FILED Jan 22, 2013
BOARD OF EXAMINERS OF MASTER PLUMBERS
Roxanne S. Bacile
Acting Executive Director

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Division of Law 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the Board of Examiners
of Master Plumbers

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF EXAMINERS OF MASTER PLUMBERS

IN THE MATTER OF JAMES P. KYNE, L.M.P. LMP# 36BI00461600 LICENSED TO PRACTICE AS A MASTER PLUMBER IN THE STATE OF NEW JERSEY	Administrative Action PROVISIONAL ORDER OF DISCIPLINE

This matter was opened to the New Jersey State Board of Examiners of Master Plumbers ("the Board") upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. James P. Kyne ("respondent") is a licensed master plumber in the State of New Jersey and has been a licensee at all times relevant hereto. Respondent is the bona fide representative for "James P. Kyne Plumbing and Heating Company" and has been the bona fide representative at all times relevant hereto.

2. The Board received a complaint filed by consumer M.N. The complaint alleged that respondent and M.N. entered into a verbal agreement on July 21, 2010 for respondent to look at a water leak at M.N.'s home. Respondent and M.N. both dug in M.N.'s front yard to find the leak, but were unable to find it. The complaint further alleged that respondent and his son, Eugene Kyne, returned to finish the job the next day. According to M.N..respondent's work resulted in part of M.N.'s driveway and lamp post collapsing into a hole. M.N. arrived at his house to find that the job had been abandoned and the hole was left unsecured by respondent and his son. Finally, M.N. alleged that respondent never provided a contract, nor obtained any permits for the work. M.N. paid approximately $9,000.00 in order to fix the damage resulting from respondent's work. (Exhibit A,

copy of complaint from M.N., attached).

3. Respondent provided a letter to the Board in response to the complaint from M.N. Respondent stated he was friends with M.N.'s father and agreed to do the work as a favor. When respondent arrived at the site, water was coming out of the ground at the corner of M.N.'s driveway and lamp post. M.N. believed there was a leak in the water main at this location. M.N. asked respondent to dig next to the lamp post. Respondent dug a hole approximately two feet by four feet wide, and two and one half feet deep. The hole then began to fill with water. M.N. asserted that the leak was coming from this location. Respondent disagreed, and stated the water leak was closer to the house and that the water was finding its way into the hole. M.N. instructed respondent to go into the hole to bail the water out in an effort to determine if the leak was coming from this location. After bailing three buckets of water, respondent noticed that the concrete lamp post and footing were shifting toward the hole. Eventually, both collapsed into the hole. Respondent decided he could not work for M.N. and respondent left the scene. (Exhibit B, copy of response from respondent, attached).

4. On April 28, 2011, respondent appeared before the Board for an investigative inquiry. Respondent was represented by Stuart Santiago, Esq. Respondent advised that his son Eugene occasionally works with him, but is not a W-2 paid employee. Respondent explained that at the insistence of M.N., but against his professional judgement, he began digging in an effort to locate the leak. Respondent admitted he should have utilized other measures to locate the leak rather than to just start digging. (Exhibit C, copy of transcript from investigative inquiry, pg. 7, lines 11 thru 22; pg. 14, lines 14 thru 21).

5. Respondent returned the next day with his son and had to bail water out of the hole that was dug the previous day. Respondent was in the hole, bailing water out, when the hole collapsed causing the lamp post to fall on him. According to respondent, the leak was further up the line and not where M.N. told respondent to dig. Respondent admitted he never secured a permit or obtained a contract. Respondent intended to do the work for free as a favor to M.N. After the hole collapsed, respondent admitted he never returned to the sight after the hole collapsed and even left his tools behind. (Exhibit C, copy of transcript from investigative inquiry, pg. 16, lines 10 thru 21; pg. 13, lines 5 thru 15, pg. 9, lines 10 thru 17, pg. 17, lines 5 thru 24, attached).

CONCLUSIONS OF LAW

1. The above preliminary findings of fact establish a basis for disciplinary action, pursuant to N.J.S.A 45:1-21(c), in that respondent engaged in grossly negligent conduct by improperly digging a hole at M.N.'s property, at M.N.'s insistence, and against respondent's professional judgment. Respondent also acknowledged that he never returned to the sight after the

hole collapsed and even left his tools behind. Additionally, these facts establish a basis for disciplinary action, pursuant to N.J.S.A. 45:1-21(h), in that respondent violated a regulation of the Board by utilizing the services of his son, who was not a W-2 employee, to perform the plumbing work for M.N., in contravention of N.J.A.C. 13:32-3.4, which provides that any plumbing work that a licensed master plumber agrees to perform shall be performed only by the licensed plumber or the employee of the licensed plumber.

IT IS ON THIS 22nd DAY OF January, 2013
HEREBY ORDERED AND AGREED THAT:

1. Respondent is hereby provisionally reprimanded for violating N.J.S.A. 45:1-21 (c) and N.J.S.A.45:1-21(h).

2. Respondent shall provisionally pay a civil penalty, pursuant to N.J.S.A. 45:1-22, in the amount $250.00 for engaging in gross negligence, in violation of N.J.S.A. 45:1-21(c). Payment of the civil penalty totaling $250.00 shall be submitted simultaneous with the signing of this order, by certified check or money order made payable to the State of New Jersey, and shall be sent to, Rosemarie Baccile, Acting Executive Director, Board of Examiners of Master Plumbers, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101.

3. Failure to timely remit any and all payments required by this order will result in the filing of a certificate of debt with interest accruing at the rate provided by the Rules of Court, and such failure or any violation of this order may result in subsequent disciplinary proceedings for failure to comply with an Order of the Board, which could include the suspension or revocation of license.

4. The within Order shall be subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry hereof unless respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

a) Submitting a written request for modification or dismissal to Rosemarie Baccile, Acting Executive Director, State Board of Examiners of Master Plumbers, 124 Halsey Street, Sixth Floor, P.O. Box 45008, Newark, New Jersey 07101.

b) Setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed.

c) Submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor or offered in mitigation of penalty.

5. Any submissions will be reviewed by the Board, and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised

through a supplemental submission during the thirty-day period, or if the Board is not persuaded that submitted materials merit further consideration, a Final Order of Discipline will be entered.

6. In the event that respondent's submissions establish a need for further proceedings, including, but not limited to, an evidentiary hearing, respondent shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein shall serve as notice of the factual and legal allegations in such proceeding. Additionally, if further proceedings are ordered, the Board may seek to recoup the costs of such proceedings from respondent, in addition to the sanctions and penalties stated above.

BOARD OF EXAMINERS OF MASTER PLUMBERS

By: Peter I. Voros

Peter I. Voros
Board Chairman

EXHIBIT A

LOG #72446

BOARD OF EXAMINERS OF MASTER PLUMBERS

2010 AUG 27 AM 10: 15

no contract

RB

Mark J. Neri
553 Bayview Drive
Toms River, NJ 08753

August 16, 2010

Division of Consumer Affairs
Board of Examiners of Master Plumbers
P.O. Box 45008
Newark, NJ 07101

To whom it may concern:

On July 29th, 2010, I sent an email to the Board of Examiners of Master Plumbers regarding an incident in which occurred at my home on July 26th, 2010. Shortly thereafter, I received a phone call from Rosemarie Baccile, requesting that I put it in writing for further review.

On or about July 19, 2010, A water leak had been discovered in my flower bed, approximately one foot from the street. I immediately advised my wife to contact the water company to assess the situation. United Water came out the same day, shut off the water, and indicated to my wife that the leak stopped. Apparently, that means it is my responsibility because it is the line going to the house.

I then contacted a local plumber in Toms River Steve Scillieri, who said he could come by the following day to take a look, approximately July 21, 2010.

522 Miltonia St, Linden 07036 # 4616

On that same day, on or about July 21, 2010, I ran into a plumber (James P. Kyne) who had come by my place of work to see my boss. This man has done work for my boss on many occasions, so I briefly told him about my water leak. He told me the job should not cost more than $450.00 to repair. He said if I need him, he does not mind traveling to Toms River. I told him I would let him know.

Later that day after Steve Scillieri told me that he was too busy, I placed a phone call into James Kyne. He said he would meet me at the house on Sunday July 25, 2010. We both began to dig, but still could not find the leak. It reached early afternoon, and he told me he needed to bring his son on Monday July 26th to finish the job.

The morning of the 26th, I waited until him and his son arrived before I departed to work at approximately 9:30 a.m.

I received a call on my cell phone at approximately 12:00 noon, it was his son Eugene saying "part of your driveway and lamppost collapsed into the hole, we are going to tidy up and get out of here". I told him not to leave, I will be right there.

I arrived at my house about an hour later, only to see nothing short of a disaster, in which had been abandoned. There was a very large hole left wide open and unsecured by the plumber and his son, with a giant stone lamppost with broken wires, laying in the hole on top of the water meter.

This plumber never provided me with a contract, but instead just verbally gave me a quote of $450.00. Nor did he call the 1-800-272-1000 DIG number, so that the property could be properly marked out. I phoned them myself on July 26th in the a.m. when I saw he neglected to do so.

No contract

It does not seem possible that a licensed Plumber in the state of NJ can cause approximately $9,000.00 worth of damage and walk off the job. This man could have killed himself or someone else.

After him demonstrating such neglect, disregard and incompetence, I recommend that the board of Master Plumbers offers its careful consideration on weather a man of such caliber should continue to posses a Plumbing license in the state of NJ.

Sincerely,

Mark J. Neri

BOARD OF EXAMINERS OF MASTER PLUMBERS
2010 AUG 27 AM 10: 15

EXHIBIT B

Commercial, Residential

JAMES P. KYNE

Plumbing and Heating
Water Main Specialist

P.O. Box 802

Cranford, New Jersey 07016

Phone 276-4446

BOARD OF EXAMINERS OF MASTER PLUMBERS
SEP 10 PM 1:35

September 8, 2010

State Board of Examiners of Master Plumbers
PO Bo 45008
Newark, NJ 07101
Executive Assistant
Rosemarie S, Baccile

Dear Ms. Baccile:

Re: Reply to Consumer Complaint, File id # 72446.

Yesterday I had asked two trusted friends to call your office to ask for information regarding this Consumer Complaint. My question merely was to ask exactly what Mark J. Neri was troubled with. The answers I received was that this is a private matter and that I would not be privy to this information. So be it.

I will outline this scenario exactly as it evolved, from start to finish.

The consumer involved was Mark Neri. His father is Joseph Neri, a dear friend and valued customer of mine for many years. As a result of my association with Joseph Neri,I met his son, Mark Neri.

Mark Neri called me several days ago, identified himself, and asked if I would repair a water line at his home. When Mark Neri said that his home was in Toms River, I was reluctant to take the job.

I explained to Mark Neri that Toms River would be a problem. Money was not the problem here.

I would have done this job at no cost, because of my close association with his Father. But at Toms River, I would not have connections for parts if needed or for digging equipment if needed.

Mark Neri assured me that my only job would be to repair the exposed main water line, and I would only need hand tools.

I offered to meet Mark Neri at his home at Toms River whenever he would have the water line exposed and ready for repairs. I would do my best to help him.

I met Mark Neri at the site one morning. When I arrived, I said stop, NO GOOD. The site was a scary mess. Water was coming out of the ground at the corner of the drive way and at the ;amp post.

In front of his home, at the corner of street curb where the curb meets his drive way there was a concrete lamp post, beside the lamp post Mark Neri asked me to dig. I dug a hole approx. two feet by four feet and two and one half foot deep.

The hole became partially filled with water, and partially covering a pipe. Mark Neri said that's the leak, fix it.

I said, again, I respectively disagree with you. I was sure the water leak was closer to the house and the water was finding its way into the hole.

Mark Neri would not buy that explanation. He asked me to go into the hole and bail some water to prove my point. I bailed three buckets of water from the hole. I proved that the water was entering the hole from another source. At the same time. I noticed that the concrete lamp post and concrete footing was shifting towards the hole. I cornered myself in the far corner of the mud hole and the lamp post came tumbling in. My leg was pressed into the soft dirt and I escaped any serious injury.

I was helped out of the hole, I checked my leg, it was sore but OK. I explained to Mark Neri that I could not work for him. With a mutual agreement I left the scene.

The following is the required list of responses as an obligation as a Licensee.

1. No parts were involved.
2. The time involved with Mark Neri was three hours. No charge
3. Travel time was four hours. No charge
4. The only skill that would have been needed according to perceived plans would have been a pipe cutter, a short replacement pipe and connection equipment.
5. To my knowledge no permit was received or required for this work.
6. File Identification # 72446

I can be reached any day at 908 523-0858. The above number is not current. Please call if I may be needed for any further clarification on this matter.

Very Truly Yours,

James P. Kyne

James P. Kyne

SWORN TO AND SUBSCRIBED BEFORE ME THIS DATE

SEP 08 2010

TARYN DAVIS-BRETT
Notary Public of New Jersey
Commission Expires 11/17/2011

EXHIBIT C

//

STATE OF NEW JERSEY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MASTER PLUMBERS

INVESTIGATIVE INQUIRY

IN THE MATTER OF:

JAMES P. KYNE
---

124 Halsey Street
Newark, New Jersey
April 28, 2011

B E F O R E: PETER I. VOROS
DONALD B. DiLEO
MICHAEL K. MALONEY
MICHAEL L. SESTANOVICH
ROBERT B. REEVE
JAMES McMANUS, JR.

ALSO PRESENT: ROSEMARIE BACCILE, Executive Assistant

A P P E A R A N C E S:

STUART SANTIAGO, ESQ.
For James P. Kyne

PAULA T. DOW, ATTORNEY GENERAL
BY: JOSEPH DONOFRIO,
Deputy Attorney General
For the Board

GLOBAL COURT REPORTING SERVICES, INC.
500B LAKE STREET
RAMSEY, NEW JERSEY
201-825-1020

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EXHIBITS

NO. DESCRIPTION PAGE

NO EXHIBITS MARKED

MR. VOROS: Welcome, gentlemen. My name is Pete Voros, I'm master plumber representative and Chairman of the Board. I'd like to introduce the other members.

MR. DiLEO: Don DiLeo, public member.

MR. MALONEY: Michael Maloney, master plumber member.

MR. SESTANOVICH: Michael Sestanovich, inspector member.

THE WITNESS: Thanks for your company, all of you.

MR. McMANUS: Jim McManus, Jr., journeyman member.

MR. REEVE: Robert Reeve, master plumber member.

MS. BACCILE: Rosemarie Baccile, Executive Assistant.

MR. DONOFRIO: Joseph Donofrio, Deputy Attorney General.

MR. VOROS: The Deputy Attorney General is going to go over the ground rules for this proceeding.

MR. DONOFRIO: Mr. Kyne.

MR. KYNE: K-Y-N-E, it's the Gallic form for C-O-Y-N-E.

MR. DONOFRIO: Mr. Kyne, the Board is in receipt of a complaint concerning plumbing work performed by you and your company for Mark J. Neary, at his home located at 553 Bayview Drive in Toms River, New Jersey. As a result of this --

MR. KYNE: I'm sorry?

MR. DONOFRIO: As a result , this investigative inquiry is being called at the request --

THE WITNESS: I apologize.

MR. DONOFRIO: That's okay. Of the Board pursuant to New Jersey Statute 45:1-18 in order to obtain some background information about you and your company. And most importantly to establish the facts surrounding the complaint that we received. Depending upon the Board's review of this matter and outcome of this process, formal action may or may not be taken regarding your license.

I will lead the questioning, Board members may ask you questions as well. If you do not understand any question, please ask that the question be repeated or rephrased for you. You will be sworn under oath and a transcript will be made of this inquiry. The transcript may be used

if there any subsequent proceedings in this case. You may choose not to answer a question if that answer would implicate you in criminal proceedings.

After today's proceeding, the Board may find no cause for action or it may find grounds to issue a formal complaint, in which case, you'll be given a full opportunity to respond to the allegations of that complaint in accordance with the administrative procedures act.

Mr. Kyne, I see that you're here today represented by counsel. Sir, could we have your appearance for the record, please?

MR. SANTIAGO: Sure. Stewart Santiago, and I'm here representing James P. Kyne.

MR. DONOFRIO: Any questions from either gentlemen as to how we're going to proceed, the nature of the proceeding?

MR. SANTIAGO: No.

MR. DONOFRIO: Okay. If Mr. Kyne could be sworn in, please?

JAMES P. KYNE, 522 Miltonia Street, Linden, NJ 07036 , after having been duly sworn,

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(201) 825-1020 www.globalcourtreporting.com

1 did testify as follows:
2
3 EXAMINATION BY MR. DONOFRIO:
4 Q Mr. Kyne, before I ask you about the
5 complaint that we received from Mr. Neary, I'm
6 going to ask you some background information,
7 okay. Can you tell the Board when you received
8 your license, what year did you receive your
9 license?
10 A I'm sorry?
11 Q What year did you receive your plumbing
12 license?
13 A I think it was in '69, not a hundred percent
14 sure.
15 Q And do you know the plumbing license
16 number?
17 A I sure do.
18 Q Okay. What is it?
19 A 4616.
20 Q Okay. And how are you registered to
21 trade with the board?
22 A James P. Kyne Plumbing and Heating Company,
23 water main specialist.
24 Q And, Mr. Kyne, you are the bona fide
25 representative?

1 A Yes.
2 Q You own the company 100 percent?
3 A Yes.
4 Q No other owners?
5 A No.
6 Q Okay. And when was the company
7 established, what year?
8 A '69.
9 Q And your business address, if you would?
10 A 522 Miltonia Street, Linden, New Jersey.
11 Q And how many employees do you have?
12 A My son helps me part time, that's it.
13 Q And your son's name?
14 A Eugene Kyne.
15 Q Is Eugene a W-2 employee? Do you give
16 him a W-2 for tax purposes?
17 A No.
18 Q Okay. How do you pay Eugene?
19 A Cash.
20 Q And you indicated he works part time?
21 He works part time, Eugene?
22 A Part time, yes.
23 Q How many hours a week approximately?
24 A Well, in the past three years or four years,
25 I haven't done -- I don't know if I've worked

1 maybe 20 hours a month, if that.
2 Q So business has been slow?
3 A Well, the water company took over the
4 business.
5 Q The water company took over James P.
6 Kyne Plumbing and Heating?
7 A No, they took over -- I specialize and do
8 water service. And they took it over.
9 Q Okay. That was going to lead me into my
10 next question. How many jobs do you have
11 currently, pending or?
12 A None.
13 Q None. And what area of the state do you
14 mostly serve? Are you in the south Jersey?
15 A Mostly Union County.
16 Q Okay. Mr. Kyne, with regard to the
17 complaint that we received from Mr. Neary, did
18 your company, in fact, perform plumbing services
19 for Mr. Neary at 553 Bayview Drive in Toms River?
20 A What?
21 Q Did you perform plumbing work for Mr.
22 Neary at his residence?
23 A Yes, I did.
24 Q Okay. And when was that?
25 A It was on a Sunday, the 20th of July.

1 Q And what year, sir?
2 A 2010, I apologize.
3 Q That's okay. And who actually performed
4 the work? Was it yourself and your son?
5 A It was his father, Mark -- Joe Neary
6 requested it because I did it -- a couple years
7 ago, I did a big job for him, a fire line.
8 Q Okay. Joe Neary is Mark Neary's father?
9 A Right, sir.
10 Q I see, okay. Did you have a contract
11 with Mr. Neary to perform the plumbing work?
12 A No.
13 Q Can I ask you why?
14 A Well, it was done -- it was on the weekend
15 and it was done as a favor. I didn't want to go
16 there, under no condition. And the father
17 persuaded me to go. I shouldn't have, but I did.
18 Q I know you had said that it was on a
19 Sunday, the 20th. The information we have
20 indicates it was Sunday, July 25th, is that
21 possible?
22 A Yeah, that's probably it, I apologize.
23 Q It was awhile ago.
24 A Old age catching up with me.
25 Q Tell us about the job, what were you

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1 instructed to do, what happened, tell us your
2 version of events?
3 A My version is the fact that down there, I
4 wasn't a hundred percent sure that the water table
5 was so high, it's only 18 inches. And it was
6 leaking at the meter pit, they have outside meter
7 pits. And first thing I said to Mark Neary, I
8 said, let's turn the water on so we find out where
9 the leak is. No, no, no, you can't do that. Said
10 the leak is right down at the pit.
11 Well, I said, we have to do that because
12 I want to see myself because water -- if it's at a
13 particular area, you will hear percolation right
14 away as opposed to if it's further, it takes a few
15 seconds for it to run there. And he wouldn't let
16 me turn the water on and I should have left.
17 I said number two, before we do any
18 digging, I said we have to call for mark outs and
19 he looked at me like I got seven heads. He never
20 heard of such a thing. I said we have to call.
21 And he said no, the leak is just right down here.
22 I said okay, we'll start digging. I'm naïve, I
23 have dyslexia and autism. A lot of people say to
24 me how come you're so good and I can't read or
25 write.

1 I apologize, I don't want to go into
2 that. But I come from Ireland where we help
3 people. I also work Ground Zero for three years,
4 I have a paramedics license. My take in life is
5 we need each other. I am very naïve. My doctor
6 gives me hell, excuse my French.
7 So anyway, I continue and he was digging
8 with me and he said the water line is not coming
9 straight in, it's going off to the left. I said
10 before we do anything, let me go in -- there's no
11 basement there, I said let me go in to, and you
12 know, I couldn't get in to see where the water
13 line was coming up, to supply the house, I
14 couldn't do that. And it was one obstacle after
15 another and I must have sick because he wouldn't
16 let me turn the water on.
17 Finally, I said I'm leaving, that's it.
18 So let me turn it on, I found right away that the
19 water line was leaking further up the other side
20 of the pier, not where he said it was. So I said,
21 we're not doing any more work, I'll come back
22 tomorrow. I said I want this marked out. I said
23 if you give me your phone and the number of your
24 house, he wouldn't give it to me. He had no
25 number on the house. And when I came back Monday

1 morning with my son, he didn't have it marked out.
2 The rest is history.
3 I mean, when the mark out people did
4 come there, I went over close to that big pier and
5 the next thing was, it came down on top of me and
6 I couldn't work any more.
7 Q It collapsed on the next day?
8 A There was no footing at all, which is
9 illegal. I know what procedures is, I'm an
10 engineer, too. I know when you put up something
11 like that, you have to put footing on it.
12 Q So the hole, Mr. Kyne, collapsed the
13 next day when you returned?
14 A Yes.
15 Q When you returned the next day with
16 Eugene, it collapsed that day?
17 A Yes, exactly.
18 Q It appeared from your submission to the
19 Board, your written submission to the Board in
20 response to the complaint, that it had collapsed
21 that same day when you were digging with Mr.
22 Neary, that's not the case?
23 A That's the case, on the Monday.
24 Q Okay. Mr. Neary was not there at that
25 time?

1 A No, he was not. The mark out people had
2 just left. And he claims that I didn't call
3 for -- that we didn't call for mark out. And I
4 have a copy of that.
5 Q Did you pull a permit prior to doing
6 this work?
7 A No, it was on the weekend. And I had to
8 find out what it was all about to see what it is.
9 If the leak was where he said it was, which I knew
10 it wasn't, and 90 percent of the time, when it's
11 only repair, you don't need a permit.
12 However, because of the situation, we
13 have 72 hours to get a permit out. That's the
14 law.
15 Q Right.
16 A And I go strictly by the book. I'm not just
17 anybody, I know my stuff. And I apologize the way
18 I talk to the Board, I'm not trying to put you
19 down, no way.
20 Q Did Mr. Neary pay you anything? Mr.
21 Neary give you any money for the work that you
22 did?
23 A There was no money -- this was what you call
24 it gratis or whatever you want to call it.
25 Q So you had no intention of charging Mr.

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(201) 825-1020 www.globalcourtreporting.com

1 Neary?
2 A No.
3 Q Okay. I just want to make sure I
4 understand. Was it Mr. Neary who instructed you
5 to dig the hole or did you dig the hole --
6 A He instructed me where to dig. He said
7 because it's not over by the pier. I said I had
8 dug down about maybe 24 inches and was getting
9 soaked with water and everything was undermining.
10 And I said to him, I said let me turn the water on
11 and I'll tell you exactly where the leak is. When
12 I turned it on after a big fuss, the leak was
13 where I said it was.
14 Q Okay. Did you dig the hole against your
15 better judgment? Did you dig that hole against
16 your better judgment?
17 A Absolutely.
18 Q You did not want to dig the hole?
19 A No.
20 Q Why did you?
21 A Because I was stupid.
22 Q Mr. Neary had provided estimates
23 totalling about $9,000 to repair the damage that
24 was caused, I guess, to his driveway and to his
25 lamp post. Did he ever contact you with regard

1 to --
2 A No, he has never called me. In fact, I
3 think the Board needs to close their ears to this.
4 When I went there, he went up one side and the
5 other side with four letter words, despicable.
6 MR. DONOFRIO: That's all I have right
7 now.
8
9 EXAMINATION BY MR. VOROS:
10 Q Yeah, I want to, I'm a little confused
11 about the time line. You went there Sunday with
12 your son?
13 A No, he wasn't with me.
14 Q You went there Sunday by yourself?
15 A No, with Mr. Neary, he's the one that -- I
16 met him at a shopping mall.
17 Q So you and Mr. Neary went to Mr. Neary's
18 house. Was Mr. Neary's son there on Sunday?
19 A The Sunday was the -- the father was never
20 there.
21 Q Okay. You and Mr. Neary's son went to
22 the house on Sunday and looked at it. Was any
23 digging done that day?
24 A Yes.
25 Q Who did the digging?

1 A Both of us.
2 Q Okay. And then you dug a certain bit of
3 it and then you said we got to get underground
4 mark outs and you left?
5 A Right.
6 Q The following day, who was on the job,
7 you, Mr. Neary's son. Was your son there?
8 A No, his son was there for a few minutes. My
9 son was with me.
10 Q Okay. So you and your son were there
11 Monday and then Mr. Neary came and then left?
12 A Right.
13 Q You and your son started digging?
14 A We didn't do much digging, what we mostly
15 was doing was dumping water out.
16 Q So you and your son got there and the
17 underground mark out people were there?
18 A It took --
19 Q And you started bailing water out and
20 the lamp post fell on you?
21 A Yes.
22 Q Okay. In here, it says Mr. Neary's son
23 called Mr. Neary and told him that it collapsed
24 and everybody is leaving. Or was that your son
25 that called?

1 A My son called because I was in no condition
2 to -- I was paralyzed.
3 Q It fell on you?
4 A Yes.
5 Q Okay. So your son called Mr. Neary and
6 said there was a collapse and that you're leaving?
7 A Right.
8 Q Okay.
9 A I left all my tools there.
10 Q You left your tools there?
11 A All of them, never did get them back.
12 Q And never got them back. When you left,
13 did you put up any fencing?
14 A Yes, there was.
15 Q Or cover?
16 A I left all my cones there, my barricade.
17 Q Okay, good.
18 A Barricaded the hole. I don't know how,
19 don't ask me, it was a miracle.
20 Q Okay. Now, when did you return after
21 that Monday?
22 A Never did.
23 Q Never returned. You mentioned that you
24 talked -- he cursed you up and down?
25 A I went to the father's shop two weeks

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1 afterwards because I was paralyzed, I couldn't.
2 And I got the four letter words, excuse me,
3 gentlemen.
4 MR. McMANUS: From the father or rom the
5 son?
6 THE WITNESS: The son.
7 MR. McMANUS: The son was at the
8 father's shop?
9 THE WITNESS: He works for his father,
10 he's bookkeeper or whatever. But the language was
11 unbearable. I never drank or smoked in my life,
12 never did. I used to teach professional ballroom
13 dancing. I'm just good for nothing now.
14 Q So after you left on that Monday, you
15 didn't have any conversations for two weeks. In
16 that period of time, did the job get fixed?
17 A Yes, I was told the water company did it. I
18 was told, I don't know.
19 Q Right. Now, another question I got for
20 you is to keep your plumbing license up, you have
21 to attend continuing education class once every
22 two years. Do you remember who the instructor
23 was?
24 A Yes. It was there in Berkley Heights, I
25 can't think of their names. In fact, I had --

1 Q Do you have a certificate?
2 A I have. I'm supposed to attend the meeting
3 the 5th of May.
4 Q Do you recall in those classes
5 discussions about contract law and employee pay
6 where you're taking out, you know, state
7 unemployment and federal income tax and --
8 A They don't run that so much. They mostly go
9 by the codes.
10 Q They mostly go with the codes?
11 A Yes. Not too much --
12 Q How familiar are you with contract law
13 and wage and labor rules?
14 A I'm not familiar with that, I apologize. I
15 guess that's the trouble with being an idiot.
16 Q I wouldn't say that you're an idiot, but
17 what I would say is we would have a problem with
18 you doing business in New Jersey if you aren't
19 following those laws. Because if you had a
20 contract, we would probably not be sitting here.
21 And then the fact that you brought up that you pay
22 your son cash is not a good thing. Your attorney
23 will talk to you about that later.
24 A Well, I tell the truth.
25 Q I appreciate that, but I'm giving you

1 some advice that you got to look into that because
2 you can't do business in New Jersey under those --
3 A I'm retired now, that's it, I'm gone.
4 Q Have you considered shelving your
5 license?
6 A I'm renewing it.
7 Q You're not going to shelve it?
8 A I'm sorry?
9 Q Are you familiar with the program where
10 you can shelve your license?
11 A Never heard of it.
12 Q It's yours, but you can shelve it until
13 you decide to do business later?
14 MR. DONOFRIO: You could put it in
15 inactive status.
16 THE WITNESS: I didn't know that, I
17 apologize. People said to me because I'm such a
18 genius on the outside, why am I so stupid in book
19 work. I'm the one that showed them how to fix
20 that problem down in the gulf, how's that grab
21 you?
22 Q Wow, that's great.
23 A I know my stuff. I apologize that I don't
24 talk --
25 Q No, that's all right, that's fine?

1 A You can ask me the same thing over again,
2 and it's not going to change.
3 MR. VOROS: Right. Anybody else have
4 any questions or comments?
5 Did you hear what I said before, if you
6 don't follow contract law and the state wage and
7 labor rules, you're not going to have a license in
8 New Jersey. And I'm sure your attorney will
9 advise you afterwards about that, do you
10 understand that?
11 THE WITNESS: I'm -- I never heard of
12 that.
13 Q Sir, do you have any questions or
14 comments for us before we have --
15 MR. SANTIAGO: Do you have any questions
16 for them?
17 THE WITNESS: So I'm in violation of
18 that rule?
19 MR. DONOFRIO: Well, we're going to take
20 all the information, Mr. Kyne, and we'll
21 deliberate and we're going to make a
22 determination. And we'll let you know.
23 THE WITNESS: I didn't do that
24 deliberately.
25 MR. VOROS: No, we don't think you did.

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1 THE WITNESS: Thank you very much.
2 Thanks for being courteous.
3 MR. DONOFRIO: Mr. Santiago, do you have
4 anything you want to add? Any questions of your
5 client?
6
7 EXAMINATION BY MR. SANTIAGO:
8 Q I want to ask more background leading up
9 to the job. Now, Mark Neary was with you on
10 Sunday, correct?
11 A Yes.
12 Q And Mark is the son of Joe Neary?
13 A Yes.
14 Q And how long have you known Joe Neary?
15 A Oh, I would say about maybe six or seven
16 years.
17 Q And you've done business with Joe Neary
18 before; is that correct?
19 A Big time.
20 Q And you considered him a friend; is that
21 correct?
22 A Correct.
23 Q And is that the reason why you didn't
24 charge Joe when he asked you to do this job?
25 A Yes.

1 Q Okay.
2 A I didn't want to go, but I said okay, Joe.
3 Q And your son, Eugene, he helps you out
4 with your job when you need him; is that correct?
5 A Right.
6 Q Would you consider him to be an
7 independent contractor?
8 A You don't --
9 Q As opposed to a formal employee?
10 A No, he's just part time.
11 Q Just a part time helper?
12 A That's all.
13 Q Okay. You don't hire any outside
14 employees?
15 A No.
16 Q Who -- listen.
17 Please, listen to my question. You do
18 not hire any outside employees who are not family
19 members; is that correct?
20 A Right.
21 Q Okay. You've never done that?
22 A No.
23 Q And after the -- after the pier, is that
24 what you call it, the pier?
25 A Yes.

1 Q After the pier fell on top of you and
2 injured you, did you seek medical help?
3 A Yes.
4 Q The same day?
5 A Same day.
6 Q And you went to where?
7 A I went to Robert Wood Johnson Hospital.
8 Q Okay. And can you describe for the
9 Board your physical condition for the following
10 two weeks?
11 A For two weeks, I was walking around on
12 crutches, I couldn't hardly walk. I should have
13 been killed. There's no question about it. It
14 was a miracle. I guess because I say the rosary
15 so much. Mother Frangelica, I'm sure you know who
16 she is, twice a day.
17 MR. SANTIAGO: I think that's all I
18 have.
19 MR. VOROS: All right. Thank you for
20 coming in and we'll let you know our decision.
21 THE WITNESS: Thank you. And thank you
22 for being courteous because I'm not well educated.
23 MR. VOROS: That's all right, we don't
24 hold that against anybody.
25 MR. DONOFRIO: Thank you, gentlemen.

1 THE WITNESS: My biggest problem is this
2 thing.
3 MR. VOROS: Thank you for coming in.
4
5
6 (Whereupon the matter was concluded.)
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1 CERTIFICATE
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6 I HEREBY CERTIFY that the foregoing is a
7 true and accurate transcript of the testimony and
8 proceedings as taken stenographically by me at the
9 time, place, and on the date hereinbefore set
10 forth.
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13 Signature on File
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