (quotations and citations omitted). This was a material misstatement and is grounds to revoke JRK's license under County Code § 31C-8(b)(1).

B. JRK's License Should Be Revoked as JRK Committed Fraud In Connection With Building Activity In Violation of County Code § 31C-8(b)(2)

Montgomery County Code Section 31C-8(b)(2) provides that the Board of Registration may revoke a builder's license, "[i]f the Board finds that the builder ... committed fraud in in connection with any building activity conducted under the requirements of this Chapter." The term "fraud" is not defined in Chapter 31C or elsewhere in the Code.

Where a specific definition does not appear in the statute, the Maryland courts will give that term its "ordinary and natural meaning." *See Maryland-Nat'l Capital Park and Planning Comm'n v. State Dep't of Assessments and Taxation*, 110 Md. App. 677, 689, 678 A.2d 602, 607 (1996), *aff'd*, 348 Md. 2, 702 A.2d 690 (1997). In doing so, a court may refer to dictionary definitions and common usage. *See Bd. of License Commissioners for Prince George's County v. Global Express Money Orders, Inc.*, 168 Md. App. 339, 348, 896 A.2d 432, 437 (2006); *Benson v. State*, 389 Md. 615, 633, 887 A.2d 525, 535 (2005).

The term "fraud" means "deceit, trickery, sharp practice, or breach of confidence, perpetrated for profit or to gain some unfair or dishonest advantage." *See* <http://www.dictionary.com/browse/fraud?s=t> (last visited June 12, 2018).

Here, JRK committed fraud when it submitted the application for a residential building permit for 5608 McLean. JRK, more likely than not, knew the signature of Mr. Davis on the application for building permit dated February 20, 2015, was not Mr. Davis's signature. (Ex. 8) Mr. Davis testified he did not sign the document or authorize anyone else to sign it on his behalf. No one other than JRK and Mr. Davis had an interest in a building permit being issued for 5608 McLean at the time the permit was issued. The signature of a "Fernando Guedes" appears on the document; whether it was Mr. Guedes Sr. or Mr. Guedes Jr. is not clear, but in any event, JRK must have known that Mr. Davis did not sign the building permit application. Mr. Davis testified he did sign other documents to be submitted to DPS at this time, so clearly JRK was aware of how to get in touch with Mr. Davis as necessary to complete paperwork. Finally, comparing Mr. Davis's signature on Exhibit 8 to those that he testified appear on Exhibits 25 and 38 show the discrepancy. Clearly, Mr. Davis did not sign the application for a building permit, Exhibit 8, yet JRK submitted it to DPS in order to obtain a residential building permit. JRK committed fraud and its license should be revoked.

C. JRK Violated County Code Section 31C-8(b)(4) As JRK Violated County and State Law When Constructing New Homes

County Code Section 31C-8(b)(4) prohibits violation of the building code, or County or State law, in the construction of new homes. JRK violated both County and State law.

DPS issued three Notices of Violation to JRK. These notices detail failures of JRK to construct new home consistently with the County's Building Code, codified at Chapter 8 of the Montgomery County Code and as adopted in Chapter 8 of COMCOR.²

² *See* Montgomery County Code § 8-1(a) ("[t]his Chapter . . . is known as the building code of Montgomery County"); § 8-1(c) ("[t]his Chapter applies to the construction of all buildings and structures"). The Code authorizes the Director of DPS to adopt regulations implementing the Code, and provides that all regulations related to the construction of buildings must be based upon the latest edition of the ICC International Building Code. *See*

Per the first Notice of Violation, JRK violated County Code § 8-10(a) when it created unsafe conditions at 4503 Elm, for the reasons listed on the Notice of Violation, including a vent between the garage and the kitchen.³ (Ex. 27)

In the second Notice of Violation, JRK violated County Code § 8-24(a) when it failed to obtain a permit for construction of a retaining wall at 4503 Elm.⁴ (Ex. 28)

In the third Notice of Violation, JRK violated County Code § 8-26 when it failed to install stone veneer in compliance with manufacturer's installation requirements at 4512 McLean.⁵ (Ex. 35)

JRK failed to remedy all of these violations, despite conversations with the homeowners about the violations. JRK's failure to construct 4503 Elm and 5612 McLean consistent with the Building Code violated County law.

Montgomery County Code § 8-13(a), (b). Consistent with the Code, COMCOR 08.00.02.01 adopts the 2015 editions of the International Building Code and the International Residential Code.

³ The duct opening in the garage is addressed by IRC 2015 (the adopted code) R302.5.2:

R302.5 Dwelling-garage opening and penetration protection. Openings and penetrations through the walls or ceilings separating the dwelling from the garage shall be in accordance with Sections [R302.5.1](#) through [R302.5.3](#).

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1³/₈ inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than 1³/₈ inches (35 mm) thick, or 20-minute fire-rated doors, equipped with a self-closing device.

R302.5.2 Duct penetration. Ducts in the garage and ducts penetrating the walls or ceilings separating the dwelling from the garage shall be constructed of a minimum No. 26 gage (0.48 mm) sheet steel or other approved material and **shall not have openings into the garage.** (emphasis added).

⁴ IRC 2015 edition provides:

SECTION R105 PERMITS

R105.1 Required. Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.

R105.2 Work exempt from permit. Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures, provided that the floor area does not exceed 200 square feet (18.58 m²).

2. Fences not over 7 feet (2134 mm) high.

3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.

R404.4 Retaining walls. Retaining walls that are not laterally supported at the top and that retain in excess of 48 inches (1219 mm) of unbalanced fill, or retaining walls exceeding 24 inches (610 mm) in height that resist lateral loads in addition to soil, **shall be designed in accordance with accepted engineering practice** to ensure stability against overturning, sliding, excessive foundation pressure and water uplift. Retaining walls shall be designed for a safety factor of 1.5 against lateral sliding and overturning. This section shall not apply to foundation walls supporting buildings. (emphasis added).

⁵ International Residential Code R703.3 provides: "The nominal thickness and attachment of exterior wall coverings shall be in accordance with . . . the wall covering manufacturer's installation instructions."

A fourth violation occurred when JRK entered contracts with Mr. Davis and Mr. Kammerer to build them homes without being licensed with OCP. Fernando Guedes, Junior, admitted in his Responses to Requests for Admission that JRK did not possess a license as a home builder in Montgomery County on or before March 18, 2015. (Ex. 36 at 3). Both the contracts with Mr. Davis and Mr. Kammerer were entered into before March 18, 2015. This violated County Code § 31C-2(a)(1), which provides that, "A builder must not engage in the business of constructing new homes or act in the capacity of a building contractor in the County unless the builder is licensed by [OCP]." *See also* COMCOR § 31C.00.01.03.1 ("A builder must not engage in the business of erecting or otherwise creating a new home unless licensed with [OCP]"); § 31C.00.01.03.2 ("For the purpose of these regulations, the term 'engaging in the business of erecting or otherwise creating a new home' includes constructing any new home for sale, acting as prime contractor to construct any new home for another person or advertising or holding oneself out as constructing or being available to construct a new home or homes... The term also includes a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of sale to a purchaser.") JRK held itself out as being available to construct new homes to both Mr. Davis and Mr. Kammerer when it entered contracts to construct their homes; JRK was engaged in the business of erecting a new home; JRK was not licensed at the time of those activities; and JRK violated County Code § 31C-2(a)(1).

Additionally, JRK violated state law, the Maryland Custom Home Protection Act ("CHPA"). *See* Md. Code Ann., Real Property §§ 10-501 – 509. Mr. Kammerer qualifies as a "buyer" under the CHPA as he owned the property at the time he entered the contract to build him a home at 4503 Elm. *See* CHPA § 10-501(b). The home JRK agreed to build at 4503 Elm is a "custom home" under the CHPA as it is a single family dwelling constructed to be the Kammerers' residence on land owned by the Kammerers. *See* CHPA § 10-501(c). Moreover, Fernando Guedes, Junior, admitted the home constructed was a "custom home" in its responses to requests for admissions. (Ex. 36 at 4) JRK is a "customer home builder" as JRK entered into a custom home contract and in fact undertook to perform under that contract. *See* CHPA § 10-501(d); Responses to Requests for Admission of Fact, Ex. 36 at 4 (admitting JRK "agreed to build a new custom home for" the Kammerers). Finally, the contract between Mr. Kammerer and JRK was a custom home contract, as it was a contract worth in excess of \$20,000 to furnish labor and materials in the construction of a custom home. *See* CHPA § 10-501(e).

The CHPA mandates that "a custom home builder ... shall place the consideration [paid] into an escrow account." *See* CHPA § 10-504(a)(1). The testimony establishes that despite inquiry from the Kammerers, JRK failed to ever produce any information or confirm that they in fact held the funds in an escrow account.

The CHPA also mandates that a custom home contract must have certain disclosures. *See* CHPA §§ 10-505 - 506. None of the disclosures required by the CHPA are in the Kammerer Contract (with the exception of the requirement in CHPA § 10-505(3) for terms governing change orders, which appears in Article XXII, page 16 of the Kammerer Contract). (Ex. 9)

JRK violated the County Code repeatedly and the CHPA; JRK's license should be revoked.

D. JRK Failed To Amend Its License Application To Notify OCP Of The Lawsuits Filed by Mr. Davis and the Kammerers

The application for a building contractors permit requires the applicant to disclose whether it is party to any pending litigation. Ex. 23, Section VI, Item 4. The application notifies the individual who signs off on the application of the obligation to update *any* changes to the information within 30 days. (Ex. 23, Section IX) After JRK filed to renew its license with OCP in February 2017, JRK was named as a defendant in two different actions – one filed by the Kammerers on October 25, 2017 (Ex. 31), and one filed by Mr. Davis on December 28, 2017 (Ex. 38). JRK failed to notify OCP of either suit, via an amendment to its application or otherwise. Both suits addressed JRK's performance or lack thereof under homebuilder contracts, and are material to JRK's status as a new home builder in the County. Under County Code § 31C-8(b)(7), this failure to notify OCP of this material change to its application is grounds to revoke JRK's license.

E. JRK Violated County Code § 31C-8(b)(13) As JRK Diverted Construction Materials JRK Did Not Own From 5612 McLean To Another JRK Project With The Intent To Defraud Mr. Williams and Mr. Coyne

Both Mr. Williams and Mr. Coyne testified unequivocally that they purchased and owned certain construction materials for 5612 McLean (shingles, slate, and stone pavers). Both testified to conversations they had with Fernando Guedes, Junior, that the materials were to remain at 5612 McLean for their future use. Both testified that the materials disappeared from 5612 McLean, only to reappear at another JRK property, 6002 Roosevelt Avenue. JRK had a permit from DPS to construct a single family dwelling at 6002 Roosevelt. (Ex. 37) Fernando Guedes, Junior, when confronted by Mr. Williams, did not deny that the materials were relocated to 6002 Roosevelt by JRK.

More likely than not, this testimony establishes that the materials at 6002 Roosevelt Street were the materials from 5612 McLean. JRK did not ever compensate Mr. Williams or Mr. Coyne for these materials.

JRK's actions are grounds to revoke its license under County Code 31C-8(b)(13), as it diverted construction materials owned by Mr. Williams and Mr. Coyne to another JRK project with the intent to defraud Mr. Williams and Mr. Coyne.

III. ISSUE REGARDING APPEAL

At the show cause hearing on May 18, 2018, the hearing examiner asked that the County articulate its position as to how a party might appeal a decision in this matter.

The show cause hearing on May 18 took place pursuant to County Code Section 31C-8(c)(1), which states: "Before revoking or suspending any license, the Board [of Registration] must afford the builder an opportunity for a hearing under the Administrative Procedures Act." Section 31C-8(c)(2) then provides, "[t]he builder may appeal *a decision of the Board* to the Montgomery County Board of Appeals" (emphasis added).

Under County Code Section 2A-11, a party aggrieved by a "*final decision* in a case

governed by this Article” may seek judicial review of the decision in the Circuit Court, and thereafter to the Court of Special Appeals (emphasis added).

The purpose of the hearing on May 18 was to provide JRK with a hearing to contest the evidence OCP gathered to support a recommendation that the Board of Registration revoke JRK's license. The final decision as to whether to revoke the license however is not made by the Office of Zoning and Administrative Hearings; that decision is made by the Board of Registration. The Office of Zoning and Administrative Hearings provides written findings of fact and conclusions of law, and makes a *recommendation* to the Board of Registration. Consistently, the Board of Registration's March 21, 2018, Order and Referral for Hearing states, “[u]pon completion of the hearing, the Hearing Examiner shall submit a written order *and recommendation* to the Board of Registration.” (Ex.2 (emphasis added)) The Board of Registration then makes the *final decision* as to whether to revoke the license. That decision, under 31C-8(c)(2), is then subject to appeal to the Board of Appeals.

In summary, reading the Code as a whole, the appeal from a decision by the Board of Registration to revoke a license issued under Chapter 31C lies with the Board of Appeals.

IV. CONCLUSION

For the reasons set forth above, the County submits that the evidence adduced overwhelmingly supports a finding of violation of County Code §§ 31C-8(b) (1), (4), (7), and 13, and that grounds exist for the Office of Zoning and Administrative Hearings to issue a report consistent with the above and to recommend that the Board of Registration revoke the builder's license of JRK, a/k/a “JRK Contractor, LLC d/b/a JRK Builders.”

Respectfully submitted,

MARC P. HANSEN
COUNTY ATTORNEY

s/ _____
Erin J. Ashbarry
Associate County Attorney
101 Monroe Street, Third Floor
Rockville, Maryland 20850
(240) 777-6700
Counsel for Montgomery County, Maryland

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2018, a copy of the foregoing Proposed Findings of Fact and Conclusions of Law was mailed via first class mail, postage prepaid, to:

JRK Contractor, LLC t/a JRK Builders
c/o Fernando L. Guedes, Resident Agent
18317 Tapwood Road
Boyd, Maryland 20841

s/ _____
Erin J. Ashbarry

APPENDIX II -- PROPOSED ORDER

**BEFORE THE BOARD OF REGISTRATION
OF MONTGOMERY COUNTY, MARYLAND**

IN THE MATTER OF:

**JRK CONTRACTOR LLC t/a JRK BUILDERS
RESPONDENT**

Resident Agent Fernando Guedes, Sr

**ORDER TO SHOW CAUSE WHY
BUILDING CONTRACTOR’S LICENSE
#BC 218983 SHOULD NOT BE REVOKED**

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OZAH Case No. CP 18-01
Order to Show Cause Regarding:
OCP Complaint # 16-OC-047597
OCP Complaint # 16-OC-048789
OCP Complaint # 17-OC-057291

* * * * *

ORDER REVOKING BUILDING CONTRACTOR’S LICENSE BC 218983

Opinion

The above-captioned case – *In the matter of JRK Contractor LLC t/a JRK Builders* – was initiated by the Office of Consumer Protection (hereinafter, “OCP”) on March 20, 2018, by a certification (Exhibit 1) to the Montgomery County Board of Registration (the “Board”). By this action, OCP sought to have the Board revoke Building Contractor’s License #BC 218983, conditionally held by JRK Contractor LLC (hereinafter, “JRK” or the “Respondent”), for alleged violations of Montgomery County law.

On March 21, 2018, the Board of Registration referred the matter to the Office of Zoning and Administrative Hearings (OZAH) by an “Order and Referral for Hearing” (Exhibit 2). The Referral Order directed that the Office of Zoning and Administrative Hearings hold a hearing pursuant to the Montgomery County Administrative Procedures Act (MCAPA) and submit a written recommendation and order to the Board.

The Office of Zoning and Administrative Hearings held a hearing, under the Administrative Procedures Act, on May 18, 2018, and the record closed on June 29, 2018, after post-hearing filings by the County. On July 6, 2018, the Hearing Examiner timely submitted a Report and Recommendation to the Board of Registration. The hearing on this matter having been conducted, after due notice to the Respondent, the Board of Registration hereby enters the following findings of fact and conclusions of law:

1. The Board of Registration has jurisdiction to hear and decide this case under Montgomery County Code Section 31C-8(b);
2. The Complainant is the Montgomery County Office of Consumer Protection, as represented by the County Attorney, and the Respondent is JRK Contractor LLC t/a JRK Builders;

3. The Respondent is the holder of Building Contractor's License #BC 218983, issued to the Respondent on April 9, 2015 by the Office of Consumer Protection (Exhibit 11), and conditionally renewed by the Board of Registration on April 4, 2017 (Exhibits 24 and 26);
4. The Office of Consumer Protection has received a complaint against the Respondent from each of the owners of 4503 Elm Street, (OCP Case #16-OC-047597); 5608 McLean Drive, (OCP Case #16-OC-048789); and 5612 McLean Drive, (OCP Case #17-OC-057291) alleging that Respondent violated Chapter 11, Consumer Protection; Chapter 31C, New Home Warranty and Builder Licensing; and Chapter 8, Buildings, of the Montgomery County Code. (Exhibits 1 and 3; Tr. 32-63);
5. The Board of Registration designated the Office of Zoning and Administrative Hearings (OZAH) to conduct the hearing under the Administrative Procedures Act (Exhibit 2);
6. The Respondent was duly served with an Order to Show Cause why it's Building Contractor's License #BC 218983 should not be suspended or revoked and a Notice of the Hearing set for May 18, 2018 before an OZAH Hearing Examiner (Exhibits 3, 4, 5 and 6);
7. The Office of Zoning and Administrative Hearings held a hearing under the Administrative Procedures Act, as noticed on May 18, 2018; evidence was presented by the County in support of its claim that Respondent had violated the provisions of the Montgomery County Code and State Law (Tr. 1-133); and the record closed on June 29, 2018, after post-hearing filings by the County.
8. The Respondent was given an opportunity to appear at the hearing to respond to the allegations, but failed to do so (Exhibits 3, 4, 5 and 6; and Tr. 6-7);
9. The proposed Findings of Fact and Conclusions of Law submitted by the County on June 15, 2018 (Docket No. 15), accurately summarized the evidence and pertinent legal authorities in this case. Those proposed Findings of Fact and Conclusions of Law were adopted by the Hearing Examiner, except as specifically noted in his Report and Recommendation,¹ and are incorporated herein by reference, with the exceptions noted by the Hearing Examiner. A copy of the County's submission, compressed into single-spacing, is attached as Appendix I to the Hearing Examiner's Report and Recommendation.
10. On July 6, 2018, the Hearing Examiner timely submitted a Report and Recommendation to the Board of Registration, finding that the Respondent had violated CHPA (Md. Code Ann., Real Property §§10-501 – 509), and repeatedly violated Montgomery County Code Chapter 31C. The Hearing Examiner therefore recommended revocation of the Respondent's Building Contractor's License # BC 218983;
11. Based on this record and the Report and Recommendation of the Hearing Examiner, which is

¹ While the County's filing accurately portrayed the facts and the pertinent law, the Hearing Examiner disagreed with two of the conclusions reached by the County – that the misstatement of the resident agent's address itself warrants revocation of the license under County Code § 31C-8(b)(1) and that the evidence is sufficient to establish a conversion of building materials in violation of Code § 31C-8(b)(13). Nevertheless, the overwhelming evidence of other violations by the Respondent amply supports the revocation of the license in question.

incorporated herein by reference, the Board of Registration hereby finds that the Respondent has violated Montgomery County Code Chapter 31C, and the State of Maryland's Custom Home Protection Act ("CHPA" - Md. Code, Real Property §§10-501– 509), as described below:

- a. County Code § 31C-8(b)(1): Respondent made a misrepresentation of material fact in the application for license or renewal by misrepresenting the correct name of the licensee's Resident Agent. On the license application form (Exhibit 23, at p. 2), JRK lists Fernando Guedes, Jr. as the resident agent, and gives his address as 18311 Fable Dr., Boyds MD 20841. This address contrasts with the address listed for the resident agent of JRK with the State of Maryland (Exhibits 18 and 39). There, the resident agent is listed as "Fernando L. Guedes" at the address 18317 Tapwood RD, Boyds MD 20841.

On the other hand, the Board of Registration cannot conclude from the evidence of record (Exhibits 18, 23 and 39 and Tr. 47-52) that this misstatement of the resident agent's address was intentional, especially since Fernando Guedes, Sr., is also listed on the license application, albeit as the "Vice President/Member name," at the correct address of the resident agent -- 18317 Tapwood RD, Boyds MD 20841. In the opinion of the Board of Registration, this mix-up of the resident agent's name and address would not, in and of itself, justify revocation of the license in question. Rather, at most, it would be grounds for suspension of the license until the defect was cured. Nevertheless, in view of the other findings listed herein, the Board of Registration revokes JRK's license;²

- b. County Code § 31 C-8(b)(2): Respondent committed fraud in connection with building activity conducted under the requirements of this Chapter by forging the homeowner's signature on a building permit application with regard to the construction of a home at 5608 McLean Drive, Bethesda, MD 20814. Scott Davis, the co-owner of the property at 5608 McLean Drive, Bethesda, Maryland, testified that he entered into a contract with JRK on December 22, 2014 for work on his home (Exhibit 7), but that he never signed an application for a building permit (Exhibit 8); nor did he authorize anyone to sign his name thereto. Tr. 92-95. Nevertheless, signatures purporting to be his, were affixed to the permit application filed by JRK with the Department of Permitting Services, and one of those signatures inaccurately asserts that he would serve as the "general contractor" for the proposed construction;

² The County's attorney argued at the hearing that the misstatement of the name and address of the resident agent was a material fact in an application for a builders license, and it was therefore grounds for the revocation of the license pursuant to Code Section 31C-8(b)(1) and COMCOR, Section 31C.00.01.03.4(b). . . . "[F]or purposes of legal proceedings, correct identity of a resident agent is essential in order to ensure adequate notice of legal proceedings against the entity." Tr. 51. However, Eric Friedman, OCP's Director, testified in response to questions by the Hearing Examiner, that the address mix-up would not itself warrant revocation. Tr. 49-50.

MR. GROSSMAN: But aside from . . . that little confusion aspect, did it have any substantive impact on any failures by JRK to perform their duties under the -- the builders contracts?

MR. FRIEDMAN: No. I don't think so. I think that the only concern would be in terms of knowing who is -- who is the real agent -- resident agent for purposes of process of service or things of that sort. But in terms of -- of constructing homes or whether they complied with or violated building codes and things of that sort, that confusion I don't think would address folks' concerns.

MR. GROSSMAN: So I take it that if, in fact, JRK had done a perfect job in constructing these homes, that the confusion about the resident agent wouldn't be a grounds for rev- -- or you wouldn't seek revocation of their license over that?

MR. FRIEDMAN: No. I think that would be correct.

- c. County Code § 31C-8(b)(4): Respondent violated the Building Code (County Code Section 8-1 *et seq.*)³ and other laws of the County or State, as evidenced by:
- 1) the Notice of Violation (Exhibit 27) issued to JRK on September 8, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 4503 Elm Street, for improper garage fire separation, improper drainage slope, improper gas piping, improper attic access and improper basement insulation, all in violation of the Building Code and Residential Building Permit #712492 (Exhibit 14), as testified to at the hearing (Tr. 65-72) and as documented by a professional inspection report (Ex. 40);
 - 2) the Notice of Violation (Exhibit 28) issued to JRK on September 8, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 4503 Elm Street, for constructing a retaining wall without obtaining the required permit in violation of the Building Code, as testified to at the hearing (Tr. 65-72);
 - 3) the Notice of Violation (Exhibits 35 and 35-A), issued to JRK on December 28, 2017, by Montgomery County's Department of Permitting Services (DPS) regarding 5612 McLean Drive, Bethesda, MD 20814, for improper installation of stone veneer, in violation of the Building Code and Residential Building Permit #729629 (Exhibit 16), as testified to at the hearing (Tr. 65-72) and documented by a professional inspection report (Exhibit 42);
 - 4) JRK entering contracts with Scott and Evelyne Davis on December 22, 2014 (Exhibit 7) and Douglas and Holly Kammerer on March 17, 2015 (Exhibit 9) to build their homes, when at the time of contracting, JRK did not have a Building Contractor's license issued by OCP. A Building Contractor's license was first issued to JRK thereafter on April 9, 2015 (Exhibits 11 and 36). Entering into these contracts therefore violated County Code § 31C-2(a)(1), which provides that, "A builder must not engage in the business of constructing new homes or act in the capacity of a building contractor in the County unless the builder is licensed by [OCP]." JRK held itself out as being available to construct new homes to both the Davises and the Kammerers when it entered contracts to construct their homes and engaged in the business of erecting new homes while not licensed to do so;⁴ and
 - 5) failing to place funds in an escrow account pursuant to the State of Maryland's Custom Home Protection Act, a/k/a CHPA (Md. Code Ann., Real Property §§10-501 – 509), with regard to the construction of the Kammerers' home at 4503 Elm Street, Bethesda,

³ Chapter 8 of the Montgomery County Code constitutes the County's Building Code, which incorporates the latest edition of the ICC International Building Code and other applicable codes through COMCOR Regulations 08.00.02.01, *et seq.* Footnotes 3, 4 and 5 on Page 9 of Appendix I, attached to the Hearing Examiner's Report, cite specific references to applicable Building Code provisions.

⁴ See also COMCOR §31C.00.01.03.1 ("A builder must not engage in the business of erecting or otherwise creating a new home unless licensed with [OCP]"); and § 31C.00.01.03.2 ("For the purpose of these regulations, the term 'engaging in the business of erecting or otherwise creating a new home' includes constructing any new home for sale, acting as prime contractor to construct any new home for another person or advertising or holding oneself out as constructing or being available to construct a new home or homes... The term also includes a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of sale to a purchaser.")

MD 20815. The home JRK agreed to build is a “custom home” under the CHPA, as it is a single family dwelling constructed to be the Kammerers’ residence on land owned by the Kammerers.⁵ *See* CHPA § 10-501(c). The contract between the Kammerers and JRK was a custom home contract, as it was a contract worth in excess of \$20,000 to furnish labor and materials in the construction of a custom home. *See* CHPA § 10-501(e). CHPA § 10-504(a)(1) mandates that “a custom home builder ... shall place the consideration [paid] into an escrow account.” The testimony establishes that, despite inquiry from the Kammerers, JRK failed to ever produce any information or confirm that they in fact held the funds in an escrow account. Tr. 75-79 and 86-87. As noted by the County attorney, JRK also failed to make certain disclosures in the contract (Exhibit 9) that are required by CHPA §§10-505 – 506.

- d. County Code § 31 C-8(b)(7): In violation of this provision, Respondent failed to file an amendment to its February 23, 2017 application to renew its Building Contractor’s License (Exhibit 23), within 30 days of the filing of lawsuits against JRK, even though the filing of those lawsuits constituted a material change to the information provided by JRK on the application. Section VI, Item 4 of the renewal application (Exhibit 23) requires the applicant to disclose whether it is party to any pending litigation. The application notifies the individual who signs off on the application of the obligation to update *any* changes to the information within 30 days. (Exhibit 23, Section IX) After JRK filed this renewal application, it was named as a defendant in two different actions – one filed by the Kammerers on October 25, 2017 (Exhibit 31), and one filed by Davises on December 28, 2017 (Exhibit 38). Both suits addressed JRK’s performance or lack thereof under homebuilder contracts, and are material to JRK’s status as a new home builder in the County. JRK failed to notify OCP of either suit. Tr. 60-63. Under County Code § 31C-8(b)(7), this failure to notify OCP of this material change to its application is grounds to suspend or revoke JRK’s license; and
- e. County Code § 31C-8(b)(13): Respondent allegedly diverted construction materials that were paid for by Messrs. Williams and Coyne for the completion of a construction project in their home, located at 5612 McLean Drive, Bethesda, Maryland, and used the property for another project, with intent to defraud Messrs. Williams and Coyne. Both Mr. Williams and Mr. Coyne testified that they purchased and owned these construction materials (grey Hardie board shingles, a palette of slate, and stone pavers), and they told JRK’s agent, Fernando Guedes, Junior, that the materials were to remain at 5612 McLean for their future use. Tr. 104, 106-108, 114-115. Nevertheless, those materials disappeared from their premises, without their permission, and they believe that they were relocated to a project at 6002 Roosevelt Street, in Bethesda, also being worked on by JRK (Exhibit 37). Messrs. Williams and Coyne further testified that they spotted “similar materials” at 6002 Roosevelt that they “believed to be” the materials missing from their property, and that despite asking JRK’s agents, they have not been compensated for the missing materials. Tr. 108, 114-118.

The County concluded, in its Proposed Findings of Fact and Conclusions of Law,⁶ that,

⁵ Fernanado Guedes, Jr, admitted the home constructed was a “custom home” in JRK’s responses to requests for admissions. (Exhibit 36 at p. 4). .

⁶ Docket No. 15, pp. 20-21; Appendix I to the Hearing Examiner’s Report, Appendix I, p. 11.

More likely than not, this testimony establishes that the materials at 6002 Roosevelt Street were the materials from 5612 McLean. JRK did not ever compensate Mr. Williams or Mr. Coyne for these materials.

While the Board of Registration does not disagree with the County’s “more likely than not” deduction, it cannot conclude that such a determination of likeliness is sufficient to warrant a formal finding that the materials observed at 6002 Roosevelt were actually the same as those missing from 5612 McLean and that they were improperly converted by JRK’s agents. The County could have proved the point by taking discovery from JRK under MCAPA Section 2A-7(b)(4), thereby questioning the source of the materials located at 6002 Roosevelt and asking for evidence regarding their purchase. The County apparently did not do so, and if it did attempt such discovery, it did not ask the Hearing Examiner to enforce any such requests, nor introduce such evidence at the hearing. Without more proof, which could easily have been obtained, the Board of Registration does not feel there is sufficient evidence for it to make a finding that the materials in question were improperly converted by JRK. The Board of Registration therefore does not rely on this alleged violation of County Code § 31C-8(b)(13) in reaching its findings, conclusions and decision that JRK’s License should be revoked. There is ample evidence, as outlined above, supporting this decision without relying on the missing materials issue.

- 12. Based on the overwhelming evidence in this record, the Board of Registration finds and concludes that the Respondent has violated CHPA (Md. Code Ann., Real Property §§10-501 – 509), and repeatedly violated Montgomery County Code Chapter 31C, warranting revocation of its Building Contractor’s License # BC 218983. Therefore, the Board of Registration hereby revokes Respondent’s Building Contractor’s License # BC 218983.

Order

Based on the foregoing findings and conclusions, and after a thorough review of the entire evidence of record, **the Board of Registration hereby revokes the Respondent’s Building Contractor’s License #BC 218983.**

So Ordered on behalf of the Board of Registration, this _____ Day of _____, 2018.

NOTICE OF APPEAL RIGHTS

The Respondent is hereby notified that three statutory provisions and a Board of Appeals Rule bear on the question of the appropriate procedure for seeking appellate review in this matter.

Montgomery County Code Section 2A-11(a) provides that *“A party aggrieved by a final decision in a case governed by this Article may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. A party aggrieved by the decision of the Circuit Court may appeal that decision to the Court of Special Appeals.”*

However, MCAPA §2A-3(a) provides: *“Where any provision of this article conflicts with a substantive provision of an act pertaining to a particular agency, the latter shall prevail.”*

You are hereby further notified that there is a specific statutory provision that applies to cases arising from Board of Registration decisions in this type of case. Montgomery County Code Section 31C-8(c) provides that *“The builder may appeal a decision of the Board to the Montgomery County Board of Appeals.”*

Board of Appeals Rule 2.1 specifies that *“Unless the applicable law specifies a shorter time, an appeal from an administrative decision must be filed within 30 days after the day the decision was mailed. The required forms must be obtained at the office of the Board of Appeals.”*

While it is the opinion of the Board of Registration that the appropriate avenue for review from this Board’s decision is with the Board of Appeals in the first instance under Code Section 31C-8(c), if the Respondent elects to seek appellate review in this matter, it should consult with counsel as to which appellate route is appropriate in this case, and pursue it in a timely manner.

Copies to:

Eric Friedman, Director, Montgomery County Office of Consumer Protection

Erin Ashbary, Esquire, Associate County Attorney

JRK Contractor LLC t/a JRK Builders

c/o Fernando Guedes Jr., 18311 Fable Drive, Boyds, MD 20841 and

c/o Fernando Guedes Sr., 18317 Tapwood Road, Boyds, MD 20841