

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Marco Mendoza  
Appeal No. 08-6

Hearing Date: March 20, 2009

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board ("Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

## II. CASE HISTORY AND FINDINGS OF THE REVIEW BOARD

Marco Mendoza ("Mendoza"), an electrical contractor, appeals a USBC notice of violation issued by the County of Fairfax USBC department for electrical work done at the home of Curtis and Shirley Clinton (the "Clintons"), located at 1509 Stuart Road, in Reston. The citation was for violating the provisions of the USBC governing the drilling of holes in floor joists for the installation of electrical wiring.

Mendoza argues that neither he, nor anyone working for him, drilled the holes in floor joists, therefore he cannot be held responsible for the USBC violation.

The Review Board disagrees for the following reasons.

The holes in the floor joists were drilled sometime between January 25, 2005 and March 11, 2005 by Gonzalo Martinez ("Martinez"), a person who represented himself to the Clintons as a licensed electrical contractor and entered into a contract with the Clintons for electrical work in November of 2004, but was in actuality an unlicensed contractor. While there is no proof that Martinez worked for Mendoza, Mendoza obtained a USBC permit in December of 2004 for installing a new electrical service at the Clintons' house, which was part of the work specified to be done in the contract between Martinez and the Clintons. Furthermore, Mendoza obtained another USBC permit in

December of 2005 encompassing the rest of the work specified to be done in the contract between Martinez and the Clintons.

The USBC, in § 110.5<sup>1</sup>, provides in pertinent part that;

"A permit shall be considered authority to proceed with construction in accordance with this code, the approved construction documents, the permit application and any approved amendments or modifications. The permit shall not be construed to otherwise authorize the omission or amendment of any provision of this code."

Both state law, in § 36-106 of the Code of Virginia, and the USBC provide that "it shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any code provisions, to violate any such provisions."

It is clear from the above that a USBC permit holder may be held responsible for USBC violations occurring under the scope of the USBC permit. As the USBC violations at the Clintons' residence were for work encompassed by a USBC permit obtained by Mendoza and having Mendoza's name listed on the permit as the responsible contractor, the notice of violation issued to Mendoza by the Fairfax County USBC department is proper.

### III. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the issuance of

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<sup>1</sup> Section 110.5 is from the current USBC (the 2006 edition) and the 2003 edition of the USBC; the 2000 edition of the USBC contained identical language in § 112.7.

the USBC notice of violation to Mendoza by the Fairfax County USBC department and the decision of the Fairfax County Board of Building Code Appeals in affirming the action of the County of Fairfax USBC department to be, and hereby are, upheld.

/s/\*

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Chairman, State Technical Review Board

April 17, 2009

Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

**\*Note: The original signed final order is available from Review Board staff.**