

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lensik, Administrative Law Judge

Appellate Case No. 2017-001797

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SC Court of Appeals

David Eastman, d/b/a Grading and Landscaping
Material Company

Appellant

v.

South Carolina Department of Labor Licensing and
Regulation, South Carolina Contractor's Licensing Board Respondents

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

David Eastman, d/b/a Grading and
Landscaping Material Company

Appellant,

v.

South Carolina Department of Labor,
Licensing and Regulation, South Carolina
Contractor's Licensing Board,

Respondents.

Docket No. 16-ALJ-11-0239-AP

FINAL ORDER & DECISION

FILED

JUL 28 2017

ADMINISTRATIVE LAW COURT

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on July 12, 2016 by David Eastman, d/b/a Grading and Landscaping and Material Company (Appellant). On December 17, 2014, the South Carolina Department of Labor, Licensing and Regulation (Department) issued a citation to the Appellant for engaging or offering to engage in contracting work or submitting a bid when not properly licensed. S.C. Code Ann. 40-11-110(A)(5) (1998). The citation included a fine of five-hundred dollars (\$500.00). The Appellant appealed his citation to the Department's Contractor's Licensing Board (Board). After an evidentiary hearing was held before the Board's appointed hearing officer, a final order was issued affirming the sanctions against the Appellant. This appeal followed. For those reasons below, the order is affirmed.

BACKGROUND

In 2013 and pursuant to a verbal agreement, the Appellant performed work on approximately seven (7) acres of land surrounding a home owned by Jason Z. Stauter and Faith Stauter (the landowners) in Greenville County, South Carolina. The Appellant was to perform the following scope of work: extend and/or rebuild two (2) earthen dams; replace two (2) concrete spillways; install two (2) PVC drainage pipes; cut and clear approximately one and one-half (1.5) acres of forest; create two (2) culverts with concrete pipes and a dirt road over them for access by trucks and equipment; provide grading and earthmoving for the culverts and concrete spillways;

transport red clay, fill dirt and compost at the property; and remove debris from the property. The Appellant was to be paid \$22,500.00 for this work. There was no written contract.

The work commenced on or about June 11, 2013. The homeowners initially paid the Appellant \$22,500.00. Later, the Appellant requested and was paid additional increments totaling \$14,000.00 for overages. As an example, Mr. Stauter testified that the Appellant told him that dirt washed out and that more rock was needed. The homeowners testified that as the costs continued to escalate, they repeatedly asked the Appellant for receipts. When the receipts were not produced, the project was abandoned on or about November 13, 2013.

Mrs. Stauter testified that she withheld some of the funds claimed to be owed pending project completion. The Appellant testified that he ceased working on the project because he wanted to be paid prior to completion. On December 19, 2013, the homeowners received an invoice from the Appellant totaling \$78,398.28 for the entire project leaving a balance owed of \$41,898.28.

In January 2014, the Appellant filed a civil action against the landowners claiming that the landowners had not paid in full for the work that the Appellant had performed. The Appellant also filed a mechanics lien against the property. The landowners answered the complaint and counterclaimed. The landowners also moved to dismiss the action essentially claiming that the Appellant was not entitled to bring the civil action on the basis that that he had violated the South Carolina Licensing statute by performing the work without a license. In April of 2014, the court of common pleas denied the motion without prejudice on the basis that it did not have sufficient information at that time.

Thereafter, the landowners filed a complaint against the Appellant with the Department claiming that the Appellant had performed work without the necessary license. The court of common pleas continued the civil action until the licensing issue could be resolved by the Department.

Upon completion of its investigation and on December 17, 2014, the Department issued a Citation and Notification of Penalty for General and Mechanical Contracting of five-hundred (\$500.00) to the Appellant for violating Section 40-11-110(A)(5) by contracting or offering to contract for construction work for which the total cost of construction was greater than five-thousand (\$5,000.00) without a license. *See also*, S.C. Code Ann. § 40-11-30 (1998). The Appellant appealed to the Department's Contractor's Licensing Board.

An evidentiary hearing was held on June 6, 2016, at which time both parties presented opening and closing statements, called and examined witnesses, introduced evidence, and answered questions posed by the hearing officer. At the conclusion of the hearing, the hearing officer upheld the issuance of the citation, affirmed the penalty of five-hundred dollars (\$500.00), and ordered that the Appellant cease and desist from practicing as a contractor without a license.

The Department issued a final order on June 16, 2016 concluding as a matter of law that (1) the Appellant violated Section 40-11-110(A)(5) by engaging in contracted work when not properly licensed in accordance with Section 40-11-30; and (2) the total cost of the Appellant's work on the subject property exceeded \$5,000.00, and he was required to have a general contractor's specialty license pursuant to Section 40-11-410(b)(4). The Appellant filed a Notice of Appeal with this court on July 12, 2016.

STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). This court reviews decisions of the Department in an appellate capacity and is "restricted to reviewing the decision[s] below." *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). According to Section 1-23-600(E) of the South Carolina Code (Supp. 2012), when acting in an appellate capacity, the court must apply the criteria of Section 1-23-380(5)(Supp. 2008) which states:

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

This section requires the ALC to apply the “substantial evidence” rule. *See e.g., Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 467 S.E.2d 913 (1996); *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm’n*, 282 S.C. 430, 319 S.E.2d 695 (1984). A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. *Bilton v. Best W. Royal Motor Lodge*, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The possibility of drawing two (2) inconsistent conclusions from the evidence does not mean that the agency’s conclusion was unsupported by substantial evidence. *Id.* *See also, Waters*, 321 S.C. at 227, 467 S.E.2d at 917 (citing *Palmetto Alliance, Inc. v. South Carolina Pub. Serv. Comm’n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)). The well-settled case law in this State has also interpreted the rule to mean that a decision will not be set aside simply because reasonable minds may differ on the judgment. *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (1981).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct and will be set aside only if unsupported by substantial evidence. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 518, 466 S.E.2d 357, 358 (1996) (citing *Kearse v. State Health and Human Serv. Fin. Comm’n*, 318 S.C. 198, 456 S.E.2d 892 (1995)). Thus, the party challenging an agency action has the burden of proving convincingly that the agency’s decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (citing *Hamm v. AT & T*, 302 S.C. 210, 394 S.E.2d 842 (1994)).

Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant*, 319 S.C. at 353, 461 S.E.2d at 391 (citing *Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984)). However, “[d]etermining the proper interpretation of a statute is a question of law, and [an appellate court] reviews questions of law de novo.” *Palmetto Co. v. McMahon*, 395 S.C. 1, 3, 716 S.E.2d 329, 330 (Ct. App. 2011) (citation omitted).

LAW/ANALYSIS

A. The Hearing Officer’s Order is Sufficiently Detailed to Allow for Review.

The Appellant argues that the hearing officer’s order fails to adequately explain his decision, and that the court should not have to make assumptions¹ about why issues were decided

¹ Interestingly, it is the Appellant on pages 7-8 of his brief, that makes a multitude of assumptions and implications from his viewpoint).¹ E.g., “From a factual point of view, the conclusion that Eastman would have assumed the obligation to obtain and pay subcontractors without some understanding or specific agreement with Stauter is extremely unlikely ... With that testimony, and the fact that Stauter did not explain what agreement he allegedly had

below. The court disagrees. The findings in the order clearly support the hearing officer's conclusions.

An administrative body must make findings which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings." *Porter v. South Carolina Pub. Serv. Comm'n*, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998) (citing *Hamm v. South Carolina Pub. Serv. Comm'n*, 309 S.C. 295, 422 S.E.2d 118 (1992)); S.C. Code Ann. § 58-9-1160 (1976). "Where material facts are in dispute, the administrative body must make specific, express findings of fact." *Porter, supra*; *Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986); S.C. Code Ann. § 1-23-350 (1977).

An administrative agency is not required to present its findings of fact and reasoning in any particular format, although the better practice is to present them in an organized and regimented manner. A mere "recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues." *Able, supra*.

Here, however, after reciting the evidence and conflicting testimony presented, the hearing officer sufficiently detailed those facts that he accepted to be the most credible and upon which he based his decision. The underlying reasons for the order are not speculative, and the order is appropriately detailed for purposes of review. As an example, Paragraph 3. below the heading of "Conclusions of Law," the hearing officer's order states as follows:

The intent of the parties is difficult to determine because of conflicting testimony of the witnesses and the lack of a written contract between the parties. However, balancing the credibility of the testimony and a review of the documents submitted, specifically, Respondent's own invoice number 3543 (State's Exhibit 2), provides sufficient evidence that Respondent's work on the Subject Property was over \$5000.00 and that Respondent should have been licensed pursuant to S.C. Code Ann. § 40-11-410(4)(b) (General contractor-Specialty-Concrete). This concrete licensing subclassification requires a license for all work in connection with concrete forming and placing, assembling of forms, molds, slipforms and pans; centering, trenching, excavating, backfill, and grading in connection with concrete construction. The Board has interpreted that the \$5,000.00 construction amount in S.C. Code Ann. § 40-11-30 is for the total cost of construction, so

with Eastman on how much the concrete would cost, strongly indicates that neither of the men contemplated Eastman negotiating the price and being responsible for it."

Respondent's argument that the regulated concrete work was for less than the \$5,000.00 construction amount is not accepted. Furthermore, Respondent's testimony of his work and the equipment used on the Subject Property for this project included work in connection with concrete forming and placing including excavating, backfilling and/or grading in connection with concrete construction.

B. Substantial Evidence Exists in the Record to Support the Board's Decision to Uphold the Citation Issued to Appellant.

The Appellant argues that his work consisted primarily of "earth work" such as grading, moving dirt and clearing debris for which a license was not required. The Appellant states that because the only concrete related work he performed was to transport concrete for a concrete subcontractor on his skid steer, he did not perform concrete work that would require a license. He further avers that even if he did perform concrete work, the value of that work was less than \$5,000.00 and thus, did not require a license. The court disagrees.

The Board is the entity charged with the implementation and enforcement of Section 40-11-5, et seq. of the South Carolina Code of Laws. When an agency has been designated as the single state agency for the implementation and enforcement of certain statutes and regulations, great deference must be accorded to that agency's interpretation of its laws and regulations. *Hampton Nursing Ctr. v. State Health and Human Servs. Fin. Comm'n*, 303 S.C. 143, 147, 399 S.E.2d 434, 436 (Ct. App. 1990). "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987).

The Appellant was issued a citation on December 17, 2014 pursuant to Section 40-11-110(A)(5) for violating Section 40-11-30. S.C. Code Ann. § 40-11-110(A)(5) (1998); S.C. Code Ann. § 40-11-30 (1998). Section 40-11-110(A)(5) provides that the Board may impose disciplinary action authorized by Chapter 11 as pertains to contractors. Here, the Appellant violated Section 40-11-30 which states:

No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five-thousand dollars for general contracting or greater than five-thousand dollars for mechanical contracting without a license issued in accordance with this chapter.

S.C. Code Ann. § 40-11-30 (1998). While evidence is conflicting, there is clearly substantial evidence to support the Board's decision to uphold the citation issued to Appellant. Not only did the Appellant engage in unlicensed general contracting when he offered to and did perform work at the Stauters' property for which the total cost of construction exceeded five-thousand (\$5,000.00) dollars but also, his work falls squarely within the confines of "concrete" work which required him to have a specialty license in accordance with Section 40-11-410(4)(b).

Section 40-11-20(9) defines a "general contractor" as an "entity which performs or supervises **or** offers to perform **or** supervise² general construction." S.C. Code Ann. § 40-11-20(9) (1988) (emphasis added). "'General construction' means the installation, replacement, repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property." S.C. Code Ann. § 40-11-20(8) (1998).

Under the heading of "general construction," the legislature has delineated several classifications and subclassifications. S.C. Code Ann. § 40-11-410 (2005). General contracting is segmented into four (4) classifications: (1) "General Contractor-Building;" (2) "General Contractors-Highway;" (3) "General Contractors-Public Utility;" and (4) "General Contractors-Specialty." *Id.* S.C. Code Ann. 40-11-270 (2016). "Concrete" is a subclassification under the classification of "General Contractors-Highway." S.C. Code Ann. § 40-11-410(4)(b) (2016).

(b) "Concrete" which includes all work in connection with concrete forming and placing; assembling of forms, molds, slipforms and pans; centering, trenching, excavating, backfill, and grading in connection with concrete construction; construction of sidewalks,

² The Appellant argues that the hearing officer effectively found the Appellant responsible for the concrete work but without making a finding as to whether the Appellant subcontracted the concrete work. While the hearing officer did not make a specific finding as to whether the Appellant subcontracted the concrete work, there is substantial evidence in the record to conclude that the Appellant not only hired but also, supervised the concrete contractor.

The testimony of the parties was conflicting. The Appellant denied hiring and supervising the concrete company, and testified that he only paid the concrete supplier because the Stauters were out of town. On cross-examination, the Appellant conceded however, that he gave the concrete supervisor directives and that the supervisor was able to follow the same including communicating the directives to the crew. Mr. Stauter testified that he neither selected nor paid the company that brought in the concrete, and that the Appellant was responsible for everything including the concrete company. When asked whether the Appellant made or formed concrete on the property, Mr. Stauter stated that he observed the Appellant "working with it, you know, building forms, and out there with the concrete crew pouring the concrete..." Mr. Stauter added that the Appellant's crew also participated in making concrete forms.

Regardless of whether the Appellant hired or subcontracted the concrete work, he still acted as a general contractor as defined by Section 40-11-20(9) by actually offering to perform and performing general construction including the installation, replacement and/or repair of structures located on the property, and by making improvements to real property. Moreover, he still performed concrete work as defined by Section 40-11-410(4)(b) irrespective of any concrete work on the same property which may have been performed by others. As such, no specific finding needed to be made on this issue by the hearing officer.

driveways, curbs, medians, and barrier walls; and installing of embedded items essential to or comprising an integral part of concrete or concrete construction including reinforcing elements and accessories including, but not limited to, concrete chimneys, floors, piers, and foundations when using concrete rebar and other materials common to the concrete industry. This subclassification does not include the General Contractor-Highway- Bridge license subclassification or the construction of streets, roads, parking lots, and highways.

An applicant must designate the license classification(s) and subclassification(s) that will constitute its scope of practice. Provided that all requirements for licensure are met, an applicant may apply for more than one classification or subclassification, and its scope of practice is limited to those areas.

There is substantial evidence in the record to support the finding that Appellant was acting as a general contractor as defined by Section 40-11-20(9) and performing general construction as defined by Section 40-11-20(8) in excess of \$5,000.00 when not licensed to do so. This was in violation of Section 40-11-30. Moreover, there is substantial evidence on the record to support that the Appellant engaged in concrete work as defined by Section 40-11-410(4)(b) without the appropriate specialty license.

Specifically, the Appellant's scope of work was to extend or rebuild two (2) earthen dams; replace two (2) concrete spillways that were deteriorating; construct an island with pathways to include a concrete culvert so that the creek could be traversed with heavy machinery and in the future,³ other vehicles; and dig up existing drain pipes and replace them with culverts for the passage of water.⁴ The Appellant was also to transport red clay, fill dirt, and compost to the property, and remove debris from the property.

The Appellant admitted that he brought the concrete drainpipes to the homeowner's property for the culverts, installed them, and then constructed the road that went over them. This work at a minimum, inescapably constitutes improvements to real property and falls within the confines of general construction. *See* S.C. Code Ann. § 40-11-20(8) (1998). There is also

³ While the Appellant's attorney insinuated that the culvert in the creek to be used for the transport of heavy equipment to an island in the middle of a creek was to be temporary, the homeowner testified it was supposed to be permanent. The court agrees with the Department's investigator in that the permanency of the culvert is irrelevant as the statutes make no differentiation.

⁴ Mr. Stauter testified that the Appellant provided and installed two (2) PVC drainage pipes including one in the lake and one in the pond.

substantial evidence that this work involved the replacement and/or repair of structures. *Id.* The Appellant acted as a general contractor when he offered to perform and did perform this work within the confines of definitions outlined above.

The Appellant claims that he only transported the concrete on a skid steer loader and that this does not constitute concrete work for which a specialty license is needed. Alternatively, the Appellant argues that even if he performed concrete work, the amount paid for the materials and work associated with the concrete did not exceed \$5,000.00.⁵ The Appellant misconstrues the statutes.

First, “concrete” work as defined Section 40-11-410(4)(b) is not so narrowly limited so as to be confined to the actual pouring of concrete. Second, pursuant to Sections 40-11-20(23) and 40-11-30, “the total cost of construction,” is not merely limited to the cost of materials but rather, for the total amount of general construction: not just the concrete materials and/or labor.

The testimony is replete with evidence from both parties that the total cost of construction as defined by Section 40-11-20(23) far exceeded \$5,000.00. As of the date of the hearing, the Stauters had paid the Appellant a total of \$36,500.00. Mr. Stauter testified that they initially agreed to pay \$22,500.00 for the work. The Stauters also incrementally paid the Appellant an additional \$14,000.00 because the Appellant told them that dirt had washed out and more rock was needed. By the Appellant’s own testimony and evidence (the invoice he submitted to the Stauters), the total cost for the work that performed totaled \$78,398.28. The Appellant testified that the Stauters owe him a balance of \$42,000.00

While some of the Appellant’s arguments are unclear, it appears that he also essentially makes a fairness argument in that there is no requirement that one be licensed to perform less than \$5,000.00 worth of work. The court rejects this argument. The legislative intent behind the licensing statutes involved in this case is to protect the public from being imposed upon by persons not qualified to render a professional service. S.C. Code Ann. § 40-1-10 (1996). *See generally, Tesenair v. Professional Plastering & Stucco, Inc.*, 407 S.C. 83, 754 S.E.2d 267 (Ct. App. 2014)

⁵ The Appellant argues that even if he did perform concrete work, its total value was less than \$5,000.00 given the cost of the concrete. The Appellant wrote two (2) checks to Piedmont Concrete Products for \$773.00 and \$964.60 for a total of \$1,738.40. The Appellant said he paid Pedro a/k/a Basilio Ramirez about \$2,000.00 and that he had no other expenses relating to the pouring of concrete. The Appellant’s testimony and argument ignore the facts that the Appellant also excavated, graded and backfilled for the concrete, and as found by the hearing officer, assembled concrete forms. In his order, the hearing officer stated, “Furthermore, Respondent’s testimony of his work and the equipment used on the Subject Property for this project included work in connection with concrete forming and placing and including excavating, backfilling and/or grading in connection with the concrete construction.”

(citing *Kenny v. Graves*, 300 S.W.2d 568 (Ky.App. 1957). Additionally, the legislature specifically provides for certain exceptions to the licensing requirements of Chapter 11 under certain conditions. S.C. Code Ann. § 40-11-360 (2016).

Moreover, substantial evidence in the record indicates that the Appellant needed a specialty concrete license to perform the work. The Appellant testified that he provided pipes that were installed on the property, and constructed the roads that went over the pipes. Mr. Stauter testified that certain existing pipes were dug up (or excavated) by the Appellant. The Appellant conceded that in order to construct the roads, he performed grading work or “earth moving” around the pipes. Although the Appellant testified he did not form the concrete spillways himself, he “graded it the way Mr. Stauter asked us to grade and then put the concrete – had Pedro put the concrete down.”⁶ This work constitutes excavating and grading in connection with concrete construction as outlined in Section 40-11-410(4)(b). Even though the Appellant testified that he had been grading⁷ without a license since he was a teenager, if he did so relative to concrete construction as here, the appropriate licenses were required by statute.⁸

While denied by the Appellant,⁹ Mr. Stauter testified that he observed the Appellant building concrete forms.¹⁰ More specifically, Mr. Stauter who was present during the spillway work at the upper pond¹¹ observed the Appellant build forms with two-by-fours. When asked if the Appellant built forms and poured concrete into them, Mr. Stauter responded affirmatively. Mr. Stauter testified that although a separate company actually brought the concrete to the property, after pouring it in to the Appellant’s truck, the Appellant would then pour it after having transported it.

As noted by the hearing officer, much of the testimony offered at the hearing was

⁶ Either the Appellant misspoke or made a Freudian slip.

⁷ The Appellant argues that the Board does not offer a license for grading contractors, and that “moving dirt,” or “cleaning, grubbing and removing debris” does not require a contractor’s license. The Board does in fact, require grading contractors to be licensed under certain circumstances. See S.C. Code Ann. §§ 40-11-410(2)(d) and 40-11-410(4)(b) (2005). Here, grading work was clearly performed in connection with concrete construction. See S.C. Code Ann. 40-11-410(4)(b) (2016)

⁸ Attached to the Appellant’s reply brief is a poster issued by the South Carolina Contractor’s Licensing Board which states that there are several classifications of work that are exempt from licensing including fencing, landscaping, clearing, grubbing, debris removal, hauling, irrigation, etc. See S.C. Code Ann. § 40-11-360 (2016). This does not conflict with the Department’s order, this court’s order, or the statutes at issue as substantial evidence supports a finding that the Appellant’s work did not fall within these exempt classifications.

⁹ If substantial evidence is included in the record to support the hearing officer’s decision, he will not be reversed whereas here, substantial rights of the Appellant have not been prejudiced

¹⁰ The assemblage of forms constitutes concrete work according to Section 40-11-410(4)(b).

¹¹ Mr. Stauter was out of town when the spillway work was done on the second spillway at the lake.

conflicted. However, simply because the possibility of drawing two (2) inconsistent conclusions from the evidence exists, does not mean that the agency's conclusion was unsupported by substantial evidence. *Bilton v. Best W. Royal Motor Lodge, supra*. A decision will not be set aside simply because reasonable minds may differ on the judgment. *Lark v. Bi-Lo, supra*.

Appellant cites *Skiba v. Gessner*, 374 S.C. 208, 648 S.E.2d 605 (2007) in support of his argument that an individual performing only landscaping work does not need a contractor's license. In *Skiba*, the South Carolina Supreme Court held that a mechanic's lien could not attach for work that "was completed for the purpose of preparing the land for landscaping and not in connection with the erection, alteration, or repair of a building or structure." The finding in *Skiba* is not inconsistent with the court's findings in this case. Had the Appellant merely moved dirt; cleaned, grubbed and remove debris; or performed other "earth work" solely for the purpose of landscaping, a license would not have been needed. However, by the Appellant's own admissions at the hearing, he performed earth moving and grading for the culverts and concrete spillways, and as such, a license was required.

The Appellant also argues that the Department's unreasonable expanded interpretation of the licensing statutes relevant to the case has the effect of denying individuals with potentially large claims access to the court system. While any underlying civil action is not within this court's purview,¹² it appears that it is the Appellant's interpretation of the relevant statutes that is too narrowly strained.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) (citing *Charleston County Sch. Distr. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). Under the "plain meaning rule," it is not the court's place to change the meaning of a clear and unambiguous statute. *Hodges v. Rainey* (citing *In Re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998)). Where statute's language is plain and unambiguous, and conveys a clear and definite meaning, rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Hodges v. Rainey*. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. *Id.* Therefore, the courts are bound to give effect to the expressed intent

¹² Both parties have made reference to an underlying civil action. The Department states that the Appellant has taken inconsistent positions in this matter and the civil action. While the pleadings in the civil action are not part of the record in this case and were not considered in the forming of the court's order in this case, the court reminds the parties that they cannot use both the sword in one action, as a shield in another.

of the legislature. *Id.*

Whereas here, the legislature's intent is clearly apparent from statutory language, a court may not embark upon a search for it outside the statute. *Id.* (citing *Abell v. Bell*, 299 S.C. 1, 91 S.E.2d 548 (1956)). When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning. *Id.* (citing *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970)).

C. DHEC's Regulation of Dams Including the Issuance of Permits for Certain Dam Projects Has No Bearing on Whether the Appellant Needs to be licensed by the Board to Perform Contracting Work.

The Appellant posits that the construction of dams is referred to as "heavy construction." The Appellant continues by stating that because the South Carolina Contractor's Licensing Board does not license "heavy contractors," or assert jurisdiction over major dam construction, it is improper for the Board to establish any prerequisites to the performance of work performed or to be performed on dams. Section 40-11-360(A) provides the list of exceptions to which the Contractor's Practice Act does not apply. S.C. Code Ann. § 40-11-360 (2016). There is nothing contained in subsection 40-11-360(A) that expressly or impliedly includes an exception for what the Appellant has deemed as "heavy construction."

The Appellant also contends that for the same reason, the Board is prohibited from making any findings related to work on dams. He asserts that to allow as much could result in the South Carolina Department of Health and Environmental Control (DHEC) (which regulates dam construction when a federal agency does not assume jurisdiction) and the Board creating a "double set of regulations and regulators and creates a potential for conflicting requirements."

The court disagrees. DHEC's issuance of permits for certain dam projects has no bearing on whether the Appellant needs to be licensed by the Board to perform contracting work. The Dams and Reservoirs Safety Act (Act) outlines DHEC's authority and responsibility for maintaining dams and reservoirs in South Carolina. S.C. Code Ann. § 49-11-110 et seq. (2017). The Act's stated declaration of purpose is as follows:

It is the purpose of this article to provide for the certification and inspection of certain dams in South Carolina in the interest of public health, safety, and welfare in order to reduce the risk of failure of the dams, prevent injuries to persons and damage to property, and confer upon [DHEC] the regulatory authority to accomplish its

purposes.

S.C. Code Ann. § 40-11-130 (1993).

In comparison, the Board's stated purpose is

[T]o protect the health, safety, and welfare of the public through the regulation of businesses and individuals who identify, assess, and provide contract work to individuals or other legal entities through the administration and enforcement of this chapter and any regulation promulgated under this chapter and Article I, Chapter 1.

S.C. Code Ann. § 40-11-10(A) (2005).

While both the Board and DHEC are charged with protecting the public health, safety and welfare by regulating various entities and operations, it is clear that they oversee and regulate distinctly different realms. DHEC is charged with insuring that dams within its purview¹³ are properly designed and engineered to minimize the risk of dam failure, and injuries to people and property. The Board is charged with insuring that those who provide contracting services in this State are properly doing so. The court agrees with the Department that DHEC's oversight and regulation of certain dams dovetails with the Department's regulation, oversight and licensing of the contracting profession.

In reviewing various regulations promulgated pursuant to the Act, it is clear that the focus of DHEC's regulation is in insuring that the dams that fall within its jurisdiction are properly designed to avoid catastrophic failure. *See e.g.*, S.C. Code Ann. Regs. 72-1 et seq. (1997). As the Appellant properly synopsised, the essential purpose of licensing contractors is to insure that the work done by contractors is performed in proper and workmanlike fashion. To this end, the physical construction performed by contractors on any given project in this state whether it be a dam or otherwise, is regulated in part by the Board.

The only mention of contractors in the Act's regulations governing permitting procedures and requirements, simply provides that with respect to repair permit applications, an engineering design that consists of drawings and specifications must include, "[g]eneral provisions that specify the rights, duties and responsibilities of the applicant, applicant's engineer, *contractor*, and the prescribed order of work." S.C. Code Ann. Regs. 72-3(D)(3)(b)(6) (1997) (*emphasis added*). The Act's regulation's reference to contractors clearly take into account the import of licensed

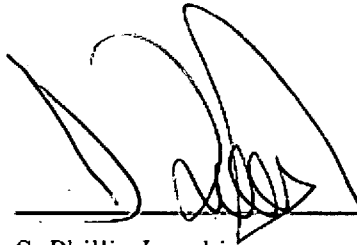
¹³ Not all dams are regulated by the Act. *See* S.C. Code Ann. § 49-11-120(4) (1993).

contractors executing the physical construction of related projects.

Based on the forgoing,

IT IS THEREFORE ORDERED that Department's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

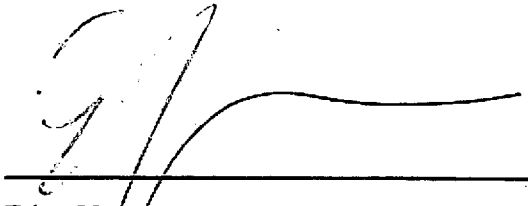
A handwritten signature in black ink, appearing to read 'S. Phillip Lenski', is written over a horizontal line.

S. Phillip Lenski
Administrative Law Judge

July 28, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Edye U. Moran, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Edye U. Moran
Judicial Law Clerk

July 28, 2017
Columbia, South Carolina

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA CONTRACTOR'S LICENSING BOARD**

In the Matter of:

**David Eastman d/b/a Grading and
Landscaping Material Company,**

Respondent

Case No. 2014-162

FINAL ORDER

This matter came before Legrand Richardson, Jr., a Hearing Officer appointed by the Contractors' Licensing Board ("Board"), for hearing on June 6, 2016 ("Citation Review Hearing") as a result of the Notice of Hearing served upon the Respondent. The hearing was held pursuant to S.C. Code Ann. §§ 40-1-90, 40-11-100, and 40-1-70(6), and the provisions of the Administrative Procedures Act (the "APA"), S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended), to determine whether the citation issued to the Respondent should be affirmed and the proposed penalty imposed upon the Respondent. Erin Baldwin, Assistant Disciplinary Counsel, represented the State. The Respondent, David Eastman, appeared and was represented by Melvin Hutson, Esquire.

The Respondent was issued a citation on December 17, 2014, which charged a violation of S.C. Code Ann. § 40-11-110(A)(5) for contracting or offering to contract for construction work for which the total cost of construction was greater than Five Thousand Dollars (\$5000.00) without a license. (§40-11-30). The penalty amount was Five Hundred Dollars (\$500.00).

WITNESSES AND EXHIBITS

Testifying on behalf of the State were the Complainant, Jason Zachary Stauter; Maurice Smith, Investigator with South Carolina Labor, Licensing and Regulation ("LLR"); and Dr. Faith Stauter.

Testifying on behalf of the Respondent was David Eastman.

The following Exhibits were introduced by the State and accepted into evidence:

State's Exhibit 1 Notice of Hearing, Citation, Request for Hearing, and Certificate of Service

State's Exhibit 2 Billing invoice number 3543 dated November 13, 2013, submitted to Zac Stauter from Respondent.

State's Exhibit 3 Twenty-nine (29) photographs dated November 4, 2014, of the Subject Property taken by LLR Investigator Maurice Smith.¹

The following Exhibits were introduced by the Respondent and accepted into evidence:

Respondent's Exhibit 1 Respondent's price list submitted to Mr. Stauter as of June 11, 2013.

Respondent's Exhibit 2 Two (2) checks paid to Piedmont Concrete Products by Respondent.

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the facts of the case are found to be as follows:

1. The Respondent was issued a citation on December 17, 2014, for contracting or offering to contract for construction work for which the total cost of construction was greater than Five Thousand Dollars (\$5000.00) without a license. This citation included a \$500.00 penalty.

2. Complainant Jason Stauter testified that Respondent was retained to do extensive work on his approximately seven (7) acre property located at 107 Jennifer Court, Greenville, South Carolina ("Subject Property"). The Subject Property included a small lake and a pond. He testified that there was no written contract between the parties. He testified that he was referred to Respondent by a friend and he assumed Respondent was licensed. He testified that Respondent was to extend and/or rebuild two (2) earthen dams; replace two (2) concrete spillways; install two (2) drainage (PVC) pipes; cut and clear approximately one and one half (1 ½) acres of forest; create two (2) culverts with concrete pipes for dirt road access by the trucks and equipment; transport red clay, fill dirt, and compost on to the Subject Property; and remove debris from the Subject Property.

3. Mr. Stauter testified that he was not supervising any of the work. He testified that Respondent was responsible for all the work. He testified that he observed Respondent building the concrete spillway forms for the upper pond and Respondent was with the concrete crew when the concrete was poured for the pond spillway. He testified that he did not observe the work on the concrete spillway for the lake. He testified that he did not contract with any subcontractors and he did not pay anyone except Respondent. He testified that he paid the Respondent the agreed price of \$22,500 plus overages for a total payment of \$36,500. He testified that on December 19, 2013, he received invoice number 3543 from Respondent dated November 13, 2013, which described Respondent's work performed and provided that the total amount of the project was \$78,398.28.²

¹The Respondent's attorney objected to the admission of the photographs on the basis that there was no foundation as to who did the work in the photographs. The hearing officer allowed the admission of the photographs for the limited purpose of providing assistance with understanding the specific work done on the Subject Property. The hearing officer stated that the photographs would not be used to determine the adequacy of Respondent's work on the Subject Property.

²The Respondent noted on the invoice that this amount did not have the previously paid \$36,500 subtracted, so Mr. Stauter's total amount owed, as per Respondent's invoice, was \$41,898.28.

4. LLR Investigator Maurice Smith testified that he issued the citation because the Respondent's work required a general contractor's concrete license since the contracting work on the Subject Property was for more than \$5000.00. He testified that there was concrete forming, placement of the concrete spillways, and backfilling and grading for the concrete spillways, the culverts and the piping. He testified that he contacted the culvert and concrete mix companies and was told by their representatives that they worked with Respondent on this project. He testified that he relied on the information that he received from the Stauters as to the Respondent's work on the project.

5. Dr. Faith Stauter testified that she was not very involved with the project except for making the payments to Respondent. She testified that she did not write checks to anyone except Respondent. She testified that she and her husband were not provided receipts for the money they paid to Respondent, and that when Respondent was asked for overages and receipts, he abandoned the project. She testified that she did not supervise Respondent and she did not contract with anyone else while Respondent was working on the project. She testified that she and her husband received Respondent's invoice after they had already paid Respondent \$36,500 and after Respondent was no longer working on the project.

6. Respondent testified that he has been in the grading business since he was a teenager and he has never had a license. He testified that there was no written contract with Mr. Stauter and he provided Mr. Stauter with the price list of his equipment usage per hour of use. He testified that he did the grading and earthmoving for the culverts and the concrete spillways, and that he hauled dirt in and moved debris out and around the Subject Property. He testified that there was no agreement to do the concrete work. He testified that Mr. Stauter hired the concrete contractor that Respondent recommended to build the concrete spillways. Respondent admitted that he paid this concrete contractor. Respondent also paid for the concrete when it was delivered because Mr. Stauter was not home. He testified that he did not build the concrete forms for the spillways and he did not pour the concrete. He testified that he assisted in bringing the concrete onto the Subject Property so the concrete contractor could pour the concrete into the spillway forms. Respondent admitted that he gave some guidance to the concrete contractor, but denied supervising him. He testified that he gave Mr. Stauter the names of three loggers for tree removal and Mr. Stauter hired them. Respondent testified that he did not pay the loggers.

7. Respondent testified that his invoice number 3543 was for the work done from June 11, 2013 until November 13, 2013.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, it is found and concluded as a matter of law that:

1. The Board has jurisdiction in this matter pursuant to S.C. Code Ann. §§40-11-100, 40-1-70(6), and 40-1-90 (1976, as amended).

2. S.C. Code Ann. Regs. 29-8(A)(6) allows for administrative penalties to be assessed pursuant to a citation issued under S.C. Code Ann. §40-11-100 (1976, as amended) for engaging in

contracting without a valid license.

3. The intent of the parties is difficult to determine because of conflicting testimony of the witnesses and the lack of a written contract between the parties. However, balancing the credibility of the testimony and a review of the documents submitted, specifically Respondent's own invoice number 3543 (State's Exhibit 2), provides sufficient evidence that Respondent's work on the Subject Property was over \$5000.00 and that Respondent should have been licensed pursuant to S.C. Code Ann. §40-11-410(4)(b) (General Contractor-Specialty-Concrete). This concrete licensing subclassification requires a license for all work in connection with concrete forming and placing; assembling of forms, molds, slipforms and pans; centering, trenching, excavating, backfill, and grading in connection with concrete construction. The Board has interpreted that the \$5,000 construction amount in S.C. Code Ann. §40-11-30 is for the total cost of the construction, so Respondent's argument that the regulated concrete work was for less than the \$5,000 construction amount is not accepted. Furthermore, Respondent's testimony of his work and the equipment used on the Subject Property for this project included work in connection with concrete forming and placing and included excavating, backfilling and/or grading in connection with the concrete construction.

4. The Respondent violated S.C. Code Ann. §40-11-110(A)(5) (1976, as amended) in that Respondent engaged in contracted work when not properly licensed (§40-11-30).

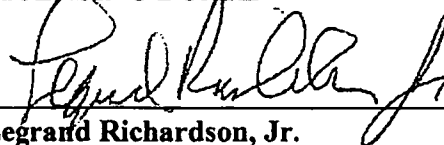
5. This action is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified contractors against the countervailing concern that society be protected from professional ineptitude and misconduct.

NOW, THEREFORE, IT IS ORDERED that:

1. The citation issued to the Respondent on December 17, 2014, is affirmed.
2. Respondent shall pay the penalty of Five Hundred Dollars (\$500.00) within ninety (90) days of the date of this final order.
3. Respondent shall cease and desist from practice as a contractor without a license as required by S.C. Code Ann. §40-11-30 *et seq.* (1976, as amended).

AND IT IS SO ORDERED.

**SOUTH CAROLINA CONTRACTOR'S
LICENSING BOARD**



**Legrand Richardson, Jr.
Hearing Officer**

June 16, 2016

South Carolina Department of Labor, Licensing & Regulation

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

In the Matter of:

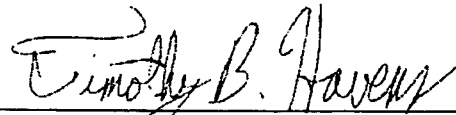
David G. Eastman

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date, June 16, 2016, served the Final Order in the above entitled-action-upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s) to the following address:

MR. DAVID G. EASTMAN
4758 STATE PARK ROAD
TRAVELERS REST SC 29690

MELVIN R. HUTSON, ESQUIRE
220 NORTH MAIN STREET, SUITE 500
GREENVILLE, SC 29601



Tim Havens
Administrative Coordinator
SC Department of Labor, Licensing
and Regulation

FILED

JUL 12 2016

SC ADMIN LAW COURT

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING &
REGULATION BEFORE THE SOUTH CAROLINA CONTRACTORS'
LICENSING BOARD

In the Matter of:)

DAVID G. EASTMAN,)
d/b/a Grading & Landscaping)
Materials Co.)
Unlicensed)
Respondent.)

OIE Case/Citation No.: 2014-162)
-----)

CITATION REVIEW HEARING

Monday, June 6, 2016
10:10 a.m. - 1:06 p.m.

The Citation Review Hearing before Legrand Richardson, Jr., Hearing Officer for South Carolina Contractor's Licensing Board, was taken at the Synergy Office Park, Kingstree Building, Room 105, 110 Centerview Drive, Columbia, South Carolina, on the 6th day of June, 2016 before Cortney N. Glover, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

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Erin G. Baldwin, Esquire, Assistant General Counsel

South Carolina Department of Labor,
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Office of Disciplinary Counsel
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Post Office Box 11329
Columbia, South Carolina 29211-1329
Attorney for the South Carolina Department
of Labor, Licensing and Regulation

Melvin Hutson, Esquire

Melvin Hutson, P.A.
1307 North Main Street
Greenville, South Carolina 29601
Representative for David G. Eastman

Also Present:

Mary Lee

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EXHIBITS

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(Invoice)	
State's Exhibit Number 3	42, 44
(Copy of Pictures of Property)	
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STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act, the Practice Act and Regulations of the Board.



PRELIMINARY MATTERS:

HEARING OFFICER: This hearing is called to order.

My name is Legrand Richardson, Jr., and I am the hearing officer authorized by the South Carolina Contractor's Licensing Board to hear today's hearing. This is the matter of David G. Eastman, doing business as Grading and Landscaping Materials Company, Case Number 2014-162.

Public notice of this hearing was properly posted at the board office and provided to any requesting persons, organizations, or news media in compliance with the SC Freedom of Information Act SC Code 30-4-80. This hearing will be conducted as informally as is compatible with an equitable presentation of both sides of the case and in compliance with the Provision of the Administrative Procedures Act, The Practice Act, and the regulations of the board.

The purpose of this hearing is to review the 12/17/2014 citation issued for engaging or offering to engage in contracting work or submitting a bid when not properly licensed or while a license is under suspension or



1 revocation in violation of Section 40-11-30.

2 Everyone is reminded that these proceedings are
3 being recorded and that all witnesses must be
4 sworn before they testify. All remarks should
5 be directed to the Hearing Officer. The State
6 and the respondent may, if they desire, make
7 openings statements. Thereafter, the State may
8 present its case. The respondent will then
9 present his or her case. Both may make closing
10 statements if they wish. The State has the
11 option of a closing statement in reply.
12 Representing the State is Erin G. Baldwin.

13 Is the Respondent or a representative of the
14 respondent present?

15 **MR. HUTSON:** We are.

16 **HEARING OFFICER:** Would you give us your full name
17 and address for the record?

18 **MR. HUTSON:** My name is Melvin Hutson. My address
19 is 220 North Main Street, Greenville, South
20 Carolina, Suite 500. ZIP Code is 29601. And
21 I have with me Mr. David Eastman.

22 **HEARING OFFICER:** Okay. The Hearing Officer would
23 like to hear very brief opening statements from
24 the State and from the Respondent, two to five
25 minutes, if you would. The purpose of the



1 opening statement is to introduce the issues
2 and the party's position. It is not
3 appropriate to permit testimony or final
4 arguments at this time.

5 Is the State ready to present its case?

6 **MS. BALDWIN:** Yes, sir.

7 **HEARING OFFICER:** Please proceed.

8 **OPENING STATEMENTS BY MS. BALDWIN:**

9 **MS. BALDWIN:** Thank you so much. Mr. Richardson, in
10 this matter, we're here for unlicensed
11 practice. There is an ongoing civil suit, and
12 so the State will try very hard to limit the
13 testimony of the witnesses just to the issue of
14 the unlicensed practice, whether a license
15 should have been required to do this work, and
16 then whether Mr. Eastman obtained the license.
17 And I think, frankly, both sides would agree he
18 did not have a license. The issue is whether
19 he needed one. And so if you will listen to
20 the scope of work that was required under the
21 agreement between the parties under the civil
22 suite, I think you will find that there is --
23 that sufficient work that would have required
24 a contractor's licensing board license. Thank
25 you.



1 **HEARING OFFICER:** Okay. Mr. Hudson?

2 **OPENING STATEMENTS BY MR. HUTSON:**

3 **MR. HUTSON:** Mr. Commissioner, David Eastman has
4 been dealing with earth-moving equipment, heavy
5 equipment and so on for a large number of
6 years. His primary business is -- his trading
7 in those -- in equipment like that, but he also
8 occasionally does jobs where he will move dirt
9 for a, you know, for a customer. And that's
10 what he was doing here.

11 This was basically a land-clearing, clean-up
12 type operation plus some repair work done on
13 two small dams. It's our position that
14 earthwork-type work is not covered by the
15 licensing requirement. It's our position that
16 if the dam work was regulated at all, it would
17 be regulated by DHEC and not by the contracting
18 commission. And I have, if you would like,
19 actually a set of the regulations that DHEC has
20 on dam construction.

21 **HEARING OFFICER:** Okay. You can hold those until
22 you present your case.

23 **MR. HUTSON:** Okay. Apparently, the issue, as we
24 understand it, is whether there was some
25 concrete work done here that would require a



1 license. Mr. Eastman didn't pour the concrete.
2 He did, you know, work in the area where the
3 concrete was ultimately poured, but the total
4 value of the work done involving concrete was
5 roughly \$4,000. We contend that that would not
6 require a license either for the person who
7 required -- who actually poured the concrete or
8 for Mr. Eastman who, frankly, his only direct
9 involvement in pouring concrete was the
10 concrete truck could not get to the site where
11 it was going to be poured, so they poured it
12 into the scoop of one of his earth-moving
13 machines, and he drove it down there and dumped
14 it. And that's our -- that's the issue as we
15 see it.

16 **HEARING OFFICER:** Okay. Very good. Thank you.

17 Ms. Baldwin, are you ready to present?

18 **MS. BALDWIN:** Thank you so much.

19 **MS. BALDWIN:** As a matter of the record, we would
20 like to mark the notice of hearing and the
21 citation itself as State's Exhibit Number 1,
22 please.

23 **(State's Exhibit Number 1 was marked for**
24 **identification purposes.)**

25 **MS. BALDWIN:** And a copy has been presented to



1 Mr. Hutson and to his client.

2 The State would call Zachary Stauter.

3 **JASON STAUTER**, having been duly sworn, testifies as
4 follows:

5 **MR. STAUTER - DIRECT EXAMINATION BY MS. BALDWIN:**

6 Q: Good morning, Mr. Stauter. Can you tell us
7 where you live, please, sir?

8 A: 107 Jennifer Court, Greenville, South Carolina
9 29609.

10 Q: And would you please spell your first and last
11 name for the court reporter?

12 A: It's Jason J-A-S-O-N, Stauter, S-T-A-U-T-E-R.

13 Q: And do you go by Zach?

14 A: I do.

15 Q: I apologize for calling you by Zach, so excuse
16 me. Mr. Stauter, would you please tell us how
17 you came in contact with David Eastman?

18 A: I had a sergeant at a police department that I
19 worked at, he gave me David Eastman's number.

20 Q: Okay. And why did you need to get in touch the
21 Mr. Eastman?

22 A: Because I had two spillways that were -- had
23 deteriorated on two bodies -- two -- a lake and
24 a pond that I have. And I needed them repaired
25 before the dams blew out.



1 Q: And so your house is not just a standard
2 suburban house on a, you know, quarter-acre
3 lot, is it?

4 A: It's a very unique piece of property.

5 Q: And can you tell us a little bit about what was
6 holding back the lake and how it was
7 constructed?

8 A: There was a earthen dam on the -- did you want
9 both of them, both bodies of water or just the
10 lake?

11 Q: Well, let's start with the lake, if you don't
12 mind.

13 A: I would say it was an earthen dam. I would say
14 it's probably about 500 feet long, maybe
15 longer. And it was just red dirt, and the
16 spillway that was there was primarily where the
17 water would go over to -- it was fed by
18 springs, so it would always flow. And so it
19 used a spillway that was deteriorating, you
20 know, across.

21 Q: And if you know, what was the spillway made of?

22 A: Concrete.

23 Q: And in order to improve the spillway and the
24 lake itself, what did you decide to do?

25 A: We needed to extend the dam outward and make it



1 larger. And we needed to replace the concrete
2 spillway so it wouldn't give out. And we
3 needed to replace -- take a significant portion
4 of the dam out to replace the drain piping
5 where the water could go instead of using the
6 concrete.

7 Q: And for that drain that needed to be replaced
8 under the -- as part of the dam itself, if you
9 know, what was that drain made out of?

10 A: The one that was there before?

11 Q: Yes, sir.

12 A: It was metal.

13 Q: And what did you decide to replace it with?

14 A: PVC.

15 Q: And did you contract with Mr. Eastman to do all
16 of that work, basically?

17 A: I did.

18 Q: At the time you were contracting with him, did
19 you have any hesitation about doing so?

20 A: No, ma'am. This was the first time we had done
21 something like this. We didn't -- and we
22 needed an expert to do it. It wasn't just the
23 stay-at-home dad.

24 Q: And with regards to your relationship with
25 Mr. Eastman, I've used the term "contract," but



1 did y'all have a written contract for this?

2 A: We did not.

3 Q: And in your mind, was everything pretty much
4 settled with a handshake on this work that
5 needed to be done at your house?

6 A: It was.

7 Q: And did you have any reason to doubt that that
8 was going to be done the way you thought it was
9 going to be done?

10 A: No, ma'am. It was explained to me that David
11 told me that he had built the -- he had built
12 the subdivision that was across on the golf
13 course, that he had built that subdivision.
14 And I took my sergeant's word for it that he
15 was -- that he could do the work.

16 Q: And when things started out, did they start out
17 pretty well?

18 A: Yes, ma'am.

19 Q: With regards to the work that was done at your
20 home, can you give us a little bit of an
21 overview of what was done? By Mr. Eastman,
22 that is.

23 A: Yes, ma'am. We had a large -- a large hill
24 that David took the dirt from, the red dirt,
25 and put it on the back side of the dam to



1 extend it. Both concrete spillways had to be
2 replaced. The spillway for the lake in the
3 back needed another pipe for the water to
4 disappear through, plus the pipe that was
5 already there, had to be dug up because it was
6 letting all the water out. He -- we built a --
7 we created an island and put, I guess,
8 pathways, big concrete culvert so we can travel
9 back and forth across the -- you know, to cross
10 the creek with the heavy machinery and to get
11 vehicles back and forth for future means. We
12 had a, I guess, about an acre and a half forest
13 removed and the stumps taken out, a lot of
14 forestry moved, a lot of trees and things like
15 that moved. But that's pretty much the -- and
16 valves and piping and things like that.

17 Q: Okay. And for all of that work that we've
18 talked about, was that under one agreement with
19 the handshake, or was it under multiple pieces?

20 A: It was under one agreement with a handshake.
21 It was what I call the dream, you know. And
22 that's how I referred it instead of the plan
23 because that's what it was for us.

24 Q: And how much did you agree to pay for all of
25 that?



- 1 A: Twenty-two five.
- 2 Q: So \$22,500?
- 3 A: Yes, ma'am.
- 4 Q: And did you pay \$22,500 for that work?
- 5 A: Yes, ma'am.
- 6 Q: And did you pay more than twenty-two five?
- 7 A: Yes, ma'am.
- 8 Q: How much more, if you know?
- 9 A: I think we paid \$14,000 over that amount in
10 increments.
- 11 Q: And why did you pay more than the original
12 twenty-two five?
- 13 A: We were told that dirt washed out or we needed
14 more rock. It was numerous things. But we
15 kept asking for receipts, and that was it.
16 That's how it just escalated, and we finally
17 just put a stop to it with no receipts. I
18 mean, we can't just keep striking checks.
- 19 Q: Okay. So is my math correct that you paid the
20 original twenty-two five plus another 14,000 to
21 give you approximately \$36,500 that you paid to
22 Mr. Eastman directly; is that correct?
- 23 A: Yes. It sounds correct.
- 24 Q: Okay. And just to make sure I'm getting it
25 right, there was no separate agreement for each



1 phase of this project, no, you know, one-year
2 interval in between these stages of the
3 project?

4 A: No, ma'am. It was -- David would come to me
5 and say, We're over. I used this much. I had
6 to go get, you know, X amount of dirt, or X
7 amount of rock. And we just would write the
8 check and ask for receipts.

9 Q: And with regards to the concrete spillway, can
10 you tell me a little bit about how the concrete
11 was done? Did Mr. Eastman actually make or
12 form concrete on your property?

13 A: Yes, ma'am.

14 Q: And what did he do?

15 A: I just remember him working with it, you know,
16 building forms, and out there with the concrete
17 crew pouring the concrete. I took pictures,
18 and I had my kids out there because they liked
19 the tractors and everything. And there was --
20 it was a busy day for them -- or a busy couple
21 of days, however long it took from form to
22 pouring.

23 Q: Okay. And with regards to the concrete
24 drainpipes that you referred to earlier, that
25 you said you made some culverts, were those



1 formed on site, or were those brought in as
2 pipes?

3 A: They were brought in.

4 Q: Okay. And who brought them in?

5 A: I couldn't say. I didn't see them brought in.

6 Q: Okay. Who installed them?

7 A: David. I saw him install those pipes.

8 Q: All right. And can you tell us a little bit
9 about the insulation of those pipes?

10 A: One was too far in the water and the water,
11 it -- he didn't even finish uncapping the dirt
12 from one side of the pipe, so it doesn't even
13 work. And there's only about a foot of room
14 for the water to come up, so it always floods
15 over, and it pretty much washes -- it's pretty
16 much washed the dirt from that concrete pipe.
17 And then the other one is too far up. It only
18 goes about a foot and a half into the water,
19 and it's this giant hill where the dirt's just
20 about gone from the top of it. And from the
21 sides, it's all eaten away because the water's
22 trying to go around the lower sides because the
23 middle part's too high, and the water goes
24 around.

25 Q: Okay. And forgive me if I'm not picturing it



1 right, but am I correct that the drainpipes are
2 going directly across a creek? So across the
3 flow of the water?

4 A: Yes, ma'am. It's giving the flow of the water
5 a place to go so we can access other parts of
6 the property. We can actually get across
7 there. If not, we would be stuck onto one side
8 of the property, and then we would have to --
9 you'd have to walk around, and you'd still
10 never get back to the house if you walked
11 around. So it had to be the access. And the
12 then the island that we put out there, one of
13 the culverts is to get onto the island.

14 Q: And in order to place those drainpipes, it
15 sounds like it must have been some dirt moved
16 around them; is that correct?

17 A: Yes, ma'am.

18 Q: Okay. Can you tell us a little bit about that
19 process?

20 A: I -- not really. I guess I just dug them in
21 there and filled it over with dirt. I just had
22 the kids out there. We would watch sometimes.

23 Q: All right. Now, in order build the access that
24 you're talking about to get to and from the
25 island and to cross the stream, are -- is



1 Mr. Eastman essentially trying to build a road?

2 A: Those are roads.

3 Q: And in doing so, are they supposed to be dirt
4 roads?

5 A: Yes, ma'am.

6 Q: Okay. So there wasn't any paving done or
7 anything like that?

8 A: No, ma'am.

9 Q: And so no concrete is poured on top of these
10 things? It's just basically put a pipe down,
11 push some dirt over on top of it, and get it
12 steady enough so that the water is stopped?

13 A: Yes, ma'am.

14 Q: All right. Now, with regards to the spillway,
15 were you there when that was done, sir?

16 A: I was there for the upper pond spillway.

17 Q: Okay. And let's talk about them, the upper
18 pond spillway first. I believe you testified
19 earlier that at least one of the spillways was
20 deteriorating when you started this project; is
21 that correct?

22 A: Both of them are deteriorating.

23 Q: Okay. So the old stuff was going bad, and so
24 you wanted Mr. Eastman to fix it and make it
25 new?



1 A: Yes, ma'am.

2 Q: In order to make it new, did he bring in forms
3 as in a slab of concrete that somebody else
4 made, or did he pour concrete on site?

5 A: He poured concrete on site, the two-by-fours
6 and stuff to where -- to make the form.

7 Q: Okay. So he actually built forms on your
8 property and poured concrete into them; is that
9 correct?

10 A: Yes, ma'am.

11 Q: Okay. And if you know, did he purchase that
12 concrete from somewhere else?

13 A: He did.

14 Q: Okay. And do you know about it from paying
15 bills, or how do you know?

16 A: Well, because they came out onto the property.
17 We sat and talked. And they were out there at
18 lunchtime, and they had a break, and we all
19 kind of talked.

20 Q: Okay. And when people were doing work on your
21 property for Mr. Eastman, was it actually Mr.
22 Eastman, or was it, you know, guys who worked
23 for him or both?

24 A: It was a separate company that came in.

25 Q: For the concrete?



1 A: Yes, ma'am.

2 Q: Okay. And was Mr. Eastman there on site when
3 they were there?

4 A: Yes, ma'am.

5 Q: Okay. What was he doing while they were
6 pouring the concrete?

7 A: Working.

8 Q: And was he working on the concrete project or
9 working on something else?

10 A: He was -- when they were pouring the concrete,
11 he actually -- they would pour the concrete
12 into his truck, and he would take the concrete
13 down, pour it in there for them, and then come
14 back up. And then it went on like that all
15 day, and then they worked it.

16 Q: And then, if you know, who actually paid the
17 concrete company that came out?

18 A: As far as I know, the checks were -- through
19 our discovery, I guess they were from Dave to
20 the concrete company. We didn't pay the
21 concrete company.

22 Q: Okay. So you didn't contract -- you didn't
23 select this concrete company, as opposed to six
24 others?

25 A: No, ma'am.



1 Q: Okay. Did you talk to Mr. Eastman about who
2 would be picked as the concrete company?

3 A: No, ma'am.

4 Q: And with regards to getting the concrete
5 company on site, did you call them to make an
6 appointment?

7 A: No, ma'am.

8 Q: Did you do anything as far as, you know, giving
9 them any kind of checks while they were there?

10 A: No, ma'am. This was supposed to be -- this was
11 just supposed to be me doing my job at home.
12 I don't have time to do these things so -- or
13 the experience for that matter. But it was
14 supposed to be an easy thing for us, just to
15 get somebody else to take care of everything.

16 Q: And who was that person supposed to be?

17 A: David Eastman.

18 Q: After the concrete was poured for the spillway,
19 was there work that needed to be done as far as
20 moving dirt around to support the spillway, or
21 was that done ahead of time?

22 A: I couldn't say.

23 Q: Now, I think you testified that there were two
24 spillways. Could you tell us about the other
25 spillway?



1 A: Yeah. The back lake. I call one a pond, and
2 then I call the other one a lake, so it's easy
3 for me and my wife to talk about these things.
4 The lake is -- obviously, it's a much larger
5 body of water. It has a significant amount of
6 water that goes over the spillway. I don't
7 know what else.

8 Q: Okay. Which pond or lake were we talking about
9 the first time?

10 A: The one that I saw the work being done with the
11 concrete was the pond. The lake in the back,
12 I believe we were out of town when that got
13 poured.

14 Q: And, again, did you pick the concrete company
15 to do the work on the lake?

16 A: No, ma'am.

17 Q: Did you call the concrete company to do to work
18 on the lake?

19 A: I didn't even know it was going to get done.

20 Q: And did you think that Mr. Eastman was handling
21 everything with the concrete company with the
22 lake?

23 A: Yes, ma'am.

24 Q: Okay. And, in fact, did you wind up with
25 spillway repairs on both the pond and the lake?



1 A: They both -- the concrete just went down the
2 creek. We got a big rain, and all the
3 concrete -- literally, all the concrete was
4 gone. It washed down the creek.

5 Q: With regards to the project at your home, did
6 you ever check to see whether Mr. Eastman was
7 licensed?

8 A: No, ma'am.

9 Q: And did you ever make any arrangements with
10 anyone, other than Mr. Eastman, during the time
11 of your work with him to do any kind of work at
12 your property?

13 A: No, ma'am.

14 Q: Can you tell us about when all this work was
15 going on with Mr. Eastman? The dates, I mean.

16 A: I couldn't. I think it's roughly a year and a
17 half ago or something. I don't know. I
18 couldn't tell you the dates.

19 Q: Okay. Do you know the year it occurred?

20 A: 2014, two thousand and -- yeah, 2014.

21 Q: And about how long was he on your property?

22 A: I think he was out there for -- I really
23 couldn't tell. I really don't want to guess
24 about it.

25 Q: Okay.



1 A: It was close to a year, I think.

2 Q: Okay. So more than a week?

3 A: Yes, ma'am.

4 Q: More than a month?

5 A: Yes, ma'am.

6 Q: Okay.

7 A: It was more than six months. It's probably
8 closer towards nine, ten months.

9 Q: All right. And during that time, he obviously
10 had a long list of things that you discussed in
11 your testimony earlier that he was working on;
12 is that correct?

13 A: Yes, ma'am.

14 Q: Okay. At what point did you decide that things
15 weren't going so well with Mr. Eastman?

16 A: After our initial agreement, he -- after he
17 went over the initial agreement.

18 Q: And at some point, did you ask Mr. Eastman to
19 provide you with paperwork about what work he
20 had done at your place?

21 A: Yes, ma'am.

22 Q: Okay. And did he provide you with a
23 handwritten invoice?

24 A: No, ma'am. At -- he didn't at any time during
25 the course of the job at -- I guess when he



1 stopped coming back over, he -- or somebody put
2 invoices in my mailbox.

3 **MS. BALDWIN:** And I'm going to ask the court
4 reporter to mark this as State's Exhibit Number
5 2 ask you if you recognize this document?

6 **(State's Exhibit Number 2 was marked for**
7 **identification purposes.)**

8 A: I do.

9 Q: What is that, sir?

10 A: This is what was left in my mailbox.

11 Q: Okay. And was there more to it?

12 A: There was a huge stack of papers that were
13 added to it.

14 Q: Okay. Was this like the cover sheet to the
15 packet?

16 A: It was.

17 Q: Okay. Is this a true and accurate copy of what
18 was placed in your mailbox as far as just the
19 cover sheet?

20 A: It looks exactly like it, because I wrote that
21 at top -- at the top that I received that
22 packet at that time. I immediately called him
23 to ask him what all this stuff was, and I got
24 no answer. And so I just wrote that on the top
25 and said this is probably it.



1 Q: Okay. And what does your notation say, sir?

2 A: Packet came in 12/19/15 at the very top where
3 there's a picture of a little machine at the
4 top.

5 Q: Okay. And you said 12/19/15. But the date on
6 the invoice is 11/13/13?

7 A: Yes, ma'am.

8 Q: So you got this two years later?

9 A: Yeah. I didn't even look at that until now.

10 Q: All right. Well, 12/19/15 would have been
11 about six months ago?

12 A: Yes, ma'am.

13 Q: Were you still dealing with Mr. Eastman six
14 months ago?

15 A: No, ma'am.

16 Q: Okay. Is it possible that that number is
17 actually 12/19/13?

18 A: Yes, ma'am. Yes. I'm sorry. There is just a
19 small little divot at the top of that 5. It
20 looked like it goes the other way. I
21 apologize.

22 Q: Okay. So if I understand you correctly -- and
23 I don't want to put words in your mouth -- I
24 just want to try and find out what happened.
25 There was a packet left in your mailbox?



1 A: Yes, ma'am.

2 Q: And it's dated 11/13/13. And then the note
3 from you is that it came in, I guess, to your
4 mailbox? Is that what you're indicating?

5 A: Yes, ma'am.

6 Q: And I have no earthly idea. Do y'all go get
7 your mail once a month or ...

8 A: It's everyday.

9 Q: Oh, okay. And you don't know who left this in
10 your mailbox, do you?

11 A: I don't.

12 Q: Did you have occasion to recognize Mr.
13 Eastman's handwriting from him doing the work
14 with you?

15 A: No ma'am. I didn't get anything in writing
16 from him.

17 Q: Okay. Is this signed by Mr. Eastman?

18 A: There's a signature at the bottom. I don't
19 know if it's his signature or not.

20 Q: Is this his company name?

21 A: I would assume so. He never told me his
22 company name. It was just the -- I -- whenever
23 this came in my mailbox, this is the first time
24 I had seen that.

25 Q: Okay. But you'd been asking Mr. Eastman to



1 provide you with receipts and documentations of
2 the bills at your house?

3 A: Yes, ma'am.

4 Q: And then you received this in your mailbox?

5 A: Yes, ma'am.

6 **MS. BALDWIN:** The State would move to admit State's
7 Number 2.

8 **HEARING OFFICER:** Without objection? So it's
9 admitted.

10 **(State's Exhibit Number 2 was admitted into**
11 **evidence.)**

12 Q: And so it looks like the work probably took
13 place over the course of about five to six
14 months? Started in, in or around June and then
15 ended around November?

16 A: I ---

17 **MR. HUTSON:** We'll stipulate the dates on the
18 invoice were start and finish are correct.

19 **HEARING OFFICER:** Okay. So from 6/11/13 to
20 11/13/13?

21 **MR. HUTSON:** Right.

22 **HEARING OFFICER:** Okay.

23 Q: And then what was the total amount of the
24 invoice that was requested of you?

25 A: What it says on here is 78,398.28.



1 Q: And had you ever heard that number before?

2 A: No, ma'am.

3 Q: Did you pay this invoice?

4 A: No, ma'am.

5 Q: And this doesn't necessarily go to today's
6 case, but what happened after this, after 2013?

7 **MR. HUTSON:** Objection. It's not relevant.

8 **HEARING OFFICER:** I'll agree with the objection.
9 Sustain the objection.

10 Q: Are you on good terms with Mr. Eastman at this
11 point?

12 **MR. HUTSON:** Objection. That's not relevant.

13 **HEARING OFFICER:** Sustained.

14 Q: Thank you. Those would be my questions for
15 this witness.

16 **HEARING OFFICER:** Okay. Mr. Hutson?

17 **MR. HUTSON:** Thank you.

18 **MR. STAUTER - CROSS EXAMINATION BY MR. HUTSON:**

19 Q: Mr. Stauter, the size of your lot is about 7
20 acres; is that correct?

21 A: A little over. Yes, sir.

22 Q: A little over 7?

23 A: Yes, sir.

24 Q: And the -- how big is the upper pond?

25 A: I couldn't tell you. If I had to estimate, I



1 would say an acre.

2 Q: Do you own all of that?

3 A: I do not.

4 Q: Now, isn't it true that when you first
5 approached Mr. Eastman about this work, that
6 you asked him for a price for dredging the
7 upper pond?

8 A: No, sir.

9 Q: All right. Did you ever consider dredging the
10 upper pond?

11 A: I did.

12 Q: And you did not do that because others own part
13 of the property; is that correct?

14 A: That's correct.

15 Q: Now, there's very little water in the upper
16 pond at the time you first approached Mr.
17 Eastman; isn't that correct?

18 A: I couldn't assume what "very little water"
19 means. It's an acre, roughly an acre of water.

20 Q: And that -- I think you said that the drain was
21 allowing water to drain out of that pond,
22 right?

23 A: No.

24 Q: Okay.

25 A: There wasn't a drain in the pond. That was in



1 the lake.

2 Q: Okay. All right. Well, was there water in the
3 upper pond?

4 A: Yes, sir.

5 Q: Was it full?

6 A: Yes, sir.

7 Q: Okay. The lake, which the pond feeds into
8 along with another stream, as I understand it,
9 was pretty much empty, wasn't it?

10 A: The lake, it went back and forth. It would
11 sometimes fill up because debris would get in
12 the pipe. And then sometimes the debris would
13 disappear, and it would empty. So it went back
14 and forth.

15 Q: Okay. Now, what -- look again at State's
16 Exhibit Number 2. Mr. Eastman said that his
17 work was that he rebuilt two dams. He did
18 that, didn't he?

19 A: Yes, sir.

20 Q: That was primarily earth work, right? Moving
21 dirt?

22 A: Primarily, I would assume.

23 Q: All right. He cleared debris out of the pond;
24 is that correct?

25 A: Yes, sir.



1 Q: He also -- you also had a logger come in and
2 remove a bunch of trees. He didn't do that
3 work, did he?

4 A: That was -- David called the guy to come out
5 and do all that.

6 Q: But he did not do that work?

7 A: David?

8 Q: Yes.

9 A: I couldn't say whether he helped or not.

10 Q: All right. He cleared the land once the trees
11 were cut, right? Dug up the stumps and that
12 sort of thing?

13 A: Yes, sir.

14 Q: You said that was about an acre and a half?

15 A: No. That was -- that's the pond.

16 Q: Well, how much land did he clear?

17 A: I couldn't tell you altogether.

18 Q: All right. The -- he also dug a big hole and
19 filled it full of the debris that he cleaned
20 out of the lake off that land?

21 A: Yes, sir.

22 Q: At your direction, right?

23 A: No, sir.

24 Q: Was there a plan of any type that he was
25 working from?



1 A: Yes, sir. In the beginning, I told him about
2 the dream, what I wanted to see. And it was --
3 it was my assumption that it was his job to do
4 the work to make that dream a reality.

5 Q: So there's no -- whatever the plan was, was
6 what you told him to do, right?

7 A: Not the way to go about doing it or, you know.

8 Q: All right. So he had to haul in some dirt or
9 have some dirt hauled in, right?

10 A: Well, he was supposed to get it from the
11 property.

12 Q: And it turned out that there was rock there
13 instead of dirt, wasn't it?

14 A: In one spot, it was.

15 Q: Then he installed two PVC, drains. One in
16 each -- one in the pond and one in the lake?

17 A: That's correct.

18 Q: Okay. And then the concrete spillways were
19 poured?

20 A: Yes, sir.

21 Q: Is there anything else he did?

22 A: For the whole project?

23 Q: For the whole project.

24 A: Yes.

25 Q: What?



1 A: There were -- he did a lot of stuff, installed
2 valves. And he just did a lot of other stuff.

3 Q: All right. Now, you've talked about two
4 concrete culverts. One of those is in the
5 creek, and it was there for the heavy equipment
6 to get across the creek while the land was
7 careered; was that correct?

8 A: No, sir.

9 Q: It was intended to be temporary, wasn't it?

10 A: No, sir.

11 Q: All right. The second concrete culvert is not
12 even in the creek, is it? It goes to the
13 pond -- or to the island that you had inbuilt
14 in your lake?

15 A: That's correct.

16 Q: And that was -- it was intended that that would
17 be removed and replaced by a little wooden
18 bridge, wasn't it?

19 A: No, sir.

20 Q: Okay. Are you saying it was not intended to be
21 temporary?

22 A: No, sir.

23 Q: Did you see the people building concrete forms?

24 A: Yes, sir.

25 Q: That work was done by Pedro's Concrete



1 employees, wasn't it?

2 A: Not only by him, but by David and his crew.

3 Q: All right. Now, you met direct -- you met with
4 Mr. Ramirez, the head of Pedro's concrete,
5 didn't you?

6 A: That's correct.

7 Q: Several times, right?

8 A: No. Just once.

9 Q: All right. In fact, you contracted directly
10 with him for that work, didn't you?

11 A: No, sir.

12 Q: Why did you meet with him then?

13 A: Because they were sitting down to lunch, and my
14 kids were with me. And we talked to them, and
15 he was showing me rockwork that he's done
16 before. And that's pretty much it.

17 Q: All right. At the same time David was doing
18 the work on your pond and lake, now, you had
19 work going on your house, didn't you?

20 A: No, sir.

21 Q: Weren't you building decks on the house at the
22 same time?

23 A: I couldn't say whether that was going on at the
24 same time.

25 Q: All right. And you directed that work



1 yourself, didn't you?

2 A: No, sir.

3 **MR. HUTSON:** That's all I have.

4 **HEARING OFFICER:** Okay. Mr. Staur, is that ---

5 **THE WITNESS:** Stauter.

6 **HEARING OFFICER:** Stauter?

7 **THE WITNESS:** Yes.

8 **MS. LEWIS:** Do you have cross-examine?

9 **MS. BALDWIN:** No cross-examination at this time.

10 Thank you.

11 **EXAMINATION BY THE HEARING OFFICER:**

12 Q: Mr. Stauter, how long -- how much concrete did
13 you see poured? In other words, like how much
14 times did you see a truck come up and bring a
15 load to the property?

16 A: I don't recall.

17 Q: I mean, once or ten times or twenty times
18 or ...

19 A: I really -- I couldn't -- I don't recall. We
20 kind of -- me and kids kind of stepped back at
21 certain points to get away from everything, go
22 inside, make lunch or do whatever we needed to
23 do.

24 Q: But I mean, you -- it was more than one. Was
25 it only once?



1 A: No, sir. He -- actually, he had to pour the
2 upper concrete spillway. He had to pour it
3 twice. But I wouldn't be able to say how many
4 truckloads it would take to do that.

5 Q: Okay. Would you have seen the trucks when they
6 were driving to the property if you were there?

7 A: Yes, sir. I saw them the one time. I didn't
8 notice ---

9 Q: I'm just trying to get a feel of whether it was
10 one or ten or twenty times that you saw a truck
11 there.

12 A: It seemed like it was there quite a bit because
13 it took up a massive portion of the driveway.

14 Q: I'm speaking number of times.

15 A: Oh, I couldn't say. I'm sorry.

16 Q: Okay. They were working. And I think the
17 Respondent has stipulated there were there for
18 approximately six months. Were they there
19 everyday for that six-month period, or would
20 they sometimes take a week off, or was it kind
21 of -- it was intermittent work, or was it
22 continual work?

23 A: It was sporadic. I would say it was just
24 intermittent.

25 Q: Okay. And for the concrete, I guess, it was



1 follows:

2 **MR. SMITH - DIRECT EXAMINATION BY MS. BALDWIN:**

3 Q: Would you please state your name for the
4 record?

5 A: Maurice Smith.

6 Q: And how are you employed, sir?

7 A: I'm an investigator for the South Carolina
8 Department of Labor Licensing Investigation for
9 the Office of Investigation and Enforcement.

10 Q: All right, sir. And about how long have you
11 worked for LLR, sir?

12 A: Eight years.

13 Q: Do you hold any certifications, registrations,
14 or licenses with regards to the subject matter
15 that you investigate?

16 A: No.

17 Q: And what is the subject matter that you
18 typically investigate?

19 A: Unlicensed practices, outpracticing outside of
20 the scope or classification of a license,
21 application fraud, criminal conviction issues
22 with licensees. These are the type of matters
23 that I handle.

24 Q: All right, sir. And as part of your duties
25 within the Department of Labor Licensing and



1 Regulation, were you assigned a case involving
2 David Eastman?

3 A: I was.

4 Q: And what did you do in response to being
5 assigned that case?

6 A: Normally, the case has been reviewed by an
7 analyst, and they confirm at the time that that
8 person does not have a license. I still go
9 back behind and also review names, documents,
10 records to see if there is anything that would
11 lead me to believe or think that there was a
12 license for an individual.

13 Q: All right, sir. And as part of your
14 preliminary procedure, did you check to see if
15 David Eastman was licensed by either the
16 Residential Builders Commission or the
17 Contractor's Licensing Board?

18 A: I did.

19 Q: And what were the results of your search?

20 A: I found no licenses for the Respondent.

21 Q: All right. And did you also check about the
22 company name that Mr. Eastman was doing
23 business as?

24 A: Yes, ma'am.

25 Q: All right. And if you know, what was his



1 company name, sir?

2 A: From what we have, was just off of the evidence
3 that we had that was provided to us from the
4 invoices, which was Grading Landscaping
5 Materials. And, again, I checked and there was
6 no such license for a company of that.

7 Q: All right, sir. And so as a result of finding
8 that there were no licenses to Mr. Eastman or
9 his company, what did you do?

10 A: Next thing we do is we send out a notification
11 complaint whether a person's licensed or not to
12 allow them to know there's been a claim filed
13 against them and/or their license.

14 Q: Okay. And throughout this process, has
15 Mr. Eastman been polite and cooperative with
16 you?

17 A: From what little corporation we've, had there
18 would have been nothing derogative.

19 Q: And he filed an appropriate response through
20 his attorney with the department, didn't it?

21 A: That is correct. The Respondent normally will
22 either make direct contract with us and/or, you
23 know, if they feel necessary, they will hire
24 their attorney, and their attorney will make
25 the appropriate response to the complaint.



1 Q: And I'm not trying to belabor the point, but,
2 I mean, everybody's cooperated; correct?

3 A: Correct.

4 Q: And as part of your investigation, did you go
5 out to the property at 107 Jennifer Court, in
6 Greenville, South Carolina?

7 A: I did.

8 Q: And did you take some photographs while you
9 were there?

10 A: I did.

11 Q: I ask you to look at what I'm marking as
12 State's Exhibit Number 3.

13 **(State's Exhibit Number 3 was marked for**
14 **identification purposes.)**

15 A: Yes, ma'am.

16 Q: Have you had an opportunity to review the
17 packet that we've completed this morning, sir?

18 A: Yes, ma'am.

19 Q: All right. Is that a true and accurate copy of
20 the pictures that you took while you were on
21 site?

22 A: Yes, they are.

23 Q: All right. And with the addition of the
24 numbers in the corners, have they been doctored
25 or adulterated in any way?



1 A: No, ma'am.

2 **MS. BALDWIN:** The state would move to admit State's
3 Number 3.

4 **MR. HUTSON:** Objection.

5 **MS. BALDWIN:** I beg your pardon.

6 **MR. HUTSON:** Objection.

7 **MS. BALDWIN:** No. I said, I beg your pardon. I'm
8 stepping back as I'm handing them the exhibits.

9 **MR. HUTSON:** The -- I'm sure these pictures are --
10 you know, I'm not questioning the fact that he
11 took pictures. I'm question the relevance of
12 these pictures. This is -- these were not
13 taken while the work was being done.
14 Apparently, the date on them, they were taken
15 a year later after gosh knows what had happened
16 on the site. And I don't think the foundation
17 has been laid to establish that -- I mean,
18 they'd be relevant, I believe, if they showed
19 what work was being done or had been done.
20 Taken a year later, I don't think that they are
21 pictures that would offer any significant
22 benefit.

23 **HEARING OFFICER:** To be quite honest, the testimony
24 has been a little bit confusing about the upper
25 lake and the lower lake and all that. And just



1 seeing a picture of it would help -- would give
2 me a better appreciation of the -- of this. So
3 I'd like to -- I'm going to overrule that and
4 allow these into evidence.

5 **MR. HUTSON:** Okay.

6 **(State's Exhibit Number 3 was admitted into**
7 **evidence.)**

8 **MS. BALDWIN:** I'm handing out State's 3 at this
9 time.

10 **Q:** Mr. Smith, as the Hearing Officer stated, I
11 think it helps to get a picture in our minds of
12 what we're talking about. Can you tell us,
13 just sort of walk us through State's Exhibit
14 Number 3 and walk us through these photographs
15 and describe where we were on the site as we
16 walk through them, please. If you could, start
17 with Number 1?

18 **A:** Maybe I'll even add more confusion.

19 **HEARING OFFICER:** Okay.

20 **Q:** From what they decided what they call a lake or
21 a pond, what I will do is try to just give you
22 where these bodies of water are relationships
23 onto the property.

24 **HEARING OFFICER:** Okay.

25 **A:** This is the section -- this is of the body of



1 water that is apparently owned by several
2 people. And it's to the left as you come into
3 the driveway of the Complainant's property.

4 So this is to the left of the property. It's
5 a fairly decedent sized body of water. I don't
6 know the measurements. But, again, this is the
7 one that has multiple owners.

8 As you can see here, this is the -- a spillway
9 made out of concrete that leads to creek that
10 goes to a lower body of water on the
11 Complainant's property.

12 Again, just showing concrete work and where the
13 concrete is starting to dissolve in that same
14 section of water to the left side of the house.
15 I'll let you know when I move to another body
16 of water. This whole time we're still dealing
17 with that same section. Again, you can see how
18 the water is moving downstream into the gully
19 going into the natural creek basin at the
20 bottom.

21 **MS. LEWIS:** What picture are you on?

22 **THE WITNESS:** I am on Number 4.

23 **MS. LEWIS:** Okay.

24 **THE WITNESS:** I'm sorry. I'll give the picture
25 number at the same time.



1 A: Again, you can see to the left of this photo
2 where the ground is starting to disintegrate
3 and come under.

4 The same, Number 5 is the continued concrete
5 work with the flow going into the natural
6 creek. We got erosion to the left.

7 This is part of the upper part if you've taken
8 a view of looking up that same section to the
9 concrete work that's at the very top, Number 6.

10 **MS. LEWIS:** You got to say the pictures before so we
11 can keep up.

12 **THE WITNESS:** I'm sorry.

13 A: Number 6, this is looking up that same section
14 of concrete work. Number 7 is showing the
15 erosion up underneath the concrete work. And
16 apparently a riff-raff would be dirt, rock,
17 make some old concrete. That's the Number 7.
18 Number 8, continuing more of the same of the --
19 showing the riff-raff where the concrete and
20 the -- is failing and the erosion underneath.
21 If you'll also notice, I did not see any rebar.
22 This is where that same number at 9 shows that
23 same that same section of water where it's
24 flowing into the natural creek area that's
25 going to the lower bodies of water on the



1 Complainant's property.

2 Number 10 is, again, another back shot up that
3 same body of water, showing the erosion and the
4 concrete failure.

5 Number 11 is just more of the same. 12, again,
6 showing where the concrete is failing and the
7 erosion. But the water is flowing.

8 Number 13 is where we get to where the natural
9 creek is flowing into the next small pond,
10 which would be the side on this -- you would
11 see there's a canoe on the other side. You see
12 where a cantilever has been installed and then
13 dirt has been back filled over it, creating a
14 drive over that small dam. And, again, that's
15 Number 13.

16 Number 14 is the adjacent side of that same
17 section where it flows into the lower body of
18 water.

19 15 is just a more close-up showing some erosion
20 around the cantilever.

21 Q: And what is that pipe made of that's shown in
22 Picture Number 15?

23 A: These cantilevers are a hard construction
24 plastic. I don't know the correct type or
25 name. But they are -- they were manufactured



1 offsite and delivered.

2 Q: And are these the PVC pipes that Mr. Stauter
3 referred to, or are they concrete pipes that
4 you referred to? I'm just trying to -- in
5 terms of category, is it concrete, or is it
6 PVC, leaving aside the correct terminology for
7 either one of them?

8 A: This one is showing some dinish, so I don't
9 think this is the concrete. This would be the
10 one type of the PVC type possibly.

11 Q: All right, sir.

12 A: Again, they were delivered. They were a
13 manufactured offsite-type product. Most
14 cantilevers are, whether they're concrete, PVC,
15 or metal, they're manufactured offsite and
16 they're delivered onto a construction site or
17 road site, et cetera.

18 Q: And just to make sure I'm keeping my
19 terminology straight, Mr. Stauter referred to
20 culverts. Would a culvert be the same thing as
21 a cantilever?

22 A: Cantilever.

23 Q: Y'all are referring to the pipes that go to the
24 bottom?

25 A: The pipes that go underneath the water.



1 Q: Okay.

2 A: Underneath the roads or spillways.

3 Q: Okay. And so what do we see in 16?

4 A: 16, again is just showing where the water is
5 not really flowing. You can see again -- you
6 can see backfilled dirt, where it's starting to
7 erode.

8 Q: And is that pipe a concrete pipe or a PVC pipe
9 or something different?

10 A: I honestly can't remember, to tell you, to be
11 honest. I'm not sure on this photo which one
12 or which material.

13 Q: Okay.

14 A: Again, we're showing where it's coming into the
15 pond where, again, the water is not flowing
16 adequately. It's Number 17.

17 18 -- let me take a quick look. I believe this
18 is where it's going past all the waterways
19 where it's going to another creek bottom that
20 flows off of the Complainant's property.

21 Q: And this is all new concrete work that you
22 observed?

23 A: That's where it was brought to my attention
24 from the Complainant that this was the work
25 that was allegedly done by the Respondent.



1 Q: And that's what you're trying to document in
2 all of these photos; is that correct?

3 A: Yes, ma'am. Again this is 18 -- as a matter of
4 fact, all the photos here, 18 through 29, are
5 all of the last spillway and -- which is
6 showing water is either lightly or no flow of
7 water. And you can see where you have like on
8 19 the concrete is breaking up. There's a
9 divot towards the last section. That does look
10 more newer that leads into the runoff that goes
11 off of the Respondent's -- off the
12 Complainant's property on to others'
13 properties.

14 Q: What does Number 20 show?

15 A: Same. This is the last edge of the spillway.

16 Q: What's in Number 21?

17 A: 21 is a -- looks like everything that could
18 have been either left over, dumped, or the new
19 concrete that was also falling apart, along
20 with wood and other construction debris.

21 22 shows this area that was -- should lead to
22 a road that would take you up to the backside
23 and the right side coming up to the right side
24 of the Complainant's home. And you can see
25 through this area that this concrete is just



1 cracking and failing.

2 Q: Okay.

3 A: Again, this is a bottom side of that last
4 spillway looking up, and you can see the
5 erosion and the failure of concrete.

6 Q: What picture are you looking at now, sir?

7 A: That's 23. I'm sorry.

8 Q: And what does 24 show?

9 A: It shows another cantilever type pipe that does
10 have water flow and, again, shows the degrading
11 of the property -- the groundwork around it.

12 Q: What does Number 25 show?

13 A: It shows where everything is, again, being
14 eroded underneath this concrete work on that
15 last spillway.

16 Q: What's in Number 26?

17 A: 26, again, is showing the pipe that was
18 allegedly installed by the Respondent on that
19 last spillway.

20 Q: And Number 27?

21 A: A debris field on that section of the runoff
22 that goes off of the Respondent's property
23 onto -- the Complainant's property onto other
24 properties.

25 Q: And Number 28?



1 A: 28, again, it's just showing more of that same
2 spillway, water not moving except for that
3 that's in the pipe. That spillway is -- and
4 the erosion of the concrete that's on top.

5 Q: And Number 29?

6 A: Again, just showing the concrete work cracking.

7 Q: Is part of your investigation throughout the
8 case -- were you called upon to make a
9 determination as to whether or not to issue a
10 citation in this matter?

11 A: Yes, I was.

12 Q: All right. And what did you do in response to
13 your investigation?

14 A: Due to the facts that concrete work from 40-11
15 shows that there should be concrete -- where a
16 licensing for concrete work that involves
17 grading, backfilling, pipework. There was no
18 license for the Respondent and/or his company
19 and that the total cost of construction or work
20 that had accumulated was over the fact of
21 \$5,000. For that reason, I issued a citation
22 for unlicensed practice.

23 Q: And in response, did you receive an appeal to
24 that citation?

25 A: Yes, ma'am, I did.



1 Q: Okay. And is that why we're here today?

2 A: That is why we're here today.

3 **MS. BALDWIN:** Those would be my questions for this
4 witness.

5 **HEARING OFFICER:** Okay. Thank you.

6 Mr. Hutson?

7 **MR. SMITH - CROSS EXAMINATION BY MR. HUTSON:**

8 Q: Please look back at Photograph Number 19.

9 A: All right.

10 Q: Do you have any evidence that the concrete
11 shown in Exhibit [sic] 19 was poured during the
12 time Mr. Eastman was performing work on that
13 job?

14 A: No. As I have said. This was all alleged.

15 Q: It was all alleged?

16 A: Yes, sir.

17 Q: You don't know whether that's his or not?

18 A: No, sir.

19 Q: That same question for Picture 28?

20 A: Next to last.

21 Q: Next to last, yes.

22 A: Again, this was all just pointed out to me by
23 the Complainant.

24 Q: All right. So basically your answer to my
25 question or each of these photographs would be



1 that you don't have any evidence that David
2 Eastman actually did this work, other than the
3 fact that Mr. Stauter told you he did?

4 A: Mr. Stauter and I -- I do contact the people of
5 the cantilever and the concrete, and they all
6 dealt with the Respondent.

7 Q: The cantilever?

8 A: Yes, sir.

9 Q: And the ---

10 A: And the concrete mix company.

11 Q: The concrete mix company. Okay.

12 A: Yes, sir.

13 Q: It's entirely possible, isn't it, that the, at
14 least part of this work, specifically the stuff
15 shown in 28, your Photograph 28 and 29, was
16 there prior to David Eastman doing any work?

17 A: There is a possibly.

18 Q: Okay. And you've shown two -- you have
19 pictures of two "cantilever crossings," for
20 lack of a better word on my part?

21 A: That's works for me.

22 Q: Do you have any independent knowledge of
23 whether those two things were intended to be
24 temporary or permanent?

25 A: You want to reform the question, please, sir?



1 Q: Do you have any independent evidence on whether
2 the two cantilevers that you've taken pictures
3 of were intended to be permanent structures?

4 A: I'm not quite sure I understand the backing of
5 your question. But the fact is, they were
6 performed, whether they were permanent or
7 temporary.

8 Q: Okay. The -- does the manner in which they are
9 installed relate in any way to your
10 determination that a citation should be issued?

11 A: How they're -- I just go by the Practice Act,
12 which says if they were installed and requires
13 backfilling and grading, you must be licensed.

14 Q: All right. Would that be your opinion that the
15 work was merely there on a temporary basis to
16 allow a truck to haul in a load of sand, for
17 example?

18 A: Yes, sir.

19 Q: All right.

20 **MR. HUTSON:** Mr. Commissioner, I'm going to renew my
21 objection to all of these photographs that,
22 frankly, I didn't find very enlightening about
23 what work was done, and that's the basis that
24 I renew the objection to.

25 **HEARING OFFICER:** I certainly understand that these



1 pictures were taken a year after the Respondent
2 left the job site, and I'm taking into account
3 Mr. Smith's testimony that he wasn't there when
4 these were taken. And also I think I want to
5 make clear that the comments about the work --
6 the adequacy of the work is -- would not
7 factor, in my opinion, because this is strictly
8 a whether he was licensed or not, not whether
9 he did defective work. So -- but I still think
10 that give me some insight into the general
11 conditions. And I'm just going to use these as
12 just to enhance my understanding of what
13 happened there. And so I'm going to overrule
14 that and allow them the stay in.

15 **MR. HUTSON:** Okay. Thank you. That's all I have.

16 **(Witness Excused)**

17 **MS. BALDWIN:** I have redirect.

18 **HEARING OFFICER:** Okay.

19 **MS. BALDWIN:** And we may finally get you some help
20 on the pictures, if we could call Dr. Stauter,
21 please.

22 **HEARING OFFICER:** Okay.

23 **DR. FAITH STAUTER,** having been duly sworn, testifies
24 as follows:

25 **DR. STAUTER - DIRECT EXAMINATION BY MS. BALDWIN:**



1 Q: Would you please state your name for the
2 record?

3 A: Faith Stauter.

4 Q: And, Dr. Stauter, are you related to Jason
5 Stauter who testified first?

6 A: He's my husband.

7 Q: How are you employed, ma'am?

8 A: I'm an emergency medical doctor.

9 Q: Okay. And so for you two, as a couple, one of
10 you gets to take care of children, and that
11 happens to be Mr. Stauter in this case, for
12 your family?

13 A: Uh-huh.

14 Q: Were you very involved with this project at
15 your home?

16 A: Not very.

17 Q: Okay. Do you recognize your home and the land
18 around it when you see it?

19 A: Yes, ma'am.

20 Q: Okay. I'd ask you to turn to State's Exhibit
21 Number 3, the photographs in front of you.

22 A: Uh-huh.

23 Q: Can we walk through this a little bit. Because
24 we have to call witnesses in a certain order
25 for legal reasons, we'd like to actually



1 explain this a little bit to the Hearing
2 Officer.

3 A: Okay.

4 Q: If you look at Picture Number 1, can you tell
5 us what parts of this picture Mr. Eastman
6 worked on?

7 A: He worked on -- this appears to be our upper
8 spillway. And he removed the old concrete that
9 was there that was disintegrating and replaced
10 it with this new concrete. And from my
11 understanding, he had to do it twice, because
12 the first time he did it, it failed. So he had
13 to come back and do it again.

14 Q: Okay. And so the concrete that's actually
15 shown here was poured or laid by and through
16 Mr. Eastman?

17 A: Yes.

18 Q: And we've heard your husband's testimony that
19 there was another concrete company that came on
20 site with Mr. Eastman. Did you personally
21 contract with that other company?

22 A: No.

23 Q: Did you write any checks to that other company?

24 A: No, ma'am.

25 Q: Did you call and make any appointments with



1 that other company?

2 A: No.

3 Q: Was it you're understanding Mr. Eastman was
4 handling it?

5 A: I thought they were all his employees. I
6 didn't know it was a separate company.

7 Q: All right. If you would turn ---

8 **MS. LEWIS:** I'd like to ask you to talk just a
9 little bit louder. I know she's asking the
10 questions, but we're -- we have to be able to
11 hear your answers too.

12 **THE WITNESS:** Okay.

13 **MS. LEWIS:** Thank you.

14 Q: So if we turn to Number 2 -- I don't even know
15 on a close-up, if you can tell me what that is.
16 Do you know?

17 A: It just appears to be a portion of the upper
18 spillway. I can't tell you what portion it is.

19 Q: Okay. And Number 3?

20 A: That is a portion of the upper spillway on the
21 opposite side from our house.

22 Q: And all of that was poured under Mr. Eastman's
23 supervision or under the agreement with Mr.
24 Eastman?

25 A: Yes, ma'am.



1 Q: Okay. What is Number 4, please?

2 A: That is a picture of most of the entirety of
3 that upper spillway going downwards into the
4 creek.

5 Q: And the concrete that we see there, is that old
6 concrete that needed to be repaired or new
7 concrete under Mr. Eastman?

8 A: It's all new. All of the old concrete was
9 removed. I don't know if any of it was used
10 underneath, but none of it remained on top.

11 Q: So just to be clear about it, from the old
12 stuff that was falling apart to this picture,
13 there's nobody else who worked on your property
14 besides Mr. Eastman?

15 A: No, ma'am.

16 Q: Okay. And in the year after Mr. Eastman left
17 the property to the time Mr. Smith came out to
18 your property, did you hire another crew to
19 come in and do anything?

20 A: No, ma'am.

21 Q: Okay. So all of this is as it stayed with
22 Mr. Eastman?

23 A: Yes.

24 Q: Okay. I just -- again, I'm not trying to play
25 hide the ball. We just want to make sure we



1 get the facts out for the Hearing Officer so he
2 can see what he's doing. What's Number 5?

3 A: Appears to be the bottom of that spillway.

4 Q: Can you tell us what Number 6 is?

5 A: It's the top where he had made the divots to
6 try to assist with the debris, I guess. I
7 guess there was some disagreement with -- my
8 husband didn't want that, and he did it anyway.

9 Q: Okay. So the specifications of the work were
10 under dispute?

11 A: Yeah.

12 Q: But was this work done by Mr. Eastman?

13 A: Yes.

14 Q: Okay. And is that concrete?

15 A: Yes.

16 Q: Okay. What's Number 7, if you know?

17 A: That's the side of the spillway where it began
18 to erode early after he laid it, the concrete.

19 Q: Okay. And I think the testimony from the
20 investigator was pretty clear that, you know,
21 there's some sort of duplications in here. Is
22 Number 8 a different ---

23 A: It's the same.

24 Q: Okay. What's Number 9?

25 A: It's where -- the end of the spillway into our



1 creek that goes around the property.

2 Q: All right. And Number 10?

3 A: It's, again, the side that's eroding.

4 Q: Number 11?

5 A: Same.

6 Q: Number 12.

7 A: Same.

8 Q: So now what's Number 13? It looks different to
9 my eye.

10 A: Yes. This is the back. This is part of where
11 they created the island, which they covered
12 with sand. This was to create a road so that
13 we could permanently be going back and forth
14 over to the sand in case we ever needed to add
15 additional sand to the island because it washes
16 out into the lake. And so this was basically
17 kind of a bridge that was formed for that.

18 Q: Okay. And if you know, what did Mr. Eastman
19 make these pipes out of? Or how did you get
20 these pipes?

21 A: He delivered them from his property, is what I
22 was told, that he already had them on his
23 property. And he delivered them to our
24 property to use.

25 Q: Okay. So Mr. Eastman ---



1 **MS. LEWIS:** We're going to have to slow down because
2 we're a little confused on what picture we're
3 on.

4 **MS. BALDWIN:** I beg your pardon.

5 **MS. LEWIS:** That's fine.

6 A: 13.

7 **MS. LEWIS:** I'm sorry.

8 Q: So on Number 13, how did that pipe get to your
9 property?

10 A: David Eastman delivered it.

11 Q: Okay. And if you know, what material is that
12 pipe made out of?

13 A: Concrete.

14 Q: And the road that goes over that pipe, was that
15 there before Mr. Eastman got to your property?

16 A: No.

17 Q: And who built the road?

18 A: He did.

19 Q: Is that the same way it was when he left your
20 property?

21 A: Yes.

22 Q: What is in Number 14, please?

23 A: It's the back side of it, I believe.

24 Q: So that's the same pipe?

25 A: I believe so, yes.



1 Q: And not to be stupid about this, I'm sorry
2 because I don't know your property, but 13
3 looks like it's got a sort of open feel, and
4 it's over a canoe, and 14 looks like there's no
5 canoe.

6 A: Okay. So, yeah, it appears to be a different
7 one. So they're right next to each other. So
8 13 you head over -- I'm trying to get my
9 bearings -- yeah, so if you -- so 13 if you
10 continue to the left of the picture and then
11 take a right, it goes to the culvert on 14.

12 Q: Okay. And I think the testimony from your
13 husband was that there were a total of four
14 different pipes that were brought in.

15 A: Yeah.

16 Q: Some were PVC, and some where concrete?

17 A: So these were the concrete pipes to be used as
18 bridges or roads, and I believe the PVC pipes
19 he's referring to are the ones used to actually
20 drain the lake and the pond so that we're not
21 constantly using the spillways as water
22 drainage so that they do not erode. So the
23 other ones allow for big rains to drain them
24 and give them different ducts.

25 Q: Okay. So 13 and 14 are both the pipes that



1 your husband referred to that were brought in
2 to create roads?

3 A: Yes.

4 Q: All right. And do they accurately reflect the
5 way things looked when Mr. Eastman left the
6 property?

7 A: Yes.

8 Q: Now, if you can tell from Number 15, do you
9 know what pipe that is?

10 A: I'm pretty sure it's the one in 13, but I'm
11 sorry. I can't say for sure.

12 Q: All right. And Number 16, do you recognize
13 that scene?

14 A: Yes, uh-huh.

15 Q: What does that picture show?

16 A: That is the one in 14.

17 Q: And, again, is this a pipe that was brought in
18 by Mr. Eastman?

19 A: Yes.

20 Q: And if you know, what was that pipe made out
21 of?

22 A: Concrete.

23 Q: And was that road built over the concrete by
24 Mr. Eastman?

25 A: Yes.



1 Q: Did you assist in the contracting of this
2 matter, the agreement that was actually made?

3 A: No.

4 Q: And did you help with any of bill-paying in
5 this matter?

6 A: Yes.

7 Q: Did you ever write a check to somebody other
8 than Mr. Eastman for this project?

9 A: No.

10 Q: And we heard your husband testify about a lot
11 of work that was done, but everything ran
12 through Mr. Eastman; is that correct?

13 A: Yes.

14 Q: So the guys who came in and cut down the
15 timber, they were done through Mr. Eastman?

16 A: Yes.

17 Q: The guys who came in and poured concrete, they
18 were done through Mr. Eastman?

19 A: Yes.

20 Q: If you know, was somebody else working on your
21 property at the same time?

22 A: No.

23 Q: And back in November of 2014 when Mr. Smith
24 came in to do these pictures, had anybody else
25 come in to fix anything on your property since



- 1 Mr. Eastman had been there?
- 2 A: No.
- 3 Q: So turning you back the Number 17 photograph,
4 is that the same canoe, or is that a different
5 canoe?
- 6 A: It's the same canoe.
- 7 Q: Okay. So we're back to Number 13; is that
8 correct, ma'am?
- 9 A: Yes.
- 10 Q: Okay. And that's, I guess, just a bigger view?
- 11 A: Actually, the one in 13, you can't see that
12 culvert from the picture in 17. That's behind
13 the canoe.
- 14 Q: Understood. So there are two culverts that are
15 basically side by side as you testified about
16 turning left and turning right?
- 17 A: Yes.
- 18 Q: Okay. And both of those were installed by
19 Mr. Eastman?
- 20 A: Yes.
- 21 Q: Not to be stupid about this, but you didn't
22 have pipes just laying around on your property,
23 did you?
- 24 A: No.
- 25 Q: And those were brought in by Mr. Eastman?



1 A: Yes.

2 Q: Did you arrange to have those pipes brought in?

3 A: No.

4 Q: Did you order them?

5 A: No.

6 Q: Did you pick the size?

7 A: No.

8 Q: Did you pick what they were made out of?

9 A: No.

10 Q: Did you pick the quality of them?

11 A: No.

12 Q: Did you do anything to get those pipes to your
13 home besides tell Mr. Eastman we want a road?

14 A: No.

15 Q: Can you tell us what's in Number 18, if you
16 know?

17 A: That appears to be a portion of our back
18 spillway, yep. Where the lake is approaching
19 the road.

20 Q: All right. And if you know, what portions of
21 that were done by Mr. Eastman?

22 A: All of it, I think. Yeah. I can't testify
23 completely to the back spillway. I didn't see
24 that one as much as far as how much was there,
25 but I think this appears to be all new



1 concrete.

2 Q: In Number 19, it looks like there are two
3 different colors of concrete and two different
4 qualities of concrete there?

5 A: Yes. The middle is old. The new is to the
6 left.

7 Q: So the lighter portion of concrete on the left
8 side of the photo that looks like it's actually
9 sort of a strip of concrete?

10 A: Yes.

11 Q: Okay. Who did that part?

12 A: David Eastman.

13 Q: Okay. And so as we've heard testimony about
14 the old degraded spillway, that's the old
15 degraded spillway and the rest of Number 19; is
16 that correct?

17 A: Yes.

18 Q: All right. And then what's Number 20, if you
19 know?

20 A: The new concrete that was poured on the end
21 exiting the property.

22 Q: All right. And if you know, what's in Number
23 21?

24 A: Appears to be maybe part of the old spillway or
25 where the new one started to disintegrate, a



1 combination of both.

2 Q: If you know what's in 22, could you tell us?

3 A: It's where the old spillway met part of the new
4 spillway.

5 Q: Okay. And in this perspective, is the new
6 spillway the stuff at the bottom right corner?

7 A: Yes.

8 Q: Okay. And the old spillway is the larger
9 portion at the basically top section of the
10 Number 22?

11 A: Yes.

12 Q: Okay. If you know, what's in Number 23?

13 A: That's where the spillway just had abruptly
14 ended and went into somebody else's property.

15 Q: And Number 24?

16 A: That is the PVC pipe that was meant to drain
17 the body of water.

18 Q: And Number 25?

19 A: The same, where the spillway ends.

20 Q: And at the top of the photograph where we're
21 seeing concrete, is that concrete that Mr.
22 Eastman had poured?

23 A: Yes.

24 Q: What's in Number 26, please?

25 A: The same PVC pipe draining the lake.



1 Q: And Number 27, if you know?

2 A: Old debris.

3 Q: And Number 28, if you know?

4 A: It's where the new spillway meets a portion of
5 the old spillway.

6 Q: And so on Number 28, would it be the top right
7 corner that would be the new concrete poured by
8 Mr. Eastman?

9 A: Yes, ma'am.

10 Q: All right. And then on that larger pad that
11 has water on top of it and is cracked would be
12 the old concrete?

13 A: Yes, ma'am.

14 Q: Okay. And then Number 29, if you could tell us
15 what that is?

16 A: The portion of the old spillway.

17 Q: Now, I understand that we're doing this from
18 pictures that were taken by somebody else, but
19 are these accurate?

20 A: Yes, ma'am.

21 Q: Okay. And does your property still look this
22 way today, or have you changed things?

23 A: We have changed things.

24 Q: Okay. Now, with regards to what you know about
25 what Mr. Eastman did at your property ---



1 A: Uh-huh.

2 Q: --- can you tell us what you saw that changed
3 at your property from before Mr. Eastman came
4 onto your property until he left?

5 A: The spillways actually were in worse condition
6 than what they started out with by time he was
7 done. And we never got any documentation of
8 any of the money, any of the checks that I had
9 given him. I never got any receipts for
10 anything that was being done. I asked, you
11 know, once we started going over, could you
12 show me why we are going over before I pay you
13 more. And that's when the project was
14 abandoned and this was left.

15 Q: And was your husband's amount of math about
16 right that somewhere close to 36,500 was the
17 project price paid to Mr. Eastman?

18 A: Close, I think it was maybe a little less
19 'cause I think that's what was our final
20 agreement. But I didn't pay the last bit
21 because I was waiting until the project was
22 done, and it was never done. And that's what
23 eventually made him abandon the project,
24 because he was wanting all of it to be paid.
25 But when I saw that things were not being done



1 properly and we had already gone over, I was
2 concerned that if I gave him the rest, it would
3 just continue to happen and not get completed.
4 So I would have to review my records to see the
5 exact amount.

6 Q: Okay. Regardless of the actual quality of the
7 work, did Mr. Eastman pour you two separate
8 spillways?

9 A: Yes, ma'am.

10 Q: And did he pour at least one of them on more
11 than one occasion?

12 A: Yes, ma'am.

13 Q: And did he bring in two concrete pipes?

14 A: Yes, ma'am.

15 Q: And did he build the roads that go over those
16 two concrete pipes?

17 A: Yes, ma'am.

18 Q: Is there any other work regarding concrete that
19 you can think of?

20 A: No.

21 Q: And with regards to the building of the
22 spillways, did you actually see that work being
23 done?

24 A: I occasionally did go out and see them. I met
25 him and his son on one occasion doing some work



1 out there, kind of seeing how was it looking.
2 And it was looking good initially, and that was
3 about it. I didn't oversee anything. I just
4 saw them doing work intermittently. For
5 several months, there was a long break because
6 we did have a lot of rain.

7 Q: And I think there was some questions asked
8 about whether y'all were home at one point
9 during a pour of the concrete. Did y'all
10 supervise every single thing that happened with
11 Mr. Eastman?

12 A: No, ma'am.

13 Q: Could you tell a difference when he had been
14 there on a given day though?

15 A: Sometimes.

16 Q: Okay. Now, could you tell whether a new
17 concrete form had been placed on your property
18 while you were gone?

19 A: Yes.

20 Q: Okay. And so everything that you've testified
21 to at this point is, as much as you remember,
22 was done at your property; is that correct?

23 A: Yes.

24 Q: And just to be clear, y'all didn't contract
25 with anybody else to come in and do this while



1 Mr. Eastman was there?

2 A: No.

3 Q: Did you check to see if Mr. Eastman was
4 licensed prior to beginning this project?

5 A: No.

6 Q: And not to put too fine a part on it, but are
7 you licensed by LLR, ma'am?

8 A: Yes, ma'am.

9 Q: Okay. Did you know that we had a licensee
10 look-up at the agency?

11 A: Yes.

12 Q: Can you tell us a little bit about why you
13 didn't look him up?

14 A: I trusted that he was licensed. I didn't -- I
15 haven't ever done anything like this before,
16 and I didn't even know to really look into it.
17 He had been referred by someone that I knew
18 closely, and I just assumed.

19 **MS. BALDWIN:** One moment, please. I think we're
20 good. Thank you so much.

21 **DR. STAUTER - CROSS EXAMINATION BY MR. HUTSON:**

22 Q: Dr. Stauter, thank you for being here today.
23 I know doctors are always busy. Would you look
24 at Photograph 13, please?

25 A: Uh-huh.



1 Q: I think you identified that as the culvert that
2 the -- you go over to get onto the island where
3 the sand was poured?

4 A: Uh-huh.

5 Q: Now, at the background there's a -- looks like
6 a concrete block wall of some type. Who built
7 that?

8 A: Our neighbor.

9 Q: And when did they do that?

10 A: I don't know.

11 Q: It was after David Eastman left, wasn't it?

12 A: I don't know.

13 Q: Look at the next one, Photograph Number 14?

14 A: Uh-huh.

15 Q: Is that the same up in the upper right-hand
16 corner, is that the same rock wall, or is that
17 a different one?

18 A: It's the same.

19 Q: Okay. It appears to be a pile of lumber on the
20 left of that.

21 A: Uh-huh.

22 Q: What was that?

23 A: I don't know.

24 Q: Were you having other work done?

25 A: I don't recall.



1 Q: Okay. And look over at Photograph 16. And
2 this seems to be a larger pile of lumber there.
3 Do you know who that was for?

4 A: We've done so many things on our property. I
5 can't say exactly.

6 Q: But that was not part of what David Eastman
7 did?

8 A: No. I mean, this was a year after he left
9 anyway, so that lumber wouldn't be a part of
10 what he did. He didn't deal with any lumber,
11 except for building his forms for the dam.

12 Q: Okay. Now, look at the Number 17 on the left
13 there. Appears to be some type of structure.
14 Did you have that built?

15 A: The gazebo on the left where the hammocks are
16 hanging, my husband built that.

17 Q: And that was built after Mr. Eastman left,
18 right?

19 A: I guess it would have to be because the island
20 was created by David Eastman. Yes.

21 Q: Okay. Now, did you and your husband tell Mr.
22 Eastman to stop work on the project?

23 A: No, sir.

24 Q: You just stopped paying him, right?

25 A: Correct.



1 Q: All right. You knew that was project was not
2 finished at the time you stopped paying?

3 A: Correct.

4 Q: And you knew that there was a lot of rock to be
5 hauled in and put around the spillways that was
6 not done, right?

7 A: I did not know that.

8 Q: Okay.

9 A: I did not know what exactly was not completed.

10 Q: You did not?

11 A: Huh-uh.

12 **MR. HUTSON:** Okay. That's all I have.

13 **HEARING OFFICER:** Ms. Baldwin?

14 **MS. BALDWIN:** No redirect. Thank you.

15 **HEARING OFFICER:** Ms. Stauter, just a couple of
16 quick questions.

17 **DR. STAUTER - EXAMINATION BY THE HEARING OFFICER:**

18 Q: Is it your understanding that these in Picture
19 Number 13 and also in 14 and in 15 and 16, that
20 those roads over the culvert were supposed to
21 be permanent? Was that you're understanding?

22 A: Yes, sir.

23 Q: Okay. And you testified you had paid \$36,000?

24 A: Somewhere in that range.

25 Q: Somewhere in that range? And then was this



1 invoice for 78 given to you after you had paid
2 the 36,000?

3 A: Yes.

4 Q: So in effect, the Respondent was really asking
5 for \$100,000 for the total work based on what
6 he had done to date?

7 A: No. He wrote on there 78,000 minus moneys
8 already paid.

9 Q: Oh, okay. All right. Thank you.

10 **HEARING OFFICER:** I have no further questions.
11 Thank you.

12 (Witness Excused)

13 **MS. BALDWIN:** That would be the showing for the
14 State, sir.

15 **HEARING OFFICER:** Okay. Mr. Hutson, would begin?

16 **MR. HUTSON:** I will call David Eastman to the
17 witness stand.

18 **DAVID EASTMAN,** having been duly sworn, testifies as
19 follows:

20 **MR. EASTMAN - DIRECT EXAMINATION BY MR. HUTSON:**

21 Q: Mr. Eastman, tell me about your background in
22 business. What business have you done during
23 your life?

24 A: I've done grading business since I was a
25 teenager.



1 Q: You'll need to speak up just a little bit.

2 A: I've done grading business since I was a
3 teenager. And then I owned and operated a
4 landfill up until 1999. And since '99, I have
5 bought and sold heavy equipment. And every
6 once in a while, I'll do a grading job.

7 Q: Okay. Do you know other people in the grading
8 business?

9 A: Yes.

10 Q: Do you know anyone in the grading business who
11 has a contractor's license?

12 A: No, I do not.

13 **MS. BALDWIN:** Objection. Relevance.

14 **HEARING OFFICER:** Overruled.

15 **MR. HUTSON:** Thank you.

16 Q: In the Traveler's Rest area, has most of your
17 work done in the Traveler's Rest area, as far
18 as the grading business?

19 A: Yeah, general area. Yes.

20 Q: Okay. And there was some mention by Mr.
21 Stauter about somebody telling him that you
22 built a subdivision. Have you ever built a
23 subdivision?

24 A: No, I have not.

25 Q: Have you ever done any grading in a



1 subdivision?

2 A: Occasionally, yes. I would clear lots for
3 builders in subdivisions.

4 Q: All right. Now, when you went to work on the
5 Stauter property, did you have a written
6 agreement with the Stauters?

7 A: No.

8 Q: Let me hand you this document and ask you if
9 you can identify it for me.

10 A: It's a price sheet of work to be done per hour
11 per piece of equipment.

12 Q: All right. Well, for example, on the top it
13 says 100 track hoe. What does that mean?

14 A: \$100 an hour for the use of the track hoe.

15 Q: And just tell -- go down and tell us what
16 those ---

17 A: \$65 per hour for use of the skid-steer; \$75 per
18 hour for a mini estimator; \$65 an hour for a
19 tandem truck; \$100 an hour for an off-road
20 articulating truck; \$75 for a wood chipper per
21 hour; \$85 for a crawler per hour; and \$20 per
22 hour for man hours, if they're not running any
23 of these pieces of equipment.

24 Q: And when did you give Mr. Stauter this list?

25 A: Prior to work being done on his property.



1 Q: And was there any other explanation of how he
2 would be charged?

3 A: No.

4 Q: I would like to ---

5 A: Let me tell you, when I first met Mr. Stauter,
6 he wanted me to dredge a pond. And he had
7 gotten a price from a tanker unit, and I think
8 it was \$22,500. We never even did that work.
9 We never dredged a pond.

10 **MR. HUTSON:** Okay. I'd like to offer this exhibit
11 as Respondent's Exhibit 1.

12 **HEARING OFFICER:** Okay. Without objection?

13 **MR. HUTSON:** Without objection.

14 **(Respondent's Exhibit Number 1 was marked and**
15 **admitted into evidence.)**

16 Q: Did you have any agreement with Mr. Stauter
17 about doing any concrete work?

18 A: No.

19 Q: There was concrete work done out there, right?

20 A: Correct.

21 Q: And who did it?

22 A: Bacilio Ramirez Concrete Company.

23 Q: You probably at some point need to spell
24 Mr. Ramirez ---

25 A: I don't even know how to spell it. We just



1 call him Pedro.

2 Q: Is the name of his company Pedro?

3 A: No. He goes by Bacilio ---

4 Q: Okay.

5 A: --- Ramirez Concrete.

6 Q: And how did he come to work on the job?

7 A: Mr. Stauter asked me if I knew anybody that
8 poured concrete, and I said, yes, I do. And so
9 I contacted Pedro, and Pedro came out and
10 talked to Mr. Stauter.

11 Q: Were you present when Pedro talked to him?

12 A: Yes.

13 Q: And was there an agreement that you would hire
14 Pedro?

15 A: I ultimately ended up paying Pedro, but I
16 didn't hire him.

17 Q: Okay. Who selected him?

18 A: Mr. Stauter did. And Mr. Stauter also asked
19 him about putting in a water feature, putting
20 in a water slide that went from his house down
21 to the lower pond. He had inquired about some
22 rock walls, and he said earlier that he and
23 Pedro were going over some pictures. I wasn't
24 present at that time but ---

25 MS. BALDWIN: I'm going to object. I just don't



1 know where we're going with this. I'm sorry.
2 But relevance, and are we answering the
3 question that we were asked.

4 **HEARING OFFICER:** Sustained.

5 Q: Now, the -- did you hire Pedro to do the work,
6 concrete work?

7 A: No. I told him where we were working, and he
8 got with Mr. Stauter. And we coordinated when
9 I was going to be there versus when he was
10 going to be there, because he needed a skid
11 loader to take concrete down to where the work
12 was going to be poured.

13 Q: Okay. Did you build the forms?

14 A: No. Pedro's crew built the forms.

15 Q: Okay. And did you pour the concrete?

16 A: No. I delivered from the truck to where the
17 concrete was being poured with the skid-steer
18 loader. They put it in a bucket, and I'd take
19 it down there and dump it.

20 Q: Okay. Did you do anything else with the
21 concrete?

22 A: No.

23 Q: Now, who was supposed to pay the concrete
24 company?

25 A: Mr. Stauter was supposed to pay the concrete



1 company, because they wanted their money before
2 they left. And he wasn't home, so I paid them.

3 Q: Okay.

4 A: And hoping to get reimbursed by Mr. Stauter.

5 Q: And did he reimburse you?

6 A: Yes, for that, he did.

7 Q: Okay. And so how many loads of concrete did
8 you pay for?

9 A: Two.

10 Q: Let me hand you what appears to be a couple of
11 checks. Can you identify those?

12 A: Yes. I wrote both of these checks.

13 Q: And who were they written to?

14 A: Piedmont Concrete.

15 **MR. HUTSON:** Okay. I move that this be admitted as
16 Respondent's Exhibit 2.

17 **HEARING OFFICER:** Without objection.

18 **(Respondent's Exhibit Number 2 was marked and**
19 **admitted into evidence.)**

20 Q: What's the total amount of those checks?

21 A: One is for 773.80, and the other one is for
22 964.60.

23 Q: I added that up to be \$1737; is that ---

24 A: Yes, sir.

25 Q: Okay. The total cost when -- are you familiar



1 with how to estimate the cost of a concrete
2 job?

3 A: Just a rule of thumb, it's usually double the
4 materials.

5 Q: So it's -- materials are 50 percent of cost of
6 the concrete job?

7 A: Yes. Yes, sir.

8 Q: Okay. Do you have any reason to think that
9 rule of thumb would not apply in this
10 situation?

11 **MS. BALDWIN:** I'm going to object. I think we're on
12 two layers of hypothesis here.

13 **HEARING OFFICER:** Sustained.

14 Q: All right. Do you know how much you paid
15 Pedro?

16 A: About 2,000, I think.

17 **MS. LEWIS:** What was it?

18 **HEARING OFFICER:** Can you speak up?

19 A: About \$2000.

20 Q: And did you have any other expenses relating to
21 the pouring of concrete on this job?

22 A: No.

23 Q: All right. In front of you there is the final
24 bill, which I think is State's Exhibit 2. Is
25 the description on that bill of the work



1 performed what you wrote?

2 A: Yes.

3 Q: Is that an accurate description?

4 A: It's not very detailed, but, yeah, what's on
5 here is accurate. Yes. This was over a --
6 almost a six-month period.

7 Q: Now, was there a period that you didn't work at
8 all on that job after you started?

9 A: Yes.

10 Q: Why was that?

11 A: Mostly weather related. We were working in a
12 wet area in the bottom of a lake, so any time
13 it rained, we couldn't work.

14 Q: All right. Now, there's been some talk about
15 these culverts that were put in. What were
16 those -- did Mr. Stauter tell you to put those
17 in?

18 A: Yes.

19 Q: And why were they put in?

20 A: He had a wooden bridge there initially that he
21 would drive his golf cart over. And when he
22 had the property logged, there was not a good
23 way for the loggers to get across the creek, so
24 we put that pipe in there so the loggers could
25 get across the creek as opposed to running



1 through it with their skidder.

2 Q: Was it ever your intention to leave it there?

3 A: No.

4 Q: Okay. Now, there was a second culvert put in
5 there to the island?

6 A: Yes.

7 Q: And did you put that in?

8 A: I did.

9 Q: And why did you put that in?

10 A: So that when the dump trucks that were hauling
11 the sand to put on the island that he was
12 creating ---

13 Q: Look around this way. I'm gon' go up here.

14 A: All right. So the sand that was to be hauled
15 in for the island he was creating, the dump
16 trucks could get over to dump the sand. And
17 then that was supposed to be taken back out so
18 it would indeed be an island.

19 Q: Okay. Now, why did you leave this job?

20 A: I wasn't getting paid.

21 Q: Any other reason?

22 A: No.

23 **MR. HUTSON:** Okay. That's all I have.

24 **MR. EASTMAN - CROSS-EXAMINATION BY MS. BALDWIN:**

25 Q: Mr. Eastman, did the Stauters, did that



1 contract with the loggers to come to your
2 property?

3 A: Come to their property?

4 Q: I'm so sorry. To come to the Stauter's
5 property?

6 A: Yes.

7 Q: Okay. And so you didn't arrange for the
8 loggers to come there?

9 A: I arranged for the logger -- Mr. Stauter asked
10 if I knew anybody that cut trees, and I
11 actually gave him three different people. And
12 that's the one that he chose to go with.

13 Q: Okay. And did you pay those people, or did he?

14 A: I did not pay them so -- I think he gave them
15 the wood just for them to come get it.

16 Q: Understood. And so with regards to the land
17 that was cleared, you didn't really do that
18 work?

19 A: I did not do any of that work.

20 Q: Okay. And what about the -- calling up Pedro,
21 did you do that, or did Mr. Stauter?

22 A: I did.

23 Q: How did you know to call -- or to call Pedro?

24 A: He's -- he does work in the area, and it's a
25 small town. And, you know, most people know



1 him. And Mr. Stauter asked if I knew anybody
2 that did rockwork and concrete, and I said,
3 yes, I do. And so I contacted him.

4 Q: Okay. And how did the pipes for both the
5 culverts or the cantilevers -- I've heard two
6 different words here today -- but the pipes
7 that we've seen in these photographs, how did
8 they get to the property?

9 A: You're talking about the concrete pipes?

10 Q: Yes, sir.

11 A: They were old waterline pipes that I had at my
12 shop to do creek crossings, and I loaded them
13 up and hauled them to Mr. Stauter's.

14 Q: Okay. And so you didn't have to purchase
15 those?

16 A: No. They were used pipes.

17 Q: Gotcha. And what about the concrete that was
18 poured for the spillways? We heard some
19 testimony about forms being made on-site at the
20 Stauters' property? Did you build the forms,
21 or did Pedro?

22 A: Pedro's crew built the forms.

23 Q: Okay. And were you there with them?

24 A: The only thing I was doing was hauling the
25 concrete from the concrete truck down to where



1 they were pouring the concrete with a skid
2 loader.

3 Q: Okay. And that's because there wasn't a good
4 access way to get in ---

5 A: The truck could not get down to where they
6 needed their concrete.

7 Q: So it's your testimony that you didn't build
8 the wooden forms that you pour concrete into?

9 A: No, I did not.

10 Q: Okay. Did you watch them do the concrete?

11 A: Some of it, yes.

12 Q: Okay. Did you think it was strange that they
13 weren't putting rebar in it?

14 A: No.

15 Q: Okay. Do you know enough about concrete to
16 know how it's poured or how it should be poured
17 or anything like that?

18 A: No, I do not.

19 Q: Okay. And do you know enough to know -- I
20 think you talked about a double --
21 the-double-materials rule, but do you actually
22 give prices for concrete in your work?

23 A: No. I very seldom ever have any concrete come
24 up. I mean, most of what I do is dirt work.

25 Q: And in order to go over the pipes that we



1 talked about, the old drain pipes that we
2 talked about that you brought from your
3 property ---

4 A: Correct.

5 Q: --- did you build the roads that go over those
6 pipes?

7 A: Yes, I did.

8 Q: Okay. And is that the earth moving that we've
9 heard you talk about, grading?

10 A: Correct.

11 Q: Okay. And how did you know what to do to build
12 the road?

13 A: Just as long it would support a heavy piece of
14 equipment or a truck, I mean, there was no --
15 it either will or it won't.

16 Q: If you got them up there and the concrete
17 didn't crumble, life was good?

18 A: Yeah. I mean, we're taking them out anyway,
19 you know. We're just ...

20 Q: With regards to the spillways, how did you know
21 what to do as far as pushing the dirt under the
22 spillways or on top of the spillways, around
23 it, once Pedro got the concrete done?

24 A: We graded it the way Mr. Stauter asked us to
25 grade it and then put the concrete -- had Pedro



1 put the concrete down.

2 Q: And so he gave -- Mr. Stauter gave you
3 direction about how he wanted the spillway to
4 be shaped; is that correct?

5 A: Correct.

6 Q: All right. And so in order to do that, you put
7 the dirt in the right places and used that for
8 Pedro to pour the concrete. Was that your
9 testimony?

10 A: Yes.

11 Q: All right. And while Pedro was there, did
12 Mr. Stauter talk to Pedro about how he wanted
13 the spillway to look?

14 A: Yes.

15 Q: Okay. And were you also helping to tell Pedro
16 this is the way it should look?

17 A: Yeah. I think I relayed a couple of -- the way
18 Mr. Stauter wanted it to Pedro, yes.

19 Q: Okay. And please don't think that I'm being
20 derogatory in any way, but does Pedro speak
21 English?

22 A: Yes.

23 Q: Okay. I just didn't know, with the names
24 involved, if we were talking about someone who
25 was not speaking English. So you were able to



1 communicate with him clearly and give him
2 direction, and he was able to accept that
3 direction?

4 A: Correct. He's been here in this country for 25
5 years, so he's very fluent.

6 Q: Forgive me. He can probably speak a lot better
7 English than I do. I just was trying to find
8 out if you were able to communicate with him.
9 That was no problem in this case?

10 A: Yes.

11 Q: Okay. And did he have a crew with him, or was
12 it just him by himself?

13 A: He had a crew.

14 Q: Okay. And did you communicate with the
15 crew ---

16 A: No.

17 Q: --- or did he communicate with the crew?

18 A: He communicated with the crew.

19 Q: Okay. And so you didn't have an occasion to
20 find out if communication was an issue with
21 them?

22 A: No.

23 Q: All right. There's been some testimony that
24 maybe the concrete was poured more than once on
25 this -- on at least one of those spillways. Do



1 you know how many times the concrete was
2 poured?

3 A: The upper one was poured -- there was little
4 small piece that didn't go far enough down into
5 pond, and so we added a little bit to it. But
6 it was not really like two pours.

7 Q: Okay. And so when you added it to it, was that
8 on a separate day or the same day?

9 A: I really don't know. Because I didn't pour it,
10 so I don't know.

11 Q: Were you there whenever Pedro was there?

12 A: I was on the property. I wasn't necessarily
13 right there where he was.

14 Q: How many times, do you know, Pedro came onto
15 the property?

16 A: At least two, two times.

17 Q: And how many times did the loggers come onto
18 the property?

19 A: I wasn't even there when -- I don't know. I
20 have no idea.

21 Q: But you built the road for the loggers to onto
22 the property; is that right?

23 A: Correct. And I was there when they brought
24 their equipment in. And I was there when they
25 were loading up to leave, and I think -- but



1 other than that, I didn't see what they were
2 doing everyday or ...

3 Q: Okay. So it's your testimony, you weren't
4 checking their progress or making sure that
5 they were doing what they were supposed to be
6 doing?

7 A: I didn't even know what they were supposed to
8 be doing. They weren't working under my
9 direction.

10 Q: Okay. And with regards to Pedro and his crew,
11 were you checking to see what they were doing?

12 A: Yes. Yes.

13 Q: And did you check to see if you thought they
14 were doing it right?

15 A: They were doing it the way Mr. Stauter asked us
16 to do it.

17 Q: Okay.

18 A: Now, whether it was right or not, I had no
19 idea.

20 Q: All right. With regards to the PVC piping that
21 we've heard testimony about, I think they're in
22 some of the testimony -- in some of the
23 photographs as well as State's Number 3.

24 A: Uh-huh.

25 Q: Where did those pipes come from?



1 A: From a local supply house.

2 Q: Okay. And did you order those, or did the
3 Stauters?

4 A: I ordered them at Zach Stauter's request.

5 Q: Okay. And did you pay for them, or did the
6 Stauters, or did somebody else?

7 A: I paid for those.

8 Q: Okay. And ---

9 A: Then they reimbursed me for them.

10 Q: All right. So you billed the Stauters back for
11 the pipes that was used in that particular
12 instance?

13 A: I don't think I ever gave them a bill. Our
14 agreement was I was working by the hour, and he
15 would settle up every week or two on the work
16 that had been done. And when we got to the
17 stopping point that he would just stop the
18 work.

19 Q: And what do you mean by "stopping point"? I'm
20 sorry.

21 A: If he didn't like the way it was going, or if
22 he changed his mind or it was costing too much
23 or too -- he just -- it was not up to me. I
24 was working by the hour.

25 Q: Okay. And so you're saying I think sort of the



1 same thing that he was saying. There was no
2 written agreement. There was no, you know, end
3 point?

4 A: The only agreement we had was that I would work
5 on his property by the hour at a determined --
6 a predetermined amount.

7 Q: And so as a result of that calculation, the
8 hourly rates, is that where the invoice that
9 was part of a big packet that this is the cover
10 sheet to with State's Exhibit Number 2 ---

11 A: Correct.

12 Q: Is that where these numbers came from?

13 A: Yes.

14 Q: All right. And is part of what you laid out
15 there, you did the work that you were
16 responsible for on the property; is that
17 correct?

18 A: Yes. I did -- well, it changed. But whatever
19 he wanted me to do for that day or that week,
20 yes, I did that.

21 Q: All right, sir. And was ---

22 A: Or I helped him find somebody that could do
23 what he wanted.

24 Q: Understood. And was Dr. Stauter correct that
25 this \$78,398.28, that that is a total of the



1 entire job, not in addition to moneys that were
2 already paid?

3 A: That amount is the portion -- that \$78,000 is
4 a portion that I worked on the Stauter property
5 minus what they had already paid me.

6 Q: Okay.

7 A: I don't know about the whole -- they were
8 having other work done, so I don't know what
9 that -- I had nothing to do with any of that.

10 Q: Yes, sir. And to be frank, I don't care about
11 what other people were doing on the property.

12 A: Correct.

13 Q: I just mean about you.

14 A: Right.

15 Q: And I'm just trying to understand the notation
16 that says minus money already paid. Does that
17 mean they still owe you?

18 A: Correct.

19 Q: For?

20 A: That was the bill -- that the total of the bill
21 on the day that I made this bill.

22 Q: Okay.

23 A: Which was 11/13/13.

24 Q: And did that take into account the money that
25 they had already paid you?



1 A: Correct.

2 Q: Are we supposed to add that ---

3 A: No, no, no. That's minus the money they
4 already paid me. This \$78,000 is minus what
5 they had already paid me.

6 Q: Okay. So they still owed you 78,000 as of ---

7 A: No, no. They owed me, I think it was
8 thirty-six five minus 78, which is ---

9 Q: Okay. So a rough total -- and my math is
10 atrocious -- but let's just say around 42,000
11 was still owed to you?

12 A: Correct.

13 Q: Okay.

14 A: Correct.

15 Q: I just want to clarify, because the hearing
16 officer had some question earlier about that
17 issue.

18 A: Yes.

19 Q: We want to know were we talking about a hundred
20 and some thousand or 78 as the real total of
21 the job. Okay. I appreciate it. I'm sorry to
22 ask so many questions that you think you've
23 already answered. But for those of us who
24 haven't lived through this process, we don't
25 understand the process quite as well as you and



1 the Stauters do.

2 A: Okay.

3 Q: So with regards to the relationship between you
4 and the Stauters, when y'all first started out,
5 was this a handshake deal?

6 A: Yes.

7 Q: Okay. And is that normal for you, no contract,
8 no written documents?

9 A: Yeah, yeah. In a small town, yeah. I didn't
10 know him personally, and he didn't know me
11 personally, but we had mutual friends.

12 Q: And did it seem like it was gon' be okay in the
13 beginning?

14 A: Yes.

15 Q: And so there was no real need for you to start
16 with the, you know, writing things up and being
17 specific about what you were going to do on the
18 property, was there?

19 A: Other than saying I'll do an hourly rate on the
20 tractors, no.

21 Q: And is it safe to assume that because this is
22 a handwritten price list in Respondent's Number
23 1, that you do most of your work by hand, as
24 far as like bookkeeping and things like that?

25 A: Yes.



1 Q: Okay. So you would keep a daily log of what
2 you were doing?

3 A: Yes.

4 Q: And we've seen some of that in terms of
5 response from your attorney and all, right?

6 A: Correct.

7 Q: And throughout that, you would sort of document
8 what you were doing, and what's that State's
9 Exhibit Number 2, the invoice, sort of
10 reflects, your handwritten invoice and a
11 summary what you did on the property?

12 A: Correct.

13 Q: So that would be true and accurate 'cause it's
14 what you've summed up; is that right?

15 A: Yes. I write down what we did for what was
16 done on a particular day and how many hours it
17 took to do it.

18 Q: Understood.

19 MS. BALDWIN: Those would be my questions. Thank
20 you.

21 HEARING OFFICER: Thank you.

22 Mr. Hutson?

23 **MR. EASTMAN - RE-DIRECT EXAMINATION BY MR. HUTSON:**

24 Q: Two more questions here. The -- did you ever
25 have a written contract with anybody or



1 anything on this job?

2 A: No.

3 Q: Okay. Did you tell -- just to clarify some
4 things that are in the record, did you tell Mr.
5 Stauter at any point that there needed to be
6 additional work done to avoid those ponds
7 washing out again?

8 A: Yes.

9 Q: And what did you tell him?

10 A: I was questioning whether he should have an
11 engineer involved, and he didn't want to get an
12 engineer involved. And then I also questioned
13 on the upper pond, when he was asking me to
14 dredge the pond, that he would have to get
15 permission from the adjoining property owners.
16 And I think that's why he didn't do that one.

17 Q: Did you talk about the riff-raff or anything
18 like that?

19 A: Yes. He needed to put riff-raff at the bottom
20 of both spillways to keep them from eroding.

21 **MR. HUTSON:** That's all I have.

22 **HEARING OFFICER:** Thank you.

23 Ms. Baldwin?

24 **MS. BALDWIN:** No re-direct -- or re-cross. Excuse
25 me.



MR. EASTMAN - EXAMINATION BY THE HEARING OFFICER:

Q: Mr. Eastman do you know if Pedro's -- I'll call it Concrete -- his company was licensed to do concrete work?

A: No, sir, I don't.

Q: Okay. You testified that you paid him these two checks?

A: I paid that to the concrete company.

Q: Okay. So ---

A: That was for the delivery of the concrete.

Q: Okay. And then you testified that you paid Pedro \$2,000?

A: Correct.

Q: Is that correct? And you testified that you paid him, I guess, every time he finished a pour? Is that -- you said that he -- when he made a pour, he wanted to get paid?

A: Yes, sir.

Q: Okay. And so that \$2,000 represents how many times did he get paid, one, two, three, four? Do you know how many -- how much would you typically pay him?

A: Roughly, it was twice. You know, whatever the concrete was, double that.

Q: Okay. But -- all right. He came out there the



1 first time, and it was your understanding ---

2 A: It worked out to about a \$100 a yard, is what
3 it worked out to.

4 Q: Okay. He came out there the first time, and it
5 was your understanding that Mr. Stauter was
6 going to pay him, that he was working for Mr.
7 Stauter, right?

8 A: Yes.

9 Q: And so he came out there, and he poured the
10 first -- his first pour. And then what
11 happened then in terms of payment, he went to
12 Mr. Stauter and said, I want to get paid? And
13 Mr. Stauter said, No, you need to get paid from
14 you? How did this ---

15 A: No. Mr. Stauter wasn't there, so I just paid
16 Pedro.

17 Q: And then you went to Mr. Stauter and said, I
18 need to get paid because I paid Pedro?

19 A: Correct.

20 Q: And so the next time he's coming out, did you
21 make any arrangements with Mr. Stauter to tell
22 him, you know, Pedro's coming. You need to
23 make arrangements to pay him?

24 A: No. The second time, they were on vacation, I
25 think.



1 Q: Okay. So ---

2 A: So they would just reimburse me whenever they
3 got back.

4 Q: Okay. And then there were additional times?

5 A: No, just two.

6 Q: So you're telling me -- and -- that all the
7 pavement in here that Ms. Stauter testified was
8 new ---

9 A: Uh-huh.

10 Q: Through all these pictures was done in two
11 pours?

12 A: Yes.

13 **HEARING OFFICER:** Okay. I think it's all I have.

14 A: I think one of them was on -- one of them was
15 in September and -- it was the date -- one was
16 in September 18th, and the other was November
17 11th.

18 Q: Okay. Thank you.

19 **MR. HUTSON:** Thank you. That's all. And that
20 concludes our presentation.

21 **HEARING OFFICER:** Okay.

22 (Witness Excused)

23 **HEARING OFFICER:** Okay. All right. I think we're
24 ready to hear closing arguments. Ms. Baldwin?

25 **MS. BALDWIN:** The State will elect to close last.



1 Thank you.

2 **HEARING OFFICER:** Okay. Mr. Hutson?

3 **CLOSING STATEMENT BY MR. HUTSON:**

4 **MR. HUTSON:** Thank you, Mr. Commissioner. The job
5 was fairly larger than \$78,000,, the total
6 amount of work performed. But the amount of
7 work that is alleged would be subject to
8 regulation by this agency is exceptionally
9 small. A tiny, small percent of the job. And,
10 frankly, it doesn't come up to the \$5,000
11 minimum. And I think the only logical way to
12 look at this, even if you were to conclude that
13 David was somehow responsible for that work was
14 if the work that -- if the concrete work is to
15 be regulated and to be a valid reason for a
16 citation, it should be the \$5,000 minimum. And
17 it's clearly not.

18 On the other hand, alternatively, as I said in
19 the beginning, this type of work, if it's
20 regulated at all, is regulated by DHEC, and
21 they have extensive regulations on that, which
22 I'll be glad to hand up to you, if you have an
23 interest in seeing that. But the -- and this
24 agency has decided that a great number of
25 things are not subject to the licensing.



1 What's called heavy construction is one of the
2 major categories. And I don't know whether
3 building a little pond is considered heavy
4 construction or not, but it -- certainly is a
5 large dam is heavy construction. And there
6 would be no license whatsoever required from
7 this agency for a contractor to go build the
8 biggest dam in South Carolina. Again, the
9 biggest dam would probably be regulated by the
10 Corps of Engineers instead of DHEC. But even
11 the ones that are regulated by DHEC, there
12 would be no requirement of a license from this
13 agency for the contractor who builds that.

14 And it simply makes no sense to me to say that
15 doing work on the some of the smallest dams
16 that can be found, as a matter of fact, so
17 small that DHEC says they don't even -- the
18 owner doesn't even have to apply for a permit
19 to have that work done, that would require a
20 license.

21 And I think it's important that you recognize
22 that in your decision. Otherwise, we could be
23 headed toward a situation where both agencies
24 are trying to assert jurisdiction to, in
25 effect, such standards for the work to be done



1 or projects of this nature. And that would
2 be -- that's not consistent with the objectives
3 of either agency or with the State. The easy
4 way, of course, is to simply say, well, the
5 dollar value of this, if it was covered by the
6 requirement of a license at all, didn't reach
7 the minimum of \$5,000. And, of course, that
8 should end the case. Obviously, I would like
9 to see you go ahead and say this is not
10 regulated anyway so that it solves the
11 questions about people who do this type of work
12 on a daily basis and, you know, and some good
13 comes out of this -- some greater good comes
14 out of this hearing. And that's my closing.

15 **HEARING OFFICER:** Thank you.

16 Ms. Baldwin?

17 **CLOSING STATEMENT BY MS. BALDWIN:**

18 **MS. BALDWIN:** Thank you so much. I appreciate
19 Mr. Hudson's vigorous, defensive of his client.
20 The State contends that this is solvable purely
21 through the law. And so if you look at the
22 statutory definitions under the Contractors
23 Licensing Board Practice Act, the conclusion
24 that the State has reached is that this is
25 obviously contracted.



1 We start with the very basic definition of the
2 general construction in contracting. We talk
3 about general construction means the
4 installation, replacement or repair of a
5 building, structure, highway, sewer, grading,
6 asphalt, or concrete paving, or improvement of
7 any kind to real property. And, again,
8 we're -- I believe we're clearly there in
9 grading. We seem to be there in improvement of
10 any kind to real property through everything
11 that's being done on this piece of property.
12 And a general contractor means an entity which
13 performs or supervises or offers to perform or
14 supervise general construction.

15 And so we have two ways of looking at this.
16 And I tried to be very clear in the way I asked
17 my questions to Mr. Eastman. Either Mr.
18 Eastman did the work himself, or he supervised
19 the work that was done on the site. And,
20 frankly, the State contends that both are true.
21 You heard him testify to work done by Pedro,
22 and he says Mr. Stauter was supervising that
23 work. The testimony, of course, from Mr.
24 Stauter is that he did not. So you would have
25 to make an evaluation of the credibility of the



1 witnesses there.

2 And then there's the issue of who actually
3 arranged for the work to be done. And so on a
4 very practical level, I think the logistics are
5 important, and they should be considered by the
6 Hearing Officer. The Stauters say they had no
7 idea who the logger was, no idea who the
8 concrete people were, and frankly left that all
9 up to Mr. Eastman. So if those witnesses are
10 to be believed that Mr. Eastman was acting as
11 a construction manager on the project at a
12 minimum and as a general contractor almost
13 certainly throughout parts of this process.

14 One of the other issues that's come up during
15 the consideration of this case has been the
16 \$5,000 requirement. And, again, I think we
17 need to look at the actual law because 40-11-30
18 requires that no entity or individual may
19 practice as a contractor by performing or
20 offering to perform contracting work for which
21 the total cost of construction is greater than
22 \$5,000 for general contracting or greater than
23 \$5,000 for mechanical contracting without a
24 license issued in accordance with this chapter.
25 And just out of an abundance of caution, I did,



1 you know, check to make sure that we didn't
2 have any changes of the law in the 2015 session
3 to make sure. And so we went back and checked
4 all of that. The licensing requirement is
5 noted in the addendum, the supplement for the
6 2015 years, but it's only updated with regards
7 to notes of decisions. And, in fact, the only
8 real changes with regards to the Contractors
9 Practice Act from 2015 were with regards to
10 notes, not with regards to the substance, the
11 text of the law. The only thing that did
12 happen, as a side note that has nothing to do
13 with this case, is that some license fees were
14 repealed as the Hearing Officer is well aware.
15 So in addition to looking at those issues, the
16 State did review what should happen. And so we
17 looked at 40-11-260, with regards to financial
18 statements and net worth requirements. And,
19 you know, the State contends that he probably
20 should have been a Group II General Contractor
21 in order to take this job.

22 The specifics of what he should or shouldn't
23 have did frankly don't matter as to the
24 allegation of he should have had a license, but
25 it does help, I think, to have a frame of



1 reference from where does he fit in the grand
2 scheme of things.

3 The Respondent's attorney has also made
4 reference to a heavy construction exception,
5 and I will just state for the record that
6 40-11-360 contains all of the exceptions from
7 the application of the chapter, meaning all of
8 the exemptions to the licensing requirements.
9 And if we look through A with regards to this,
10 there are a number of exemptions that might
11 apply to various properties that are done. The
12 most obvious one here is actually (A)(5), which
13 is: An owner of a residential property who
14 improves the property or who builds or
15 improves, structures or a appurtenances on the
16 property, if he does the work himself, that
17 being the owner, with his own employees, and
18 the State would contend that would be a W-2
19 employee, that the homeowner would have to
20 employee, or with licensed contractors. And as
21 far as the State is aware, none of the people
22 involved in this process were licensed
23 contractors. And, frankly, none of them were
24 hired by the homeowner in this particular
25 matter if the homeowner is to be believed in



1 this case.

2 Even through the testimony of the Respondent in
3 this case, you heard that the homeowner didn't
4 arrange for these people to be on site, so the
5 State would contend that (A)(5) clearly does
6 not apply in this matter.

7 With regards to the other exemptions that are
8 allowed under 40-11-360, the exemptions
9 actually require some pretty specific
10 circumstances to apply, and the State would
11 content that none of those do apply in this
12 particular case. Walking through them, (A)(1)
13 regards fire sprinkler systems, burglar and
14 fire alarm systems, clearly inapplicable to
15 this case; (A)(2) relates to finished products
16 that are not fabricated and do not become a
17 permanent fixed part of the structure. But
18 work requiring licensure must be installed by
19 a licensed contractor. Again, inapplicable to
20 this particular case; (A)(3) relates to the
21 title of property that's in the name of the
22 federal government, the United States of
23 America, does not apply here; (A)(4) relates to
24 construction work for the South Carolina
25 Department of Transportation. Again, does not



1 apply here; (A)(6) relates to an owner of a
2 non-owner occupied property. Without going
3 into all the permutations of that, that doesn't
4 apply here either; (A)(7) relates to an owner
5 constructing a farm building or portable
6 storage building. Again, inapplicable; (A)(8)
7 relates to public owners. Again, absolutely
8 inapplicable here; (A)(9) relates to
9 renovations and maintenance projects of the
10 South Carolina Department of Corrections;
11 inapplicable; and (A)(10) relates to the South
12 Carolina Public Service Authority. Finally,
13 inapplicable here.

14 The B provision just relates to the notice that
15 has to be given under this particular
16 exemption, and so none of those apply in this
17 case. I am not certain where the heavy
18 construction exemption is coming from, but that
19 is not appropriate for this particular case.

20 The State further looked at the General
21 Contractor's Highway, the specifics for
22 licensure under 40-11-410 License
23 Classifications and Subclassifications. Again,
24 I don't believe that the Hearing Officer has to
25 find what licensure he should have obtained in



1 order to do these projects, but we did notice
2 that there were various provisions that relate
3 to grading under that, under 40-11-410(2)(D).
4 And then as well, if you look under General
5 Contractors Specialty, which is contained under
6 40-11-410(4) General Contractors Specialty, if
7 you go to 4B, that would be the concrete
8 specialty under that provision. And the State
9 would contend that that applies here.

10 When you look at concrete, it includes all work
11 in connection with concrete forming and
12 placing. So that brings in all of the grading,
13 all of the earth moving, everything that goes
14 into the associated reinforcement and work that
15 goes into the concrete.

16 So, again, we have assembling of forms, molds,
17 slip forms and pans, centering, trenching,
18 excavating, backfill and grating in connection
19 with concrete construction and a number of
20 other issues here. I understand that
21 Mr. Eastman contends he could not have known
22 this he should have had a license here. The
23 State would contend there was no way he could
24 not have known, that this obviously required a
25 fairly substantial license and -- that should



1 have been done in advance of even bidding on
2 the project, much less taking on the project.
3 Thank you.

4 **HEARING OFFICER:** Thank you. Your case is
5 submitted. This matter will now be taken under
6 advisement. Advice counsel and I will now go
7 into executive session in accordance with
8 Section 30-4-70(B) the specific purpose of this
9 executive session is to obtain legal advice
10 from advice counsel regarding the current
11 disciplinary matter involving a person
12 regulated by a South Carolina Contractors
13 License. Will everyone please be excused from
14 the room?

15 **(Executive Session)**

16 **RECOMMENDATION:**

17 **HEARING OFFICER:** We are back in session. I'd like
18 the mention again that Mary Lee was in
19 executive session with us for observation and
20 was not participating.
21 This kind of case is -- makes -- is difficult
22 because of a lack of a contract. Both parties,
23 really when y'all enter into these type of
24 agreements and nothing's reduced to writing, it
25 makes it very hard for me to sort out what



1 really the intent of the parties were with all
2 this he-said-she-said conflicting testimony,
3 and I would really encourage you next time to
4 take time to do the paperwork, and you might
5 avoid all of these -- a lot of these problems
6 to begin with.

7 After reviewing everything in this matter, I do
8 find that the Respondent is in violation of
9 Section 40-11-410, Number 4, General
10 Contractors Specialty Paragraph B: Concrete.
11 And I'd like to read that to you just for
12 clarification. Concrete, which includes all
13 work in connection with concrete forming and
14 placing, assembly of forms, molds, slip forms
15 and pans, centering, trenching, excavation,
16 backfill and grading, in connection with
17 concrete construction. And that's the
18 pertinent part of this paragraph that I believe
19 applies in this place -- in this instance. So
20 I'm going to affirm this citation as issued,
21 which was a \$500 fine. And this will be the
22 final order. And we'll issue that as soon as
23 possible, and your appeal will be to the
24 administrative law judge, if you so choose.
25 Thank you.



1 (There being no further questions, the deposition
2 concluded at 1:06 p.m.)
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Nikki R. Haley
Governor

Richele Taylor
Director

South Carolina
Department of Labor, Licensing and Regulation

Office of General Counsel
Office of Disciplinary Counsel



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REGULAR MAIL

February 26, 2016

Mr. Melvin Hutson, Esq.
Melvin Hutson, P.A.
1307 North Main Street
Greenville, SC 29601

RE: In the Matter of: David G. Eastman d/b/a Grading & Landscaping Materials Co.
Unlicensed
OIE Case/Citation No.: 2014-162

Dear Mr. Hutson:

Please find enclosed a copy of the Notice of Hearing (Citation Review Hearing) for your client's appearance at the hearing scheduled in the above-referenced matter before a Hearing Officer designated by the State Contractor's Licensing Board. The date of the hearing before the Board is scheduled for June 6, 2016.

This hearing has been scheduled based upon your request for a review hearing. If you decide to withdraw your request, please contact me, as witnesses may be subpoenaed for this hearing.

Should you have any questions, please do not hesitate to contact me at (803) 896-4581.

Sincerely,


Erin C. Baldwin
Assistant Disciplinary Counsel

EGB/kgi

Enclosures



**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE CONTRACTOR'S LICENSING BOARD**

In the Matter of:

DAVID G. EASTMAN
d/b/a Grading & Landscaping Materials Co.
Unlicensed

Respondent.

OIE Case/Citation No.: 2014-162

NOTICE OF HEARING
(Citation Review Hearing)

TO: Melvin Hutson, Attorney for Respondent

YOU ARE HEREBY NOTIFIED THAT:

1. A hearing before a Hearing Officer designated by the Contractor's Licensing Board (hereinafter the "Board") with respect to the above-captioned matter is scheduled for June 6, 2016, at 10:00 a.m., in Room 105 of the Kingstree Building, located in the Synergy Business Park, 110 Centerview Drive, Columbia, SC 29210.
2. The hearing has been set to review the above captioned Citation issued to you. Hearings are held in accordance with the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.* (1976, as amended), which describes your procedural rights, including, but not limited to, the right to respond and present evidence and testimony on all issues involved and cross-examine witnesses against you. You may also have legal counsel to represent you in this matter to more fully understand, protect, and assert your legal rights.
3. At the hearing, the Hearing Officer shall determine, based upon the evidence presented, whether to affirm, modify or dismiss the Citation.
4. **FAILURE TO APPEAR FOR THE HEARING WILL CONSTITUTE A WAIVER OF THE HEARING AND THE CITATION SHALL BECOME A FINAL ORDER AS SET FORTH IN S. C. CODE ANN. § 40-11-100 (1976, as amended).**

**SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD**

BY: _____

Erin G. Baldwin
Assistant Disciplinary Counsel
LLR - Office of Disciplinary Counsel
P.O. Box 11329
Columbia, SC 29211-1329
(803) 896-4657

February 20, 2016.

South Carolina Department of Labor, Licensing and Regulation
Office of Investigation and Enforcement
P.O. Box 11329
Columbia, South Carolina 29211-1329
(803) 896-4470

CITATION AND NOTIFICATION OF PENALTY FOR GENERAL AND MECHANICAL CONTRACTING

Mr. David G. Eastman
DBA: Grading & Landscaping Materials Co.
4758 State Park Road
Travelers Rest, SC 29690

License Number: UNLICENSED

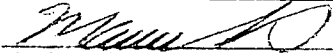
Issuance Date: 12/17/2014

 X General Mechanical

Case No.: 2014-162

This citation describes alleged violation(s) of Title 40, Chapter 11 of the South Carolina Code of Laws Ann., 1976, (as amended.) The penalties listed are based on these violations. You must pay the proposed penalties pursuant to §40-11-100. Any citation and/or penalty assessed by the South Carolina Department of Labor, Licensing and Regulation may be appealed without payment by requesting a hearing in writing before the Board. Such requests must be addressed to: South Carolina Contractors' Licensing Board, P. O. Box 11329, Columbia, S.C., 29211-1329, and must be mailed within 15 days of receipt of this Citation. This citation concerns application of the South Carolina Contractors Practice Act and Regulations and does not necessarily resolve all aspects of any disciplinary action currently pending before the Board or which may be filed in the future. **Disciplinary action by the Board may result in you being required to pay the costs associated with the investigation and prosecution of the case. If no appeal is filed, the citation will become a final order of the South Carolina Contractors' Licensing Board and the citation penalty must be paid within 30 days of receipt of the citation.**

ITEM	DISCIPLINARY AUTHORITY	DESCRIPTION OF VIOLATION	PENALTY AMOUNT
<u> 1 </u>	§40-11-110(A)(5)	Engaging or offering to engage in contracting work or submitting a bid when not properly licensed or while a license is under suspension or revocation. (§40-11-30)	<u> 500.00 </u>
<u> </u>	§40-11-110(A)(5)	Use of the term 'licensed contractor' without being licensed. (§40-11-370)(A))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Issuing a building permit to an unlicensed general or mechanical contractor. (§40-11-350)	<u> </u>
<u> </u>	§40-11-110(A)(5)	Failure to immediately withdraw from a construction project after violation of licensing requirements. (§40-11-300(B))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Acting as a construction manager without being registered by the Department or in excess of group limitation or license classification. (§40-11-320 and Reg. 29-5)	<u> </u>
<u> </u>	§40-11-110(A)(5)	Dividing work into portions to avoid licensing requirements or group limitations. (§40-11-300(A))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Engaging in a name other than the exact name that appears on the licensee's license. (§40-11-370)(B))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Failure to obtain a building permit as required by local or state jurisdiction – First Offense. (§40-11-110(A)(13))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Failure to maintain a business address accessible to the public. (§40-11-110(A)(18))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Failure to notify the Department of any change in current mailing address, home address, home and/or office telephone number. (Reg.29-9)	<u> </u>
<u> </u>	§40-11-110(A)(5)	Failure to notify the Department of changes in information required in an original or renewal application. (§40-11-110(20))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Departure from an applicable building code of the State of South Carolina or any of its political subdivisions as determined by a court of competent jurisdiction. (§40-11-110(A)(23))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Failure to notify the Department of a change in status of primary qualifying party within fifteen (15) days of disassociation. (§40-11-230)(B)(3))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Contracting without a primary qualifying party after license suspension. (§40-11-230)(B)(3))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Failure to have a certified primary qualifying party in full-time employment in a responsible management position. (§40-11-240(A)(2))	<u> </u>
<u> </u>	§40-11-110(A)(5)	Failure to comply with joint venture bid requirements. (§40-11-340)	<u> </u>
<u> </u>	§40-11-110(A)(9)	Aiding or abetting an unlicensed entity to evade the Practice Act, combining or conspiring with an unlicensed entity, allowing one's license to be used by an unlicensed entity, or acting as agent, partner, or associate, of an unlicensed entity. (§40-11-200)	<u> </u>
<u> </u>	§40-11-110(A)(10)	Entering into a contract with an unlicensed contractor for work to be performed for which a license is required. (§40-11-200)(B))	<u> </u>
<u> </u>	§40-11-110(A)(11)	Using false, misleading, or deceptive advertising whereby a member of the public may be misled and injured. (§40-11-370)	<u> </u>
<u> </u>	§40-11-110(A)(21)	Contracting or offering to contract for construction work exceeding the limitations of a group or outside the classification or subclassification of a license. (§40-11-270)(A))	<u> </u>


Maurice Smith, Investigator III

TOTAL PENALTY: \$500.00

Copy received: _____
Signature of Respondent _____ Date _____

Please make check or money order payable to:
South Carolina Contractors' Licensing Board

CERTIFICATE OF SERVICE BY MAIL
This is to certify that the undersigned has this date served this Citation and Notification of Penalty in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, certified, return receipt requested, and postage paid, or in the Interagency Mail Services, addressed to the party(ies) or their attorney(s) to the following address: 4758 State Park Road, Travelers Rest, SC 29690.

This 17 day of December , 2014.

By:  Maurice Smith, Investigator III

07/15/2013

Date Fine Received: _____
Check No.: _____
Received By: _____



LAW OFFICES

MELVIN HUTSON, P.A.

WEBSITE
melvinhutsonpa.com

1307 NORTH MAIN STREET
GREENVILLE, SOUTH CAROLINA 29601
(864) 241-4300



RECEIVED JAN 14 2015

FACSIMILE (864) 241-4300

RECEIVED
SENDER'S EMAIL:
m.hutson@bellsouth.net

January 12, 2015

2015 JAN 15 AM 10:46

LR
LEGAL SVCS

South Carolina Contractors' Licensing Board
P.O. Box 11329
Columbia, SC 29211-1329

Re: David Eastman, DBA: Grading and Landscaping Materials, Co.
Case No. 2014-162

Gentlemen:

On behalf of David Eastman we request a hearing in the attached Citation and Notification of Penalty. Please note that although I represented Mr. Eastman in the investigation, entered an appearance on his behalf and corresponded with the investigator, it appears that I was not provided a copy of the enclosed Citation and did not learn of it until January 11.

Thank you for your attention to this matter.

Very truly yours,

Melvin Hutson
Attorney for David Eastman

cc David Eastman

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE CONTRACTOR'S LICENSING BOARD**

IN THE MATTER OF:

DAVID G. EASTMAN
d/b/a Grading & Landscaping Materials Co.
Unlicensed

Respondent.

OIE Case/Citation No.: 2014-162

CERTIFICATE OF SERVICE

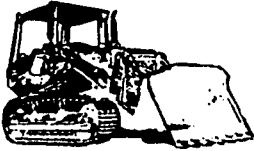
I hereby certify that I have this day caused to be served the within Notice of Hearing (Citation Review Hearing) upon the person hereafter named, by placing the same in an envelope, securely wrapped, in the United States first class mail, regular mail, properly addressed to the said person hereafter named, at the place and address stated below, which is the last known address for the same:

Mr. Melvin Hutson, Esq.
Melvin Hutson, P. A.
1307 North Main Street
Greenville, SC 29601

**SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION**

Kim Long
Kim Long, Paralegal
LLR-Office of Disciplinary Counsel
Post Office Box 11329
Columbia SC 29211-1329
(803) 896-4474

February 24, 2016.



INVOICE # 3543

RESIDENTIAL — COMMERCIAL

**GRADING & LANDSCAPING MATERIALS COMPANY**

Grading, Excavating, Bark, Gravel

Clearing, Hauling, Etc.

Located at: 4758 State Park Rd. — Travelers Rest, SC 29690

(864) 834-4535

SOLD
TOJack Stauter + Faith M.
107 Jennifer Ct.Greenville, S.C.
29690

MAKE CHECKS PAYABLE TO:

G.L.M. Co.

4758 State Park Rd.

Travelers Rest, SC 29690

11-13-13

QUANTITY

DESCRIPTION

AMOUNT

start 6-11-13 Bill for work on Rebuilding 2 ponds

top 11-13-13 Rebuilt 2 dams - cleared ponds and additional
acreage - Built Road - Haul away debrisdig dump hole and fill with debris from men's money
clearing and dams - Haul in Red Clay fill dirt already paid
and compact - install 2 PVC drains - pour
2 Concrete Spillways + materials

78,398.28

David H. Catman

LABOR

TOTAL

White - Original

Yellow - Customer

Pink - File

Price List as of 6-11-13

per Hour

1.00 Track Hoe

.65 skid steer

.75 Min X

.65 tandem truck

1.00 Haul truck

.75 chipper

.85 crawler loader

.20 man lift

DAVID G. EASTMAN

GRADING + LANDSCAPING

MATERIALS CO.

4758 STATE PARK RD.

TRAVELERS REST, S.C.

29690

GRADING AND LANDSCAPING MATERIALS CO.
4758 STATE PARK RD.
TRAVELERS REST, SC 29690

4870
67-737/532
BRANCH 1

9-18-13 Date

Pay to the Order of Piedmont Concrete Products \$ 773.80
Seven Hundred Seventy Three and 80/100 Dollars

Bank of
TRAVELERS REST

For Jack job Rail G. Catman

GRADING AND LANDSCAPING MATERIALS CO.
4758 STATE PARK RD.
TRAVELERS REST, SC 29690

346
67-737/532
BRANCH 1

11-11-13 Date

Pay to the Order of Piedmont Concrete Products \$ 964.60
Nine Hundred Sixty Four and 60/100 Dollars

Bank of
TRAVELERS REST

For 107 Jennifer Ct. 102661 Rail G. Catman

346 \$964.60 11/14/2013