

CITY OF NEW YORK
THE SPECIAL COMMISSIONER OF INVESTIGATION
FOR THE NEW YORK CITY SCHOOL DISTRICT

FRAUD AND INCOMPETENCE:
*WHY IT TOOK TWO YEARS
TO REPLACE FOUR WINDOWS AT P.S. 55*

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INTRODUCTION

In 1994, the Division of School Facilities ("DSF") awarded a Board of Education ("Board") contract to Rapid Waterproofing, Inc. ("Rapid") for both masonry repairs and the replacement of four windows at P.S. 55 in Queens.¹ Rapid successfully bid on the contract with the knowledge that it was incapable of performing the window installation. The contractor then failed to complete the work and submitted falsified documents to conceal this from DSF. At the same time, the masonry work that Rapid did perform was inadequate and is already showing signs of significant deterioration.²

Similarly, Mulukuntee Krishnappa, a "Supervisor of Building Maintenance" in the Inspection Unit at DSF, utterly failed to perform his duties in connection with his oversight of the window installation at P.S. 55, and he submitted fraudulent documentation to cover up his malfeasance.³

As a result of the inspector's failure to supervise, the contractor's incompetence, and their mutual deceit, the windows were not installed for two years after the contract was awarded, the work was performed by an unauthorized subcontractor, and the installation was done improperly: the windows were installed backwards or upside down, were not appropriately glazed, were not painted properly, are mismatched, and because they were not functioning properly, they had to be nailed closed.

¹From 1993 to 1997, the Board awarded Rapid approximately 33 school repair contracts involving "general contracting" and "masonry work." These contracts ranged from \$1,500 to \$13,700. In total, the Board paid Rapid approximately \$188,500 for school repairs.

²Due to Rapid's failure to perform on another DSF construction contract at P.S. 369 in Brooklyn, the contractor is currently barred from July 1997 until July 8, 1999 from bidding on contracts with the Board.

³Due to his supervision of an unrelated contract at another school, Krishnappa is currently assigned to administrative duties in the DSF office and is not inspecting construction sites.

Finally, when the inspector, the contractor, and the subcontractor were questioned at this office regarding the performance of the P.S. 55 contract and the fraudulent documentation submitted, they gave confusing testimony and entirely conflicting answers.

What follows are the results of our investigation into the performance and inspection of the Board's repair contract at P.S. 55 in Queens.

THE CONTRACT AT P.S. 55

Phase I -- The Masonry Repairs

In March 1994, DSF collected bids on a contract for both masonry repairs and window installation on the bulkheads⁴ at P.S. 55 in Queens. Rapid bid \$11,250 and was awarded the contract. In April 1994, the Board approved the purchase order, and DSF estimated that the project would require 60 days to complete.⁵

Ferenc Bocs was the original DSF inspector assigned to the P.S. 55 contract. After the preliminary site meeting was held in May 1994, Rapid and Bocs agreed that the masonry work would commence in June 1994. On July 12, 1994, Rapid filed a "Contractor's Application for Payment" to request \$8,000 for the masonry repairs at P.S. 55 "completed during period from June 22, 1994 to July 8, 1994." Inspector Bocs documented on his "Work Progress Report" ("progress report") that the work was completed, and on July 21, 1994, he approved Rapid's request for payment of \$8,000.

Although the masonry repairs were inspected and ruled satisfactory in July 1994, the work significantly deteriorated by spring 1997, when investigators videotaped the condition of the work site. The low quality of the masonry work performed by Rapid resulted in prematurely cracked and disintegrated mortar, which may not have been detectable at the time of inspection.

⁴The two bulkheads at P.S. 55 are brick structures on the roof of the school that serve as a protective barrier for the stairs and which allow access to the roof. See photograph of bulkhead on following page.

Phase II -- The Window Replacement

After Rapid finished the masonry repairs in July 1994, only the window replacement at P.S. 55 remained. For this final phase of the contract, Krishnappa was assigned as the DSF inspector.⁶

Between July and December 1994, there is no evidence that any work was done at P.S. 55 or that anyone from DSF either communicated with Rapid or visited the school. After inspector Bocs' final entry in July 1994 on the progress report, Krishnappa's first entry was on December 13, 1994. This entry, however, only indicates that DSF sent a letter to Rapid, directing the contractor to complete the work within ten days. Indeed, the only telephone call to Rapid that Krishnappa documented on his progress report occurred on January 20, 1995, but he only "left the message to call back."

Another four to five months lapsed before Krishnappa paid any attention to the P.S. 55 contract. His next progress report entries, on May 15, 1995 and June 21, 1995, however, do not describe any activity at the school site or with the contractor, but only reflect that DSF requested default proceedings against Rapid. Thus, based upon the inspector's documentation, for almost one year after the masonry repairs were completed at P.S. 55, there was no visit to the school or dialogue between the inspector and the contractor regarding the prolonged delay with the window replacement work.

⁵After an engineer from DSF surveyed the school site, the project was estimated to cost in the area of \$14,400 and to require 60 days to complete. Rapid's bid, however, was \$3,150 under the DSF estimate, and the contractor required almost two years to complete the contract.

⁶Ferenc Bocs was one of many DSF provisional employees who were terminated during the July and August 1994 budget cuts. The P.S. 55 contract was reassigned to Krishnappa sometime after these budget cuts.

According to the progress report, Krishnappa did not even visit the school site until a full year after the contract should have been completed. On August 9, 1995,⁷ he visited the school and noted that the window replacement was "not done as of this day."

The impetus for Krishnappa's first site visit was the default hearing scheduled by the Chancellor's Board of Review. The purpose of such a hearing is generally to allow contractors to explain why they should not be found in default on a contract. At the August 10, 1995 hearing for the P.S. 55 contract, however, the contractor gave no explanation on the record. Instead, after an "off-the-record" conversation, DSF⁸ agreed to allow Rapid to complete the window replacement at P.S. 55. The Chairman conducting the hearing stated that "there has been a resolution of the issues of this case . . . and the settlement is that Rapid Waterproofing, Inc. will do the work." The deadline for the window replacement was November 30, 1995, and Rapid's failure to complete the work by this date would result in a default recommendation without a further hearing.

The Unauthorized Subcontractor

After the default hearing, Rapid had approximately three and one-half months to complete the window replacement. The work, however, was not performed by the contractor, did not occur on time, and did not conform to the specifications of the contract. Krishnappa allowed an unauthorized subcontractor, Jaffary Construction Corporation ("Jaffary"), to complete the window replacement and did not inspect the subcontractor's work.

⁷Krishnappa's progress report entry for this visit at P.S. 55 appears to be dated "8/10/95." However, a "9" is written over the "10," to reflect "8/9/95."

⁸At the hearing, DSF was represented by Krishnappa and Shashi Dharia, an engineer.

According to Mohammad Choudhry, the president of Rapid, when he bid on the P.S. 55 contract, he knew he would only be able to perform the masonry repairs but not the window replacement. He intended to hire someone to install the windows for him. Choudhry, however, concealed this intention from DSF, and on the "Bid Form," he answered "no" to the question "do you intend to subcontract any portion of this Contract."

Choudhry claimed that he was unable to find anyone to perform the window replacement work during the entire year between the masonry repairs and the default hearing. Shortly after the default hearing, he discussed this problem with Krishnappa, who offered a solution -- the inspector recommended Syed Shah, president of Jaffary, to complete the work for Rapid. Shah also confirmed with investigators that Krishnappa contacted him about completing the window replacement job for Rapid at P.S. 55.⁹

Based upon Krishnappa's recommendation, Choudhry and Shah negotiated a price over the telephone, and after reaching an agreement, they met with the inspector. At that meeting, Shah supplied a letter, dated September 14, 1995, in which Jaffary identified itself as a "sub-contractor" and agreed to install four wooden windows at P.S. 55 on or before October 30, 1995. In the letter, Rapid agreed to pay Jaffary \$5,500, in two installments, with the last payment due after the Board approved the work. According to Choudhry, he gave Shah the first installment of \$2,500, and Shah signed the Letter of Agreement in Krishnappa's presence.

After the initial payment, Jaffary started the bulkhead window replacement at P.S. 55, but did not complete the work by either the unofficial October 30, 1995 deadline or the DSF November 30, 1995 deadline. According to both Choudhry and Shah, only two

⁹According to Shah, he knew Krishnappa from other DSF projects. In fact, Krishnappa had even referred Shah for another DSF construction contract that was awarded to Tenalp Construction.

of the four bulkhead windows were installed by November 30, 1995, and the last two windows were not installed until sometime in 1996, a significant time after the deadline. In fact, Shah calculated that the last two windows were not finished for another six months, but Choudhry estimated that it took almost one year. Nonetheless, Rapid was not held in default for failing to complete the work by the deadline.

RAPID'S FRAUDULENT DOCUMENTS

Despite the fact that the window replacement was not completed by the new deadline of November 30, 1995, Rapid was not held in default because, with Krishnappa's assistance, the matter was concealed. Both Choudhry and Krishnappa submitted documents to the Board that falsely represented that the work was finished on time.

On January 30, 1996, with only two of the four windows replaced at P.S. 55, Choudhry submitted an "Application for Payment" to DSF for the full \$3,250 balance of the contract. On this application, he falsely indicated that Rapid finished the window work between November 10 and November 15, 1995, which was prior to the November 30, 1995 deadline. Choudhry later admitted that when he prepared the application for final payment, he knew that the window installation was, in fact, only half finished.

In addition to claiming that the work was timely, Choudhry prepared his "Payroll Report" in a manner which falsely indicated that Rapid performed the window installation. Specifically, by a signed certification, which states that "the above information represents wages and fringe benefits paid to all persons employed by my firm for construction work upon the above project during the period shown," Choudhry listed himself and his vice president, Tariq Chaudhry, as the only laborers. On the

payroll report, there is no reference to Jaffary Construction, Shah, or Shah's employees who actually performed the work. It is unknown what wages and benefits, if any, were paid to the laborers who actually installed the windows at P.S. 55. It is undisputed, however, that neither Choudhry nor Chaudhry did the work.

When confronted with the payroll report, Choudhry offered the explanation that it was only supposed to be a "sample" for Shah to use in preparing his own payroll report. He first claimed that he gave this sample to Shah directly and denied attaching it to his application for payment. He then acknowledged that he gave the report to Krishnappa, but continued to assert that he only intended it to be a sample for Shah. Shah, however, neither prepared nor submitted any paperwork for the window installation, and this payroll report was attached to the application for final payment that Choudhry submitted to DSF. Obviously, Choudhry's exclusion of the true laborers on the payroll report served to conceal the existence of the subcontract from the Board.

Furthermore, on the payroll report for the window work, Choudhry listed his social security number as "064-78-8211." On the payroll report that he submitted for the masonry repairs at P.S. 55, he listed his social security number as "064-78-8591." Neither of these numbers, however, is his actual social security number. Choudhry explained that he made a mistake both times and admitted that his social security number is really "064-78-8569."

However, Choudhry has repeatedly written these same two social security numbers by "mistake" on payroll reports submitted to DSF for previous contracts. We reviewed a sample of payroll reports that Rapid submitted to DSF between 1993 to 1995 for construction contracts. These reports reflect that Choudhry used social security

number "064-78-8211" for this P.S. 55 contract; he used his real social security number "064-78-8569" for a contract at P.S. 85; and he used social security number "064-78-8591" for contracts at Grover Cleveland High School, P.S. 156, P.S. 199, Newtown High School, P.S. 40, P.S. 130, P.S. 11, and P.S. 49. When confronted with one example from the payroll report that he submitted for work at P.S. 130, he explained that it was yet another mistake due to being tired when completing the paperwork at night.

With Choudhry's false statements on the payroll report and on his application for payment, he still needed the inspector to corroborate his paperwork in order for the final payment to be approved on the P.S. 55 contract.

KRISHNAPPA'S FRAUDULENT DOCUMENTS

To approve the contractor's payment, Krishnappa had to match his paperwork to Rapid's false assertion that the window installation was completed by November 15, 1995, and he had to claim that he actually inspected the work.

First, in a handwritten memo, Krishnappa declared that "the work has now progressed to substantial completion as of this date Nov. 15, 1995." An identical typed version of this document was then prepared. Second, consistent with this memo, Krishnappa recorded on his work progress report, "11/15/96[sic]¹⁰ 100% all work completed and satisfactory."

Finally, without ever inspecting the windows, Krishnappa signed and approved the application for payment on June 19, 1996. On the application, he wrote "all work

¹⁰Krishnappa admitted that the date of "11/15/96" on the work progress report was supposed to be November 15, 1995, which conforms to the handwritten memo that he dated November 15, 1995. He recorded this entry, however, sometime in January or February of 1996, after he returned from India.

completed and satisfactory, payment approved in full \$3,250." He signed under a certification that stated "I have **examined** the work performed and/or materials furnished for which the foregoing payment is requested and find that the said work performed and/or materials furnished is **in conformity with the contract and specification requirements**" (emphasis added). To this application, Krishnappa attached a copy of his November 15, 1995 typed memo and forwarded the package of documents to the Bureau of Engineering Audit ("BEA") for final approval of payment.

KRISHNAPPA'S RESPONSE

Krishnappa was interviewed by this office twice, and both times he gave confusing, conflicting, and untruthful answers. On both occasions, however, he admitted that he did not inspect the windows at P.S. 55 and he falsified paperwork to have the payment approved.

The First Interview

In his first interview, Krishnappa asserted that he had someone else visit the work site at P.S. 55, but admitted that he never inspected the windows before approving payment. According to Krishnappa, after the default hearing, he went to India on vacation from October 30, 1995 to December 10, 1995. He claimed that before he left for India, he sent an "assistant" whose name he could only recall as either "Camel" or "Carmen," and who is no longer working at DSF, to inspect the windows while he was in India. He stated that the contractor had installed two windows by December 1995, and sometime in January 1996, he called the custodian of the school who informed him that the work was completed. Based solely upon this phone call, without inspecting the work, he approved the contractor's request for payment, and sent the paperwork to BEA.

When shown a typed version of the memo dated November 15, 1995, that indicates the work was substantially completed, Krishnappa explained that the same assistant "Carmen" must have prepared it. He quickly stated that he relied on this memo to make the corresponding entry on his progress report, "100% all work completed and satisfactory."

Krishnappa explained that five months lapsed after the contractor requested payment because his file was misplaced until June 1996. When he found it in another cabinet, he signed the request for payment. Despite the fact that this interview focused on the installation of the windows at P.S. 55, Krishnappa never mentioned the subcontract with Jaffary or Shah.

The Second Interview

Krishnappa's version of events changed in his second interview, which was under oath, yet he still admitted that he failed to inspect the windows and submitted false paperwork. Contrary to his statement in the first interview that he sent Carmen to inspect the windows, he admitted that, prior to leaving for India, he did not reassign the case or leave any instructions with anyone to follow up with the work. When he returned from India, sometime in December 1995, he called and spoke to a laborer or custodian helper at the school who indicated that the windows were done. He did not speak to the contractor or visit the school. In January 1996, when the contractor requested payment, the file was not misplaced, but merely sat on his desk for five months until he approved it in June 1996. He approved the payment without actually inspecting the work because at that time he had a lot of work, his wife was having "mental problems," and he was "drinking a lot."

When again shown the typed November 15, 1995 memo, which in the first interview he claimed was authored by Carmen, Krishnappa stated that he did not write it, did not draft it, and did not know who wrote it. However, he repeated his explanation that he relied on this memo for his progress report when he made his entry, "100% of the work completed and satisfactory."

Confronted next with the original handwritten version of the typed memo that he had just denied authoring, Krishnappa identified his handwriting and admitted that he wrote the memo. He claimed he wrote the memo before he went to India in anticipation that the work would be completed by November 15, 1995. He then postulated that someone must have picked up the memo from his desk and turned it in for him. Apparently, he forgot that both the handwritten note and the typed version were in his original file, and he had even attached a typed copy with the paperwork he forwarded to BEA in June 1996.

As in the first interview, Krishnappa never volunteered any information about the subcontract with Jaffary. When initially questioned in general about Syed Shah and Jaffary Construction, he claimed he did not know the person or the company and never recommended anyone for DSF work. When directly asked if he approached Jaffary to install the windows at P.S. 55, he finally admitted that he referred Shah to Choudhry, but he claimed that he did not know Shah agreed to do the work. He then added that "somebody told [him]" in January or February 1996 that Shah did the work. Krishnappa again clarified this statement and said "maybe Shah" told him. Finally, he claimed that Shah told him about the subcontract when they ran into each other one day on the subway. When shown the September 1995 Letter of Agreement between Rapid and

Jaffary, which, according to Choudhry, was signed in his presence, Krishnappa denied ever seeing it.

THE FRAUDULENT 'WOOD PRESERVATIVE CERTIFICATE'

After Krishnappa approved Rapid's request for payment on June 19, 1996, he forwarded the payment request to BEA for final approval. On July 17, 1996, BEA sent an "exception letter" back to DSF withholding payment because "the contractor did not submit the 'wood preservative certificate' for the new double hung wood windows" as required by the contract specifications. Krishnappa forwarded to BEA a letter describing the use of a wood preservative treatment for the windows at P.S. 55. BEA questioned the authenticity of the letter and referred the matter to this office.

The document submitted to BEA is a letter, dated August 20, 1995, with the letterhead of "Bryant Lumber and Building Supply Corp." ("Bryant"). The letter is written to Rapid and states that Bryant prepared the wooden windows for P.S. 55 and that the "sash, parting strips, and frame all has been treated with DAP water based Clear Wood Preservative." The signature on the letter is illegible, but below it is typed "president."

This office interviewed Eric Koch, the president of Bryant and showed him a copy of the letter. Koch signed an affidavit stating that he did not write or draft the letter, it does not represent Bryant's past or present letterhead, he did not sign it, and he did not authorize anyone to sign his name on the letter. Moreover, according to Koch, Bryant does not manufacture windows. Koch has to special order wooden windows, which are made out of pine, but are not waterproofed.

When Krishnappa, Choudhry, and Shah were shown a copy of the letter, they gave conflicting answers about the derivation of this wood preservative letter. According to Choudhry, Krishnappa did not ask him for a wood preservative certificate but asked Shah. Only when Shah began asking Choudhry for final payment did Choudhry learn from DSF that the certificate was required.¹¹ Choudhry then informed Shah that he had to submit a letter about the wood preservative. Choudhry claims that Shah faxed him a signed copy of the letter, and a week or so later, Choudhry faxed it to DSF. Shah, however, denied ever seeing the wood preservative letter and claimed to know nothing about it.

In his first interview, Krishnappa stated that after he received the BEA letter requiring the wood preservative certificate he sent a letter to Rapid requesting it. However, there is no such letter from the inspector to the contractor requesting this certificate in any of the DSF files we reviewed. Krishnappa claimed that Rapid sent him the wood preservative letter, which he forwarded to BEA.

During his second interview, Krishnappa stated that after he received BEA's letter, he telephoned Choudhry, asked for the certificate, and gave Choudhry the fax number in the inspection unit. About ten days later, Krishnappa claimed that he received the Bryant letter by fax, then forwarded it to BEA. He identified a photocopy of the Bryant letter as the document he received by fax. However, when shown the original copy of the letter that was in the DSF file, which contained an original blue ink signature and was obviously not a faxed copy, Krishnappa immediately altered his version, stating

¹¹Choudhry claimed that he spoke with someone named "Maria" at DSF who informed him that the certificate was required.

that he did not receive the letter by fax, and did not remember exactly how it came into his possession.

Clearly, Krishnappa, Choudhry, and Shah were not truthful about the wood preservative letter. Choudhry claimed Shah sent it, but Shah denied ever seeing the letter, while Krishnappa stated Choudhry somehow supplied it. What is certain is that Bryant did not prepare the letter.

THE CONDITION OF THE WINDOWS AND ROOF AT P.S. 55

Due to Krishnappa's failure to inspect the work site and enforce satisfactory performance of the contract, the bulkhead windows did not meet the requirements in the specifications, and the roof area was left in an inexcusable condition. In spring 1997, investigators videotaped and photographed these windows and the roof area at P.S. 55. All four windows do not match. Two different types of windows were installed. They are not properly glazed, some windowpanes are not entirely connected to the window frame, and they are not painted correctly. Indeed, some of the windows are installed backward or upside down, and the custodian had to nail the windows closed because they did not open, close, or lock properly. As a result, the Board will once again have to allocate funds to replace the bulkhead windows at P.S. 55.

The contractor also failed to clean the trash and construction debris after completing the window repairs. Tubes of caulking material, drinking bottles, paper, pieces of wood, and the old windows were left on the roof. Investigators removed samples of the wood from these old windows that were left on the roof and submitted them to a laboratory for lead analysis. The results of the analysis showed that the samples from the frame, sill, and sash, all exceeded the HUD criteria of 0.5% lead. Upon

the chemist's assessment that the window debris could still be disposed of as non-hazardous construction debris, investigators relayed this information to the school custodian with instructions to clean the roof. ¹²

CONCLUSIONS AND RECOMMENDATIONS

Mulukuntee Krishnappa

Mulukuntee Krishnappa entirely abandoned his duties as the DSF inspector assigned to the window installation portion of the P.S. 55 contract. Indeed, he concealed this dereliction by submitting fraudulent documentation. Without ever inspecting the site, he approved final payment, and misrepresented that the work was timely, satisfactory, and performed by the contractor. On the contrary, the work he approved did not even come close to satisfying the contract specifications, and his attempt at an excuse, that he was having problems with his wife and drinking, is unacceptable. Furthermore, it was clear during his confusing and conflicting testimony during both interviews that he was not truthful about the documentation, even when questioned under oath. It is therefore the recommendation of this office that Krishnappa's employment with the Board be terminated. In addition, given that he was responsible for approximately 200 schools in Queens and Brooklyn during the time of his admitted drinking problem, we also recommend that the Board review for possible neglect and malfeasance other school sites that Krishnappa was assigned to supervise.

¹²Despite the laboratory's ability to analyze the lead content of the window debris, there was no practical method for the laboratory to test the windows installed by Jaffary for the presence or absence of the "DAP water based Clear Wood Preservative."

Rapid Waterproofing, Inc.

From the initial stage of bidding to the final step of requesting payment, Rapid was dishonest about the window installation contract at P.S. 55. The contractor bid on a window contract that he was incapable of completing, concealed the existence of a subcontract, and submitted false documents, including a payroll report, which indicated that Rapid performed the work on time. Moreover, when questioned about the documents submitted, the president of Rapid, Mohammad Choudhry, was less than truthful when he testified under oath, and as with Krishnappa, his testimony was confusing and contradictory.

While Rapid is currently barred from July 1997 to July 8, 1999 from bidding on contracts with the Board due to its failure to perform on another DSF construction contract at P.S. 369 in Brooklyn, we recommend that Rapid be permanently barred from bidding on contracts with the Board and the City, and that this case be considered should Rapid seek to renew its registration as an eligible bidder for the Board.

Jaffary Construction Corporation

Jaffary's installation of the windows at P.S. 55 proved to be a complete failure. As a result of Jaffary's incompetence, the Board will have to spend additional funds in order to correct the windows. Although Jaffary was not the official contractor with the Board for the P.S. 55 contract, it nonetheless assumed the responsibilities of the window portion of the contract and performed the work in an unacceptable manner. We therefore recommend that this case be considered should Jaffary or Syed Shah apply to register as an eligible bidder for the Board.

Referral to the Queens County District Attorney

This matter will be referred to the Queens County District Attorney's Office for possible criminal prosecution.