

Abstracts of Important Lien Recovery Fund Claim Decisions July 1, 2003

The following are brief abstracts of decisions entered by the Division of Occupational and Professional Licensing regarding Lien Recovery Fund claims. The list is not all-inclusive but does provide a broad-spectral sampling of precedents and procedures used for processing claims. Additional information on a given claim can be obtained by accessing the documents file for the claim. These files contain PDF format copies of key documents from a claim's file. Complete copies of the files can be obtained by submitting a GRAMA request to the Division.

Amounts Recoverable from Fund (including costs and attorney fees)

- *LRF-2001-0621-01 through -07 Eyer Lighting & Design, Inc. v Castle Homes, LLC.* Division paid claims including post-judgment attorney fees finding that language of UCA § 38-11-203(3)(d) & (e) allows for collection of post-judgment attorney fees and costs if, and only if, the language of the judgment specifically allows for post-judgment augmentation. Division denied pre-judgment attorney fees pursuant to the amount awarded in judgment. Division denied post-judgment costs finding that photocopies, courier fees, postages, faxes, etc. are not taxable costs.
- *LRF-2000-0821-01 Western Rock Products Corp. v Sideright, Inc.* Division approved claim for payment but denied \$3,487 of post-judgment attorney fees. Division found that the standard of manifest injustice requires the claimant must demonstrate it has made all reasonable efforts to collect what is owed but some unusual circumstance resulted in those efforts costing many times more than would normally be incurred.

Civil Findings

- *LRF-2002-0226-01 Anderson Lumber Company v Devenish Construction.* Civil court entered a finding of partnership by estoppel with respect to the original contractor. At formal hearing Division objected to payment of the claim because the partnership was not licensed. Department held that Division is not bound by civil court findings if Division is not a party to the suit. Board found that partnership did not exist but that a valid agency relationship existed and claim was paid.

Claim Filing Deadline (UCA § 38-11-204(2))

- *LRF-1998-0520-01 Hansen Insulation, Inc. v Falcon Builders; LRF-1998-0522-01 BMC West Building Products v Falcon Builders; and LRF-1998-0615-01 Hansen Insulation, Inc. v Robert Warren dba Warren Construction.* Division denied claims for failure to meet claim-filing deadline. On Agency Review Department upheld denial finding that deadline is clearly an issue of jurisdiction that requires strict reading of the statute and cannot be extended.
- *LRF-1999-0915-02 Columbia Mechanical Plumbing & Heating, Inc. v PRP Development, LC.* Division initially denied claim for failure to meet claim-filing deadline. Claimant appealed asserting that UCA § 78-14-41 "discovery rule" tolled the deadline. On Agency Review Division stipulated that discovery rule did apply because delay in filing claim was wholly attributable to actions by the homeowner and the court that were entirely beyond claimant's control. Claim approved for payment.

Conditional Denial of Claims

- *LRF-2001-0806-01 & -02 Newman Wood Systems v Castle Homes, LLC*. Division denied claim because claimant did not timely respond to a Notice of Incomplete or Insufficient Claim Application in that claimant's response to the Notice was postmarked a week after the response due date and received by the Division 10 days after the due date. Division found that the provisions of UCA § 58-1-301(2)(d) apply to Lien Recovery Fund claims. Therefore, failure to respond to a Notice by the response due date constitutes grounds for denial.
- *LRF-2001-0927-01 & -02 Whitewater Whirlpool Baths & Systems, Inc. v Brandenburg Development & Consulting, LLC*. Division expanded on *Newman Wood Systems v Castle Homes, LLC* to include denial of claims wherein the claimant does not respond to the Notice.

Licensed Original Contractor (UCA § 38-11-204(3)(a))

- *LRF-1997-1117-01 J & J Building Supply, Inc. v Interior Structures, Inc.* Claim was denied because original contractor was not licensed at the time the contract was initially agreed to. Original contractor became licensed during construction; Division rejected this argument as proof homeowner entered into a written contract with a licensed original contractor. Division also rejected claimant's argument that it was not obligated to confirm original contractor was licensed since claimant had relied, in good faith, on original contractor's representation that it was licensed "at all times relevant to the claim."
- *LRF-1999-1210-01 Nathan Goodrich d/b/a Bedrock Masonry v Legend Builders, Inc.* Claimant argued the original contractor, Legend Builders, Inc., should be considered an alter ego of Michael Mower—Legend's sole shareholder and only officer—and, therefore, licensed by virtue of Mower being personally licensed. Division denied claim finding that it is statutorily prevented from applying an equitable doctrine to the determination of claim validity. Therefore, Legend could not be considered an alter ego of Mower nor could Legend use Mower's license. Division also overturned prior decision of *LRF-1997-0124-01 L K L Associates, Inc. v Rulon Hancock and Hancock Drywall, Inc.*
- *LRF-2000-0515-02 Salt Lake Winnelson Co. v Ellsworth Plumbing, Inc.* Division denied claim because homeowner contracted with an unlicensed original contractor. Contract was between homeowner and Kirkham Properties, LLC—a Utah limited liability company wholly owned by Kent S. Kirkham. License was held by Kent S. Kirkham d/b/a Kirkham Properties. Claimant argued homeowner had made good faith effort to contract with a licensed contractor and could not be expected to know that the LLC could not use Kent Kirkham's individual license. Claimant also argued LLC should be considered an alter ego of Kent Kirkham. Division rejected both arguments citing LRF statute does not grant equitable powers to the Division.
- *LRF-2000-1006-01 Interstate Rock Products, Inc. v Jeff Mitchell Concrete a/k/a JMC*. Division denied claim finding that homeowner did not enter into a written contract with a licensed original contractor. Original contractor was issued its license after contract was agreed to but before construction began. Claimant argued that original contractor and homeowner understood that construction was not to begin until and unless original contractor became licensed. Division rejected that argument because language of the contract contradicted and superseded the alleged understanding. On appeal for Agency Review Department affirmed denial finding that a claim is only valid if the original contractor and the single-family residence homeowner entered into a contract at a time the contractor was

licensed. Claimant appealed to the Fifth District Court (Case No. 010501365); judgment has not yet been entered.

Lien Recovery Payment is not a Right

- *LRF-1998-0622-01 Dixie Woodworks, Inc. v Glendon Corporation.* Division denied claim because claimant did not obtain judgment against nonpaying party and because claimant failed to meet civil action filing deadline. Claimant appealed for Agency Review alleging the factual basis for denial was not accurate. Department upheld Division's denial finding that receipt of payment from the Fund is not a right but rather is governed by very specific laws and rules with which the claimant must comply to receive payment.

Owner-Occupied Residence (UCA § 38-11-102)

- *LRF-1998-0720-01 Ready Made Concrete v Holland Construction, Inc. dba Jim Holland Construction.* Division denied claim for failure to meet UCA 38-11-204(2) claim-filing deadline. On Agency Review claim was remanded to Division. Division again denied claim finding that a gazebo on a horse farm does not meet the definition of an "owner-occupied residence" even though a nearby barn did have sleeping facilities in the loft.

Payment in Full (UCA § 38-11-204(3)(b))

- *LRF-1998-0130-02 Anderson Lumber Company v James D. Cannon dba Cannon Construction.* Division approved claim finding that payments by homeowner to third parties (i.e. suppliers, subcontractors, etc.) can be included in calculation of whether homeowner paid original contractor in full if, and only if, original contractor agreed to those payments.
- *LRF-1999-0427-03 Jack B. Parson Companies v D V Construction.* Division paid claim after finding that payment in full by the homeowner need not be in the form of money. Division found that transfer of nonmonetary assets from the homeowner to the original contractor constitutes payment if adequately documented.
- *LRF-1999-0810-01 Anderson Lumber Company v Martin Alvin Nielson dba Boorhamwood Homes dba Sandalwood Development dba N & H Contractors.* Division rejected findings of fact that homeowner paid in full and required claimant to independently verify payment. Rejection rested on two facts: 1. judgment language entered an order requiring LRF to pay claim despite the fact complaint did not name LRF as a defendant and 2. original contractor was excused from participation in civil action due to pending bankruptcy proceedings. Therefore, findings were not binding on LRF nor on original contractor. Division held that formal proceeding was required as original contractor had not been able to present at civil proceeding evidence that homeowner did not pay in full. At hearing Division found that homeowner did not pay in full and claim was denied.

Qualified Beneficiary (UCA § 38-11-301(3)(b))

- *LRF-1998-0807-01 Steel Engineers, Inc. v Lonetree Services, Inc.* Division denied claim finding that real claimant was Robert Kurth—owner of both the incident residence and Steel Engineers, Inc. Division found that Steel Engineers, Inc.'s registration with the Fund could not be passed through to Kurth.
- *LRF-1999-0331-01 through -03 Northridge Plumbing & Heating, Inc. v BauCorp Co.* Division denied claim because claimant was not a qualified beneficiary. As a prerequisite to collecting from the Fund, contractor claimants must be properly licensed pursuant to UCA §

58-55-101 *et seq.* Claimant had reorganized business from sole proprietorship to corporation without licensing corporation. Division found that the claimant was the corporation, which had not registered with the Fund nor become licensed as a contractor.

- *LRF-1999-0405-01 Mountain Land Design, Inc. v Glendon Homes.* Division denied majority of claim finding that claimant was eligible for payment of only those qualified services provided after claimant registered with fund. Claimant argued all qualified services should be paid since it registered during construction of the incident residence but after providing a majority of the qualified services claimed. Division rejected this argument as overly broad.
- *LRF-2000-0713-01 TBP Construction, Inc. v John "Jack" Horn dba All Seasons Cabins, Inc.* Division denied claim finding that claimant could not be a qualified beneficiary as it was not licensed as a contractor when it provided qualified services that fell within the purview of UCA § 58-55-101 *et seq.* Claimant appealed citing theories that it was licensed when performing the services or the Division should be estopped from asserting that claimant was not licensed. Claimant's arguments rested upon asserting that the submission of a complete application for licensure is adequate to demonstrate claimant will be licensed and should be considered as such and that a Division employee orally represented that claimant would be approved for licensure. On Agency Review Department affirmed denial finding that a license does not come into existence until it is physically printed. Therefore, claimant could not be considered as licensed until the license was actually printed and mailed by Division. Department also found that claimant's assertion of estoppel did not rise to the standards set forth in the courts.
- *LRF-2000-XXXX-XX Albert Ashworth v J & J Mill and Lumber Co. and Terry Wade, Esq.* Division denied claim finding that a homeowner cannot meet the definition of a qualified beneficiary.
- *LRF-2001-0727-04 through -19 Master's Carpet Showroom v BauCorp Co.* Division denied claim because claimant registered with the Fund after completing all qualified services on all residences at issue. Division found that it was not unjust to charge the claimant a separate filing fee for each property as required by UCA § 38-11-204(1)(b) prior to reviewing the claims and that refunding the fees was not appropriate.