

SRPL Board Complaint No. 001-2022

DISPOSITION

Based on its investigation and findings, the Site Remediation Professional Licensing Board (“Board”) voted to resolve the complaint with a finding that the subject of the complaint did not violate the provisions of the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.) alleged in the complaint and referenced below.

ISSUE

This complaint was brought on November 5, 2021 by a Person Responsible for Conducting Remediation (“Complainant”) who hired the LSRP that is the subject of the complaint (“Subject LSRP”) to remediate his 100’ x 25’ commercial site in an urban center (“Site”). The complaint was prepared with the assistance of another LSRP hired exclusively to help prepare the complaint (“Consultant LSRP”)¹. The complaint alleges that the Subject LSRP conducted the remediation incorrectly by doing unnecessary work, thereby overcharging the Complainant. The complaint also alleges that the Subject LSRP violated multiple provisions of the SRPL Board Rules; specifically, N.J.A.C. 7:26I-6.2; 6.3(d); 6.6; 6.7(a), (b), (c); 6.8(a), (e); 6.13; 6.18(a); 6.21(a); 6.27(a).

INVESTIGATION

The Professional Conduct Committee of the Board appointed a Complaint Review Team (“CRT”) to investigate the allegations and response. The CRT reviewed the complaint and the Subject LSRP’s response, submitted on June 3, 2022. The CRT interviewed the Consultant LSRP on September 21, 2022. The Complainant was invited to this meeting and accepted the invitation but did not attend. The CRT interviewed the Subject LSRP on October 12, 2022. The CRT also reviewed documents and correspondence in the Department files regarding the Site.

In particular, the CRT noted the following facts:

Site Remediation:

The Subject LSRP was retained from April 17, 2012 to May 23, 2022.

The Site has a long history, including as a dry-cleaning facility. The Complainant intended to lease the Site to be used as a childcare facility.

¹ The Consultant LSRP was not retained to remediate the Site.

The Subject LSRP submitted 2 RAOs: a leasehold RAO for the childcare facility and an RAO for the entire site.

The Subject LSRP worked with the Department of Environmental Protection (“Department”) to transfer the oversight of the remediation of an unregulated heating oil tank to the UHOT program in order to save the Complainant annual remediation fees.

HDSRF Grant:

The Subject LSRP prepared an application for a Hazardous Discharge Site Remediation Fund (“HDSRF”) grant, which was granted to the Complainant and Subject LSRP as a joint check in the amount of \$68,233.71, which was approximately half of the amount requested (\$136,639.43), as it would only cover investigation work, not remediation work. The Subject LSRP also helped prepare insurance claims. Following the awarding of the HDSRF grant, the Complainant withheld the check from the Subject LSRP². The Subject LSRP asserted that the following email dated March 10, 2020 from the Complainant’s attorney provides the terms for the release of the HDSRF grant:

“[Complainant] wanted me to communicate this offer to you. He says he has already paid [your company] \$134,000. He says he will send you the EDA check [HDSRF grant] if you agree that he doesn’t have to pay anymore money to [your company]. Additionally, any insurance monies recovered he would keep.”

Legal Dispute between PRCR and Subject LSRP:

The Subject LSRP ultimately filed a lawsuit for the HDSRF grant and the outstanding balance owed to his company. The Complainant responded on October 30, 2020 with a countersuit, claiming that much of the investigation and remediation conducted by the Subject LSRP was unnecessary. The Complainant released the HDSRF grant to the Subject LSRP, and on November 25, 2020, filed an offer of judgment for \$40,000. On October 14, 2021 the Subject LSRP accepted the offer of judgment for \$40,000 and went through the court process to collect it. Two weeks later, the Complainant filed the complaint with the Board.

The dispute regarding the Subject LSRP’s fees and their payment are outside of the purview of the Board, although they provide context for the complaint.

Technical Issues alleged in the complaint:

In addition to the fee dispute, the complaint alleged various technical issues; specifically:

² The CRT reported the Complainant’s actions to the Department.

1. The copper feed lines from the UST in the basement were missed in the initial site walk-through.
2. The Subject LSRP used intrusive methods to locate the UST rather than methods that were less intrusive.
3. There was no ground water investigation, so a vapor intrusion investigation was not necessary.
4. The Subject LSRP improperly conducted a soil investigation in the basement.
5. The Subject LSRP unnecessarily installed ground water monitoring wells.

The Subject LSRP countered with the following arguments:

1. The copper feed lines were originally missed because they were in an obscure location. They ultimately were found and lead to the investigation of the UST.
2. A magnetometer survey was conducted, but borings were necessary to definitively locate the UST. An OPRA request was sent to the city to produce records to help locate the UST, but the first response was not helpful. Only after a second request was made which the city sent to their Plumbing Department was useful information provided.
3. The presence of bedrock near grade in the basement required that soil gas samples be collected, which indicated PCE above the soil gas screening levels in effect at the time. The Subject LSRP consulted with the Department and developed a ground water investigation plan. This was necessary due to the history of the Site as a dry cleaner and its intended use as a childcare facility.
4. The intended use of the Site as a childcare facility required a comprehensive investigation. The soil investigation indicated lead, which required excavation or capping.
5. Ground water monitoring wells were necessary to determine whether the source of the PCE was on site. The location and number of wells were discussed with the Department, and the Department agreed with the Subject LSRP's ground water monitoring plan.

FINDINGS

The Board finds that the violations as alleged in the complaint were unfounded. In the opinion of the Board, the Subject LSRP adequately investigated the site, collected sufficient data, analyzed the data using independent professional judgment, and documented the basis for his conclusions. Throughout the investigation and remediation of the Site, the LSRP was in communication with the Department and cooperated with the Department's advice, particularly concerns raised by the plan to utilize the Site as a childcare center. There is no evidence that the LSRP conducted work that was inappropriate. Therefore, the CRT finds that the LSRP's conduct in the remediation of

this Site did not violate the Site Remediation Professional Licensing Board Rules alleged in the complaint and referenced above.