COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. **Board of Building Regulations and Standards**
Docket No. C23-00048

In re: William R. Trahant, (CSL # CSSL-101220)	))))

DECISION and ORDER

Procedural History

The Board of Building Regulations and Standards ("Board" or "BBRS") received a complaint on April 3, 2023, made by Galen Blanton, Regional Administrator for the United States Department of Labor, Occupational Safety and Health Administration ("OSHA"), Boston Regional Office and Robert Carbone, Regional Staff for OSHA ("Complaint").

The Complaint alleged that William R. Trahant (Construction Supervisor License ("CSL") # CSSL-101220 ("Trahant")[1] failed to properly supervise work as required by 780 CMR 110.R5, for Code-regulated work at several, different locations in Massachusetts, over several years up to and including 2022, because Trahant incurred "violations of . . . federal law relevant to CSL work, including violations of the Occupational Safety and Health Act or Occupational Safety and Health Administration regulations, as formally decided by . . . relevant . . . federal agency." *780 CMR 110.R5.2.8, # (11)*.

In accordance with 780 CMR 110.R5, notice of the Complaint along with copies of all the documents that were submitted with the Complaint were mailed to Trahant's known address on record with the Board (*780 CMR 110.R5.2.11, 110.R5.2.9.1.2, and 110.R5.2.9.3*) on April 19, 2023. Trahant did not submit a written response to the Complaint.

A hearing was deemed necessary (780 CMR 110.R5.2.9.3) and notice of the hearing was issued on June 29, 2023, for the hearing to occur on September 21, 2023. To help ensure safety in continuing response to the COVID-19 pandemic (and after) and in accordance with authorization from the Legislature, the hearing session was held via remote means, Microsoft Teams.[2]

[1] Trahant's CSL, CSSL-101220 was issued on 9/30/2008, was last renewed on 3/29/2022, and has an expiration date of 2/10/2024.

[2] Remote hearings have been conducted pursuant to the Act extending the emergency measures (originally pursuant to Exec. Order No. 591 (Mar. 10, 2020), as amended) through April 1, 2022. "An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency," *St. 2021, c. 20*. *See* https://www.mass.gov/service-

The following individuals, in addition to the Hearings Officer, attended the hearing: William R. Trahant; Robert Carbone (OSHA); Galen Blanton (OSHA); Attorney James Glickman (for OSHA); Andrew Lutynski (Commonwealth's Division of Occupational Licensure ("DOL")); Andrew Bridges (DOL).

Exhibits

The following Exhibits are in evidence:

1. Construction Supervisor License (CSL) Complaint Application, including narrative describing allegations (5 pages);
2. Documents OSHA issued to Trahant re: 40 Broad Street, Lynn (54 pages);
3. Documents OSHA issued to Trahant re: 31 Market Street, Ipswich (67 pages);
4. Documents OSHA issued to Trahant re: Chestnut and Western Avenue, Lynn (21 pages);
5. Documents OSHA issued to Trahant re: 86 Congress Street, Salem (46 pages);
6. Documents OSHA issued to Trahant re: 305 Beach Street, Revere (47 pages);
7. Documents OSHA issued to Trahant re: 54 Russell Street, Peabody (17 pages);
8. Documents OSHA issued to Trahant re: Greenwood Street, Peabody (16 pages);
9. Copy of Secretary of Commonwealth, Corporations Division, Business Entity Summary for William Trahant, Jr. Construction, Inc. (2 pages);
10. April 19, 2023, Notice of Complaint cover letters (2 pages);
11. June 29, 2023, Notice of Remote Hearing (5 pages);
12. Pre-Hearing Order, September 15, 2023, and copies of Microsoft Teams invitation records (4 pages).

Findings

Testimony, documents in evidence, administrative records of the Board and the Division of Occupational Licensure/Office of Public Safety and Inspections ("DOL"/ "OPSI"), and relevant

details/updated-guidance-on-holding-meetings-pursuant-to-the-act-extending-certain-covid-19-measures. Remote hearings continue to be conducted, per Section 7, Chapter 22 and Section 3, of Chapter 107 of the Acts of 2022. *See also* https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter22 and https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter107. Per *An Act Making Appropriations for the Fiscal Year 2023 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects* (Chapter 2 of the Acts of 2023), provisions regarding remote meetings have been extended from March 31, 2023, to March 31, 2025. Remote hearings have been held via Microsoft Teams and via telephone conference calls. Audio hearings provide sufficient opportunity to offer testimony, question witnesses, and offer argument in accordance with 801 CMR 1.02(10). Remote hearings also have been found to be more convenient than in-person hearings for participants, notwithstanding occasional technical challenges.

public information, if applicable, support the following findings of fact and conclusions of law and regulation. *G. L. c. 30A, § 11(2), (3), (4), (5), (8), § 14(7); 801 CMR 1.02(10).*[3]

Overview of OSHA Processes (Exhibits provide specific examples about how the processes are applied, relevant to this Complaint)

OSHA opens an inspection based on a complaint or a referral. An OSHA Compliance Officer also can observe a condition and determine if the condition is hazardous per OSHA criteria. Thereafter, the Compliance Officer obtains approval from their supervisor to open an inspection.

The Compliance Officer is then dispatched to the site; an opening conference is held on site with the subject(s) of inspection, the employer; interviews are conducted; information gathered; and pictures and measurements are taken. The Compliance Officer, after completing those tasks, performs research then makes recommendation(s) to their Supervisor about citations. The Supervisor reviews potential citations and, if those are approved, the Area Director issues the Citation(s), per the Occupational and Safety Health Act. OSHA can issue different types of Citations: it may issue a Willful Citation, which involves indifference or disregard for the regulation(s) (this is OSHA's most severe Citation). OSHA can issue Repeat Violation Citations for, repeated violations. OSHA can issue Serious or other-than-serious Citations.

Willful and Repeat Citations generally carry larger monetary penalties because of the nature of those violations (e.g., safety risks are considered). The employer has 15 days thereafter either to contest the Citation(s) or request an informal conference, in which the employer would discuss the Citation(s) and, possibly, reach a settlement with OSHA.

If a Citation cannot be resolved and/or the employer contests it, the matter goes to a litigation track handled by OSHA Solicitor's Office. The Solicitor's Office also tries to reach settlement, but, if it cannot, the matter goes to a trial/hearing before an Administrative Law Judge ("ALJ"). Following the trial/hearing, the ALJ then rules on the evidence and make determinations accordingly.

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[3] Findings are based on the "substantial evidence" standard of review. "'Substantial evidence' means such evidence as a reasonable mind might accept as adequate to support a conclusion." *G. L. c. 30A, § 1(6).* "To satisfy the 'substantial evidence' requirement, the agency's conclusion need not be based upon the 'clear weight' of the evidence or even a preponderance of the evidence, but rather only upon reasonable evidence, that is, 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Gupta v. Deputy Dir. Of the Div. of Employment and Training*, 62 Mass. App. Ct. 579, 582 (2004), quoting G. L. c. 30A, § 1(6); accord *Duggan v. Board of Reg. in Nursing*, 456 Mass. 666, 674 (2010).

Note also, "Unless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses." *G. L. c. 30A, § 11(2); 801 CMR 1.02(10)(h). See also 801 CMR 1.02(10)(f).*

Specific Properties Subject of the Complaint

40 Broad Street, Lynn

This investigation was opened based on a Compliance Officer's first-hand observations as he drove by the site. He saw the workers exposed to fall hazards. (See Exhibit 2, pp. 10, 13, 15, 16, 24, 25-34). On-site inspections occurred on March 23, 2022. The following Citations were issued on August 19, 2022.

OSHA issued a Serious violation for Trahant's failure to use either ground fault interrupters or an assured equipment grounding conductor program to protect employees (*29 CFR 1926.404(b)(1)(i), (ii), (iii)*). OSHA found that an employee was exposed to electrical shock hazards while operating an electric circular saw. The violation was "Corrected During Inspection" and OSHA issued a fine in the amount of $7,977.00. (Exhibit 2, p. 8).

OSHA issued a Serious violation for Trahant's failure to use portable ladders that extended at least 3 feet above the upper landing surface. (*29 CFR 1926.1053(b)(1)*. The violation was Corrected During Inspection and OSHA issued a fine in the amount of $6,381.00. (Exhibit 2, p. 9)

OSHA issued a Willful – Serious violations for Trahant's failure to use "guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system." (*29 CFR 1926.501(b)(10)*). OSHA found that "employees were exposed to 30-foot fall hazards while performing roof replacement work on the edge of the main roof without fall protection" and "employees were exposed to 9-foot fall hazards while performing roof replacement work on the hatchway roof without fall protection." (Exhibit 2, p. 10; see also photographs, Exhibit 2, pp. 23-35). The violations were Corrected During Inspection and OSHA issued a fine in the amount of $68,368.00. (Exhibit 2, p. 10).

The phrase, "Corrected During Inspection" means, for examples, that the workers exposed to that hazard were removed from the hazard, or work was completed for the day, or workers got down from the roof while the OSHA Compliance Officer was there. Regardless, the Compliance Officer concluded that something had occurred that was sufficiently significant but also noted that the workers were no longer exposed to the safety risks OSHA regulations address.

As of the CSL hearing, these violations are not subject to further review/appeal in any regulatory or legal process. Following the issuance of these Citations, OSHA received no response from Trahant. Thus, following the 15-day period, the Citations became a Final Order, September 14, 2022. On October 29, 2022, OSHA issued a demand letter for payment of the fines, which has, since, been referred to OSHA debt-collection group, in Washington D.C., because Trahant has refused to pay the fines. (See Exhibit 2, p. 11).

In response to the evidence in the Complaint hearing, Trahant testified: "That job was done, and we broke everything down. That's all I got to say about that. That job was finished, and we were bringing everything down. We had just taken down our flags, and we were there for two days." Although Trahant still owes the federal government the fines for those violations, he testified, "I feel as though I don't." He testified that he thought all he needed to do was to make corrections while they (OSHA) were there. He testified that he did not know he had to get back in touch with OSHA. According to Trahant's testimony, "They just tell us what's wrong and we fix it."

When asked during the hearing why Trahant did nothing to contest the violations and/or the fines, he answered, "Because I was totally aggravated, and I thought it wasn't fair. It wasn't fair, we were done with the job and took everything down." Trahant also testified that his family has been in the roofing business for 119 years and it has never had a fall, never had a Workers' Compensation case. According to Trahant, his "guys are safe" and "they're safe in [his] mind."

31 Market Street, Ipswich

The OSHA investigation about 31 Market Street opened in November 2017. Someone called in the complaint; OSHA dispatched a Compliance Officer to the site the following day (11/29/2017). During the inspection, OSHA observed that fall protection roof anchors were installed to give the appearance of adequate fall protection. But, upon closer inspection, OSHA found that the anchors were not "secured per manufactur[er's] instructions." (See Exhibit 3, p. 48-56 photos).

OSHA issued four Repeat Citations and one Willful Citation. (See Exhibit 3, pp. 8 – 17). The Repeat Citations referred to prior Citations for violations at: Western Avenue, Lynn; Congress Street, Salem; Beach Street, Revere (all further described in the Exhibits and described below). The Willful Citation referred to prior violations at Congress Street, Salem; Beach Street, Revere; Russel Street, Peabody; and Greenwood Street, Peabody (again, all further described in the Exhibits). The Citations all involved improper fall protection. The fines totaled (with interest accrued as of July 18, 2018) $133,451.11. (Exhibit 3, p. 1).

Trahant provided no responses to OSHA. The matter was referred to Collections. During the hearing, Trahant offered that he did the same things as he did about the work he supervised at 40 Broad Street. In his words, "They come; they told us what was wrong, and we correct[ed] it. That's what I did." Further, he insisted, during the hearing that he was on the job all the time and he keeps his employees safe.

520 Chestnut Street and 243-245 Western Avenue, Lynn

After a complaint was filed, OSHA opened an investigation on 11/1/2017. What is described, in detail, in Exhibit 4 is summarized as follows. Workers were exposed to fall hazards; did not have proper fall protection. Trahant, himself, also was exposed to fall hazards, while on the roof with his workers. (See e.g., Exhibit 4, p. 21). OSHA found that workers were exposed

without any means of fall protection. One Serious and one Repeat Citation were issued, both about lack of fall protection. (Exhibit 4, pp. 6, 7). $104,570 in fines were issued. (Exhibit 4, p. 8). Trahant did not respond to the Citations; they and the penalty fines ($104,570) became a Final Order on 2/16/2018. He did not respond to the demand letter and the matter was referred to Collections.

In response to the evidence, Trahant testified: "My guys don't like to walk on the roofs without staging, over a five or six pitch. We nail by hand. We use planks and brackets." The photographs in evidence show the presence of planks and brackets (supporting planks) on roof decks. (See Exhibit 4, pp. 17, 21). Although common sense and common understanding lead one to conclude that the use of planks and brackets help provide better footing for working atop pitched roof decks, none of this evidence was relevant to specific Citations, e.g., personal fall-arrest systems for stopping a fall were not rigged such that an employee could not free fall more than 6 feet.

86 Congress Street, Salem

OSHA opened an investigation on 10/27/2014. Five Citations (3 Serious; 1 Willful; 1 Repeat) were issued on 2/6/2015 (Exhibit 5, pp. 35-39). The Citations were for lack of protective helmets, lack of proper fall protection, damaged portable ladder, and lack of proper training. Trahant filed a timely Notice of Contest. A hearing was held before an ALJ. But Trahant failed to attend the hearing; he did not submit any evidence for the hearing. (See Exhibit 5, p. 12 (Bates stamped page 000098). The ALJ confirmed all violations and Citations (also specifically found that Trahant was on roof alongside unprotected workers). (Exhibit 5, p. 5, stamped page 000091). Trahant told the Compliance Officer that it was a small job and he just wanted to get it done. (Id.). Trahant made no payment for the fines (totaling $43,560.00 as of 2/6/2015) and the matter was referred to Collections.

During the hearing Trahant offered little comment, except to say, "They came and we corrected what was wrong."

305 Beach Street, Revere

This matter began because of observations by a Compliance Officer who was driving by the site on 7/29/2014. The Compliance Officer found that Trahant was on the roof with his employees, but none had means of fall protection. Two, Repeat Citations, for lack of fall protection and ladder safety violations were issued. A Serious Citation was issued for failure to abate the Violations. Trahant filed a Notice of Contest. But his filing was after the 15-day window. Citations became a Final Order of 7/29/2015. He failed to pay fine. A Demand Letter was issued and the matter was Referred to Collections.

In response to the evidence, during the hearing, Trahant testified: "They came and we fixed the corrections. We corrected what was wrong."

54 Russel Street, Peabody

OSHA opened this matter on 7/19/2012. A Citation was issued for one Repeat violation, about lack of adequate fall protection. Trahant timely filed a Notice of Contest. During the informal conference, OSHA explained to Trahant that any subsequent Violation would start to incur more significant penalties. (As described above, there were subsequent actions against Trahant.) OSHA and Trahant reached a settlement agreement, which reduced the fine, and Trahant paid the reduced amount, in full. The matter was ultimately closed.

Trahant could not recall much about the events, given when they occurred (several years ago). (Trahant also wondered, during the hearing, if this involved his son, who was not 18 of age at the time. Trahant recalled that his son's age may have been a factor in reducing the fine. Carbone testified that Wage and Hour would have considered his son's age but that OSHA would not be involved in that process.)

Greenwood Street, Peabody

OSHA opened this on 5/24/2011 opened. This was the first inspection by OSHA that involved Trahant. Citations were issued for Lack of fall protection and a ladder violation because ladder was not of sufficient length. Trahant engaged in settlement conference. A settlement agreement reduced fine to $4200. Trahant paid the fine and the matter was closed.

During the CSL hearing Trahant testified in response to the evidence: "We fixed the corrections and paid the fine."

Discussion

Requirements that apply to a CSL holder's responsibilities for work the Code regulates are extensive. *See 780 CMR 110.R5.2.12 and 110.R5.2.15*. The Code requires the CSL holder "to be fully and completely responsible for all the work" being supervised that 780 CMR regulates and to "be responsible for seeing that all work is done pursuant to 780 CMR." *780 CMR 110.R5.2.15.1*. The CSL holder has primary responsibility, continuing through completion of all Code-regulated work, to ensure Code compliance and to avoid violations of 780 CMR. *780 CMR 110.R5.2.15.*

A main intent of 780 CMR is to help ensure safety. The CSL holder's requirements to properly supervise as required by 780 CMR 110.R5 also include the following over-arching requirement. That is, the CSL holder must ensure "all work shall be conducted, installed, protected and completed in a workmanlike and acceptable manner so as to secure the results

intended by 780 CMR." *780 CMR 110.1.*[4] The intent of the Code, as expressed in 780 CMR 101.3, is:

> The purpose of 780 CMR is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and **safety to life and property** from fire and **other hazards** attributed to the built environment, and to provide safety to fire fighters and emergency responders during emergency operations. *780 CMR 101.3*.[5] (emphasis added).

As part of the goal to help ensure safety, 780 CMR 110.R5.2.8 specifies that the following "shall be grounds for reprimand, suspension, or revocation of a [CSL]":

> Violations of State or federal law relevant to CSL work, including violations of the Occupational Safety and Health Act or Occupational Health and Safety Administration regulations, as formally decided by the courts or relevant state or federal agency. *780 CMR 110.R5.2.8, # 11*.

The evidence about what OSHA found is clear and cannot be changed---Trahant was responsible for multiple violations of OSHA regulations. The decisions about his violations were decided by the "relevant . . . federal agency." No evidence was offered that any of the violations remain open to further review or appeal through the federal system (or other system) that could change the evidence of the violations for purposes of 780 CMR 110.R5.2.8, # 11.

Although Trahant's arguments can be interpreted as attempts to call into question whether he violated some/all of the applicable OSHA regulations, his main argument against imposing any penalty against his CSL can be summarized as follows. He argued that *none* of the violations involved any injury to anyone *and at no time* in any roofing work has his supervision caused or involved any injury to anyone.

Trahant also insisted, during the hearing, having the opportunity to explain why he stopped paying the OSHA fines. He was provided ample time in which to do so. Trahant explained that his attorney (who did not attend the hearing)[6] advised him that it was very important for Trahant to have his explanation in the record. I told Trahant that he was not

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[4] The "workmanlike and acceptable" requirement appears in both 780 CMR 110.1 and 780 CMR 51.00, R110.1. Both sections state, "It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes **and that all work shall be conducted in a workmanlike and acceptable manner so as to secure the results intended by 780 CMR**." (emphasis added).

[5] Same in 780 CMR 51.00, R101.3.

[6] Trahant had ample time after he received the Complaint to arrange for having representation (legal or otherwise) present with him at the hearing. *780 CMR 110.R5.2.9.4*. He chose to represent himself.

obligated to explain why he had not paid the fines, given that the facts about the violations were not in dispute, but I would allow him to offer any explanation.[7]

First, Trahant reiterated that, for 110 to 119 years, his family's roofing business had never had a fall, never had a Workers' Compensation claim. He explained that he has avoided injuries because he is on site, every day; that he is either on the roof or on the ground while his employees perform roofing work. Thus, he believes he truly supervises.

Next, he asserted that, over the last 10 years, OSHA has been going to cities and towns, and obtaining records about his roofing projects. Thus (as Trahant explained about what he recalled his attorney told him to say), Trahant argued that OSHA has been involved in racial profiling. Trahant argued that OSHA has been "targeting" him. He recalled that OSHA went to Lynn, went to Saugus, went to Marblehead and "that is why [he] got totally pissed off."

As I explained during the hearing, I find Trahant's argument about alleged racial profiling to be, at best, only, marginally relevant (likely not relevant at all) to the evidence about the occurrence of OSHA violations. For example, he did not offer any evidence in support of his testimony and argument during the hearing. Moreover, even if there were evidence that OSHA had selectively enforced federal law and regulations based on only, for example, "targeting" Trahant's workers based on what their races appeared to be to OSHA officials, that evidence would not change the evidence about, for example, lack of required fall protection.

What OSHA officials may have perceived/observed leading up to steps described in the Exhibits might have been relevant to whether OSHA even had reason to start investigations. But Trahant's allegations about racial profiling might have been relevant if Trahant had contested and, even somewhat, succeeded in contesting those Citations through the applicable federal review processes and, if available, review through a court system with jurisdiction. But, again, as a matter of fact, regulation, and law, the Citations and the violations they describe exist and are evidence for purposes of 780 CMR 110.R5.2.8, # 11. The CSL hearing process is not the forum to revisit what Trahant had ample time and opportunity to contest through some other process, but, for the most part, chose not to engage in.

In accordance with 780 CMR 110.R5.2.9.1, "Any person . . . may file a complaint." Here, the reason OSHA filed the Complaint was based on all the Citations. But anyone else, for example, could have filed a CSL complaint against Trahant's CSL based on a complainant's belief that Trahant was not complying with applicable OSHA regulations for roofing work, and/or, for example, his failure to ensure workmanlike and acceptable requirements of 780 CMR 110.1. During or after the occurrences of the events in evidence, anyone could have filed CSL Complaints against Trahant if they offered information about his failures to comply with OSHA regulations. A

[7] No doubt that the fines OSHA imposed reflect OSHA regulations and policies that consider, for examples, the quality and extent of a violation and potential risks, in addition to the factors described above. Maybe the absence of any fine along with, for example, only some type of reprimand from OSHA about a violation would be relevant for a CSL proceeding. But, in that example, the violation would still exist for purposes of 780 CMR 110.R5.2.8, # 11.

CSL complaint alleging OSHA violations is not limited to coming from only OSHA officials. Of course, OSHA officials typically have greater expertise than "any person" about OSHA regulations.

Further, Trahant explained during the hearing that he was "just upset" and that he "just [doesn't] understand. He argued that because he has been in business for 45 years and believes he has kept his employees safe, he does not believe he needs "someone to look over [his] shoulder to tell [him] how to keep [his] guys safe."[8]

In addition to the evidence describe above, OSHA testified (credibly) that, in 2021, which was the most recent year for which OSHA has statistics, there were 5,109 occupational fatalities. Roofers have the third highest fatality rate, only behind people engaged in logging and fishing. In 2021, the roofing industry, alone, suffered 123 fatalities. Ninety-nine of those were from falls from roofs. The New England region has 4 to 5 calls per week about someone falling off a roof while engaged in roofing work. Just during the week before the hearing, OSHA reviewed four, fatal accidents, related to falls. OSHA pointed out one of its obvious functions, to serve as a prevention mechanism, to prevent the tragic accident or incident before it occurs. Nothing was offered to argue against OSHA's representations.

Finally, Trahant asked about evidence regarding injuries on any of the properties in evidence. He testified that his attorney told him to ask the question, "Has [OSHA] ever been to one of [his] job sites about a call about somebody falling"? OSHA testified that it has not responded to an actual fall.

Conclusion and Administrative Penalties

The evidence shows that Trahant is responsible for multiple violations per 780 CMR 110.R5.2.8, # 11.[9] Note also the evidence about the number of violations over time. The evidence shows a pattern and practice by Trahant to ignore OSHA regulations and, as a result, create unnecessary/excessive safety risks, even if, as he represented, none of his employees has been injured, or worse, yet.[10]

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[8] During the hearing, I explained to Trahant that he can offer more explanations, but he was not obligated to do so; that he did not need to offer irrelevant things for the hearing to be fair to him pursuant to 780 CMR 110.R5 and the Informal/Fair Hearing Rules (801 CMR 1.02).

[9] Note also that 780 CMR 102.8.1 and 780 CMR 51.00, R102.8.1 mandate, "The owner shall be responsible for compliance with the provisions of 780 CMR." Further, an owner can incur liability for a failure to ensure Building Code compliance. *780 CMR 114, 115; 780 CMR 51.00, R114, R115*. Thus, when a CSL holder fails to ensure compliance with 780 CMR as required by 780 CMR 110.R5, a property owner may, also, incur some type of liability for any 780 CMR failure.

[10] 780 CMR 110.R5.2.9.1 states, "All complaints shall be received by the BBRS within three years of the date the parties entered into an agreement to perform work requiring licensure pursuant to 780 CMR 110.R5." The plain language of this three-year limit applies to CSL complaints where a property owner has initiated the complaint against the CSL holder(s). The BBRS' intent in having this rule is to help ensure that: property owners do not wait too long to

The potential actions the Hearing Officer may impose following completion of the hearing about a complaint against a CSL holder and reaching a finding of "any violation of 780 CMR" (*780 CMR 110.R5.2.8(3)*) for which the CSL holder is responsible in accordance with 780 CMR 110.R5 include: a reprimand against the CSL; a suspension of the CSL for a defined period; or revocation of the CSL. *See 780 CMR 110.R5.2.8; 110.R5.2.9.5.* In addition, "the hearing officer may order the license holder to retake the CSL examination" applicable to the type of CSL. *780 CMR 110.R5.2.9.5.*

The Board may consider mitigating and exacerbating facts when determining whether a reprimand, or suspension (and the length of the suspension), or revocation of a CSL is warranted. Those may include, among other things, credible mitigating circumstances that may reasonably have impaired the CSL holder's ability to ensure Code compliance or, by contrast, exacerbating circumstances which should have made it easier for the CSL holder to ensure Code compliance. Credible evidence that a CSL holder made genuine and timely efforts to correct Code errors may be considered. *See e.g., 780 CMR 51.00, R101.2, R101.3; 780 CMR 101.2, 101.3* (intent of the Code is to encourage measures that improve life safety).

Based on only the evidence about the OSHA violations involving 40 Broad Street, Lynn (the most recent events) and Trahant's own testimony and argument during the hearing, **REVOCATION** of his CSL is warranted. No evidence was offered that suggested any reasonable basis for Trahant's failure to comply with the regulations OSHA cited. The evidence shows that he does not want to comply or does not believe in the OSHA regulations.

Evidence about property damage, human injury (or worse) related to a Building Code failure for which the CSL holder was responsible is always considered an exacerbating factor in determining a penalty against the CSL. But, by contrast, the absence of harm resulting from, for example, improper or no fall protection, cannot be considered as mitigating. Assuming Trahant's testimony about his business never having had any type of injury is accurate, the best that can be inferred, based on the number and types of OSHA violations in evidence, is that Trahant and his employees have been lucky.

The relevant requirements exist to help ensure safety. These are not types of rules such as those related to a contractual dispute where the absence of damages (e.g., physical and/or monetary) may mean that the person in breach may not have to pay the other party or obtain

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file a complaint when they easily could have, and should have, learned about Code errors within three years of their contract with a CSL holder. But this restriction does not in its plain language apply to the sentence just before it: "Any person, including a building official, staff of the Masschusetts Office of Consumer Affairs and Business Regulation, or the BBRS itself, may file a complaint." Any of those other people would never be one of "the parties [who] entered into an agreement to perform work." Thus, I find that OSHA was not precluded from including in the Complaint evidence about events that took place more than 3 years prior to the BBRS' receipt of the Complaint. But, even if that evidence should be precluded, the evidence about OSHA violations within three years prior to the Complaint plus Trahant's own testimony and argument during the hearing would be sufficient to warrant the penalty against his CSL, discussed below.

specific performance (thus some type of reasonable "no-harm, no-foul" defense). Responsibility of the CSL holder and potential liability against a CSL in accordance with 780 CMR 110.R5 exist even if any Code-compliance failure never led to, or even partially contributed to, some harm.

Trahant argued and offered testimony about having corrected/addressed violations when someone from OSHA alerted him on site. This showed that he must have understood what was required, or, also, he believed that potential risks were eliminated when work was completed, and his crew had returned safely to street level. Again, his argument and testimony convey a belief, "no harm, no foul." Among the problems with Trahant's argument are that: he easily could have and should have known the regulations, and he apparently did know them; he could have and should have, at least, done more to comply with, for example, fall-protection requirements; and, based on his track record, he decided to ignore them because, as he testified, he does not believe he needs "someone to look over [his] shoulder to tell [him] how to keep [his] guys safe."[11]

In addition, if the only evidence were the same written descriptions and photographs that showed the safety measures Trahant believed were adequate *without* specific citations to OSHA regulations, the evidence would show failures to supervise to ensure workmanlike and acceptable safety requirements, required by *780 CMR 110.1*. But we also have evidence of OSHA violations that exist, as a matter of law and regulation, which cannot be removed from this Complaint because 780 CMR R5.2.8, # 11 specifically identifies OSHA violations as reasons to impose a reprimand, suspension, or revocation.

The evidence and his own arguments do not inspire confidence that Trahant appreciates the responsibilities of a CSL holder. Maybe he understands but has chosen not to comply with those responsibilities. Regardless, Trahant's disregard of and disagreement with OSHA regulations (which, very clearly in this case, demonstrated why they exist---to help protect people from falls and other hazards) do not inspire confidence.

Conclusion and Order

Accordingly, # CSSL-101220, issued to William R. Trahant, Jr. is hereby **REVOKED**.

Trahant must immediately forward his CSL card to the Board. *780 CMR 110.R5.2.9.5.* If he does not forward his CSL card to the Board, there will be grounds for further sanction because of a "failure to turn over a suspended or revoked license to the BBRS." *780 CMR 110.R5.2.8 (6).* The Board imposes the requirement to return the CSL card because suspended or revoked CSL's that do not have expired end dates on the cards have been known to have been used during suspension or revocation periods.

[11] Possibly he believed that having paid some OSHA fines before, he had reason to refuse to pay later fines. Regardless, even if had paid all the fines, his failures to ensure compliance would have still existed at the relevant times; the safety risks would not have changed as result of subsequent fine payment.

Although most building departments and many customers check online databases to verify whether CSL's are valid, sometimes those verifications do not timely occur. When that happens, people rely on *only* the CSL card, and *assume* that the CSL holder is qualified to act as a Construction Supervisor if the expiration date printed on the card has not passed. For example, building permits might get issued, work might commence, but, when the CSL is checked and found to be in suspended or revoked status, then, at minimum, inconvenience follows for property owner, CSL holder/contractor, and building official (e.g., stop work orders are issued).

For the CSL holder, further penalty may be imposed because the CSL holder was found to have been acting as a Construction Supervisor **without a valid License**. *See G. L. c. 112, § 65A and G. L. c. 22, § 22/520 CMR 1.02(2)(d)2, a* (which allow for, among other things, imposing monetary fines against an individual who acts as a Construction Supervisor without a valid CSL (e.g., a CSL that has been suspended or revoked)).

Trahant must deal with active building permits that have his name as the CSL holder of record as follows:

(1) He must ensure that any work authorized by those active building permits must **"immediately cease until a successor license holder is substituted on the records of the building department"** as required by 780 CMR 110.R5.2.16;
(2) or (2) work **must immediately cease** until he has complied with all requirements about revocation of his CSL described below and the BBRS has approved his request for reinstatement.

Trahant must deal directly with each building department where his CSL is on record for active building permits. His failure to ensure compliance with 780 CMR 110.R5.2.16 may result in further penalty against his CSL. Obviously, he also must change any *pending building application* or any *potential, new building permit application* to remove him as the proposed CSL holder of record during the revocation of his CSL.

The revocation period for Trahant's CSL will be, at least, two (2) years. "A person whose license is revoked may apply in writing to the BBRS for reinstatement **no sooner than two years from the date of the revocation**." *780 CMR 110.R5.2.9.5* (emphasis added). In addition, because at least two years will have passed, Trahant must also have taken and passed the applicable CSL examination for his license within six months prior to when he submits his request for reinstatement. The BBRS imposes this re-examination-and-passing requirement because, after at least two years, there have been, typically, changes to 780 CMR promulgated by the BBRS. Typically, having passed the applicable examination within six months prior of the request for reinstatement shows knowledge of the most recent/up-to-date edition of 780 CMR.

The revocation of Trahant's CSL does not mean that he cannot operate his business. If someone else is a CSL holder with a valid and applicable CSL and that other person **truly supervises Code-regulated work by being both the CSL holder of record for building permits and**

being on site to supervise, Trahant can continue to operate his roofing business, absent any other restriction that some other law or regulation might impose on his business operations. Note that, in those circumstances, the new CSL holder must fully comply with 780 CMR 110.R5. Like any CSL holder, that new CSL holder can be the subject of a CSL complaint against their CSL while they are supposed to be supervising Trahant's roofing work.

SO ORDERED,
BOARD OF BUILDING REGULATIONS AND STANDARDS
By its designee,

///CNP///

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Christopher N. Popov
Hearings Officer
DATED: November 17, 2023

"Any person aggrieved by a decision of the hearings officer or the [Board] may appeal such decision in conformance with M.G.L. c. 30A, § 14." *780 CMR 110.R5.2.10.1.*

Pursuant to 780 CMR 110.R5.2.10, "Discretionary Appeal," the CSL holder aggrieved by this decision may, in writing, request the Board to review this decision **only within 30 days of receipt** of this decision. Thereafter, a request will **not** be considered.

The filing of a request with the Board shall serve to toll the timing provisions of G. L. c. 30A, § 14 until such time as a final decision is rendered by the Board. *780 CMR 110.R5.2.10.* Thus, if the review request to the Board is **not** filed within 30 days of receipt of this decision and an appeal to Superior Court is **not** filed within the mandatory 30-day period imposed by G. L. c. 30A, § 14(1), then the decision **cannot** be changed by the Board or the Court.

The filing of a written request to the Board or of an appeal to Superior Court shall **not stay any the disciplinary action** the Hearings Officer specified. *G. L. c. 30A, § 14(3)*. If a written request is made to the Board, the request must include objection(s) to the decision and present argument about the decision. *G. L. c. 30A, § 11(7).*

The Board's review of a written request is an administrative review that shall be based solely on the administrative record and is not to be construed as a second hearing about the same complaint. If the Board decides to further review the decision, the Board will consider any written objection(s) and written argument(s) provided by the CSL holder. If the Board does **not** concur with any of the objections or arguments, the Board will **not** provide specific answers to the objections or arguments. See *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299 (1981) (Chapter 30A does not specifically require that objections to a recommended decision be answered or be accompanied by a statement of reasons); *Weinberg v. Board of Registration in Medicine*, 443 Mass. 679, 687 (2005) (board is not required to address each and every legal issue

and theory relied upon by [Respondent]). The Board is **not** required to provide an opportunity for oral presentation of objections and/or argument as part of its further review process. *G. L. c. 30A, § 11(7).*

"After review, the BBRS may deny the petition, **[or]** grant the petition but affirm the decision of the hearings officer, **or** grant the petition and remand the matter to the hearings officer for further proceedings as directed. An order of remand may include instructions that the hearing officer's decision imposing a reprimand, period of suspension, or revocation be increased, decreased, waived, or rescinded, and any other penalty substituted including, but not limited to, decreasing or increasing a period of suspension, rescinding a suspension and issuing a reprimand, or rescinding a suspension and ordering revocation." *780 CMR 110.R5.2.10.* (emphasis added). The BBRS shall state reason(s) for its final decision. *G. L. c. 30A, § 14(8).*