

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE & ALTERATION CONTRACTORS**

**DEPARTMENT OF LABOR &
ECONOMIC GROWTH,
BUREAU OF COMMERCIAL SERVICES *ex rel*
FRED AND SHERRYLE PULASKI**

**Docket No. 2008-411
Complaint No. 302896**

Complainant,

v

**GRAHAM YAGLE HOMES, INC
SANDEE LYN YAGLE, QUALIFYING OFFICER
License No. 21-02-161341**

Respondent.

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on November 18, 2008;

WHEREAS, the Board having received a Hearing Report under MCL 339.514 for this case and the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of James Sisk, Administrative Law Judge, dated July 29, 2008;

WHEREAS, the hearing report is hereby incorporated by reference;

WHEREAS, the Respondent having been found in violation of the Michigan Occupational Code, PA 299 of 1980, hereafter the "Code," or rules promulgated there under, now, therefore,

IT IS ORDERED, that the following penalties authorized by Section 602 of the Code are imposed:

1. Respondent shall pay a FINE in the amount of \$1,000.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 302896 must be clearly indicated on the check or money order, and the payment sent to the Department of Labor & Economic Growth, Administrative Services Division, P.O. Box 30018, Lansing, MI 48909.

2. Respondent shall pay RESTITUTION in the amount of \$5,000.00 to Fred and Sherryle Pulaski, by certified check made payable to Fred and Sherryle Pulaski, and mailed to 5122 Ne-Li-Wa Lane, Traverse City MI 49684, within 60 days from the mailing date of this Final Order.

3. Respondent's failure to comply with each and every condition of this Final Order shall result in REVOCATION of any and all Article 24 licenses held by Respondent or Respondent's Qualifying Officer. No application for licensure, relicensure, reinstatement or renewal shall be considered or granted by the Department until all Final Orders of the Board have been fully complied with. Respondent's Qualifying Officer may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 license held by Respondent or Respondent's Qualifying Officer is in suspended or revoked status.

4. Respondent shall submit in writing to the Michigan Department of Department of Labor & Economic Growth, Bureau of Commercial Services, Administrative Services Division, P.O. Box 30018, Lansing, Michigan 48909, proof of compliance with each and every requirement of this Final Order, in a form acceptable to the Department.

This Final Order shall not be construed as limiting the Department of Labor & Economic Growth, any other agency of the State of Michigan, or any individual as to the use of a lawful method of collection of the payment imposed by this Final Order.

Failure to comply with the provisions of this Final Order is considered a violation of the Code pursuant to Section 604(k) and may result in further disciplinary action.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this 15th day of January, 2009.

BY: 
Mark T. Glynn, Chairperson

Date mailed: 1-15-09

Proof of Compliance should be filed with:

Department of Labor & Economic Growth, Bureau of Commercial Services
Administrative Services Division
P.O. Box 30018
Lansing, MI 48909

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2008-411
Bureau of Commercial Services, Petitioner	Agency No.	302896
V	Agency:	Bureau of Commercial Services
Graham Yagle Homes, Inc. Sandee Lyn Yagle, Qualifying Officer, Respondent	Case Type:	Sanction

Issued and entered
this 29th day of July 2008
by James Sisk
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Request for Hearing on April 2, 2008. Pursuant to the Request for Hearing, the State Office of Administrative Hearings and Rules (SOAHR) issued a Notice of Hearing dated April 7, 2008. The Notice of Hearing advised the parties that a contested case hearing had been scheduled for May 21, 2008.

The Administrative Law Judge (ALJ) held hearings in this matter on May 21, 2008, June 26, 2008, and July 7, 2008. John P. Mack, Assistant Attorney General (AAG), appeared on behalf of Petitioner. William M Conklin, Attorney at Law, appeared and represented Respondent. Sandee Lyn Yagle, Qualifying Officer, also appeared and participated on behalf of Respondent. Also participating in one or more of the hearings as witnesses were Sheryle and Fred Pulaski, Complainants, Ryan Conklin, subcontractor, and Russell Schlarf, local building inspector.

The hearing resulted from allegations set forth in a Formal Complaint issued on December 21, 2207. The Complaint alleged that Respondent violated the Michigan Occupational Code (Code), 1980 PA 299, as amended, being MCL 339.101, et seq. and failed to comply with the Michigan Residential Code of 2000, as well as the Administrative Rules promulgated pursuant thereto.

During the hearings conducted in this matter, Petitioner admitted the following exhibits into the record:

Petitioner's Exhibit #1	Contract to Build House
Petitioner's Exhibit #2	Seven Photographs of Alleged Code Violations in Roof Construction
Petitioner's Exhibit #3	Single Photograph of Alleged Code Violation in Cement Deck Support
Petitioner's Exhibit #4	List of Items Left Unfinished
Petitioner's Exhibit #5	Complainant's Complaint dated March 30, 2006
Petitioner's Exhibit #6	Field Correction Notice dated May 24, 2004
Petitioner's Exhibit #7	Field Correction Notice dated August 27, 2004
Petitioner's Exhibit #8	Field Correction Notice dated April 25, 2005
Petitioner's Exhibit #9	Field Correction Notice dated June 13, 2005
Petitioner's Exhibit #10	Building Inspection Report dated April 19, 2006

ISSUES AND APPLICABLE LAW

This matter raises the general issue of whether Respondent violated the Codes and/or the Rules. Specifically, this matter raises the issue of whether Respondent violated a rule of conduct in practicing an occupation contrary to Section 604 (c) of the Code, MCL 339.604 (c), and the Rules of the Michigan Residential Code, contrary to 1979 AC, R 338.1551 (5). That Section of the Code and those Rules state in pertinent part:

Rule 51.

(5) Standards of construction shall be in accordance with the local building code, or in the absence of a code in accordance with the building code of the nearest political subdivision having a building code.

R101.3 of the Michigan Residential Code (MRC) provides:

The purpose of this code is to provide minimum requirements to safeguard the public safety, health and general welfare, through affordability, structural strength, means of egress facilities, stability, sanitation, light and property from fire and other hazards attributed to the built environment.

R403.1.4 (#3) of the MRC provides:

All exterior footings and foundation systems shall extend 42 inches below actual grade.

Exceptions:...

...3. Upon evidence of the existence of any of the following conditions, the building official may modify the footing depth accordingly:

- a. Freezing temperatures (freezing degree days).
- b. Soil type
- c. Ground water conditions
- d. Snow depth experience
- e. Exposure to the elements.
- f. Other specific conditions identified by the building official that may affect the foundation system.

R903.1 of the MRC provides:

Roof decks shall be covered with approved roof coverings secured to the building or structure in accordance with the provisions of this chapter. Roof assemblies shall be designed and installed in accordance with this code and the approved manufacturer's installation instructions such that the roof assembly shall serve to protect the building or structure.

R905.2.6 of the MRC provides:

Asphalt shingles shall have the minimum number of fasteners required by the manufacturer. For normal application, asphalt shingles shall be secured to the roof with not less four fasteners per strip shingle or two fasteners per individual shingle. Where the roof slope exceeds 20 units vertical in 12 units horizontal (20:12), special methods of fastening are required. For roofs located where the basic wind speed per Figure R301.2(4) is 110 mph (177 km/h) or greater, special methods of fastening are required. Special fastening methods shall be tested in accordance with ASTM D 3161 modified to use wind speed of 110 mph (177 km/h).

Shingles classified using ASTM D 3161 are acceptable for use in wind zones less than 110 mph. Shingles classified using ASTM D 3161 modified for use in all cases where special fastening is required.

R905.2.7 of the MRC provides:

For roof slopes from two units vertical in 12 units horizontal (17-percent slope), up to four units vertical in 12 units horizontal (33-percent slope), underlayment shall be two layers applied in the following manner. Apply a 19-inch (483 mm) strip of underlayment felt parallel with and starting at the eaves, fastened sufficiently to hold in place. Starting at the eave, apply 36-inch-wide (914 mm) sheets to the underlayment, overlapping successive sheets 19 inches (483 mm) and fastened sufficiently to hold in place. For roof slopes of four units vertical in 12 units horizontal (33-percent slope) or greater, underlayment shall be one layer applied in the following manner. Underlayment shall be applied shingle fashion, parallel to and starting from the eave and lapped 2 inches (51 mm), fastened sufficiently to hold in place. End laps shall be offset by 6 feet (1829 mm).

R905.2.7.1 of the MRC provides:

In areas where the average daily temperature in January is 25°F (-4°C) or less or when Table R301.2 (1) criteria so designates, an ice barrier that consists of a (sic) least two layers of underlayment cemented together or of a self-adhering polymer modified bitumen sheet, shall be used in lieu of normal

underlayment and extend from the eave's edge to a point at least 24 inches (610 mm) inside the exterior wall line of the building.

FINDINGS OF FACT

Based upon the pleadings, testimony, and exhibits admitted into the record, the ALJ finds that the following facts have been established:

1. Respondent maintained a valid residential builder's license issued pursuant to the Code, 1980 PA 299, as amended, Article 24, MCL 339.2401-2412 until May 31, 2005, when the license lapsed.
2. On October 3, 2003, Respondent entered into a written contract with Complainants, Fred and Sheryle Pulaski, to build a residence for them at a price of \$245,000.00.
3. Respondent commenced construction in November 2003 and anticipated completing the construction by Fall 2004.
4. Numerous change orders requested by Complainants delayed construction.
5. On May 24, 2004, Schlarf, a local building inspector, issued a Field Correction Notice (Exhibit #6) to Respondent after an inspection of the property, which required Respondent to add bracing on some trusses, add solid point load blocking and studs to the floor and basement walls, add blocking panels in the floor, get electrical, plumbing, and mechanical approvals, and have a full framing inspection performed.
6. Respondent corrected the problems cited by Schlarf.
7. By Summer 2004, Complainants complained to Respondent about leaks in the roof, evidenced on the wall separating the kitchen from the dining room, around a dormer window, and an inside wall of the sunroom.
8. On August 27, 2004, Schlarf inspected the property again and found that Respondent needed to add truss hangers, web braces, nail webs, solid blocking, submit floor layout, and fire block the stairwell wall below the guest room ceiling and the top of the fireplace at ceiling level.
9. Respondent made the corrections.
10. By September 2004, Employer ceased construction work because of the numerous disagreements with Complainants over problems with the construction, and Complainants refusal to pay Respondent for some of the work performed.

11. Because of the remaining problems, Complainants experienced difficulty obtaining an occupancy permit and had to complete some of the construction through other contractors before they could obtain a temporary occupancy permit that allowed them to move into the residence on August 5, 2005.
12. Complainant, Sheryle Pulaski, testified that she and her husband expended another \$200,000 to complete the necessary repairs to allow them to take up occupancy in the residence.
13. Complainant, Sheryle Pulaski, testified that ice buildups occurred in locations on the roof and along the eaves and down the side of the house where Schlarf found ice protection to be missing.
14. On April 19, 2006, Schlarf conducted a final building inspection, and he found that the only code violation remaining involved a failure to complete the roof underlayment, and some roof shingles had been attached improperly because a few nails had not been nailed flush.
15. Schlarf also witnessed water stains on the library ceiling at the time of the inspection.
16. The evidence established that Respondent took up each complaint of a leak with the subcontractor performing the roofing work, Bryan Conklin.
17. Conklin testified that he checked the property each time Respondent notified him of a possible leak, even staying overnight in the residence during rainstorms on at least two occasions.
18. Conklin testified that he never found any evidence of the roof leaking, although he once discovered some rock salt on the floor of the residence that had melted.
19. Conklin testified that he remained willing and able to make any repairs to the underlayment or to fix the ice shield, but Respondent notified him that Complainants barred him from coming onto the property any longer.
20. Depending upon the extent of the need to make repairs, Conklin estimated that repair of the roof should cost no more than \$5,000.00.
21. Sheryle Pulask, Complainant, testified that she obtained two estimates of the cost to have the entire roof replaced, which was approximately \$17, 000.00.
22. Sandee Yagle testified that the continuing change orders and disagreements over construction issues with Complainants, coupled with Complainant's refusal to release payments as agreed at various stages of the construction, made the contract unprofitable, resulted in an inability of Respondent to continue to pay subcontractors, forced Respondent to stop work, and forced it to go out of business.

23. Yagle testified, also, that Respondent made numerous attempts to correct the complained of problems with the roof, but Complainants finally barred it and Conklin from coming on the property.
24. Yagle testified that Respondent continued to remain ready to correct any problems or leaks related to the roof.
25. Yagle testified that all subcontractors employed by Respondent had been paid in full, and no liens had been filed against the property by any of them.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. *8 Callaghan's Michigan Pleading and Practice (2d. ed.)*, Section 60.48, page 320.

The burden of proof is upon the Petitioner to establish by a preponderance of the evidence that grounds exist for the imposition of sanctions pursuant to 1990 AACRS, 1763. Based upon the record as a whole, including Petitioner's Exhibits #1-#10, the ALJ makes the following conclusions of law:

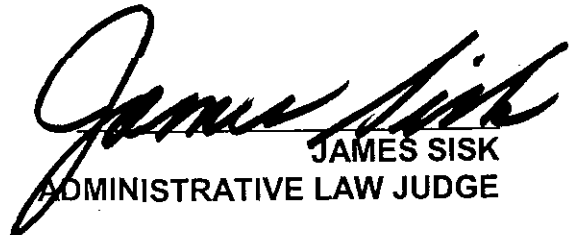
1. Respondent made good faith attempts to perform the contract as required and complete the construction.
2. Numerous change orders made by Complainants interfered with and delayed the completion of the construction by Respondent.
3. Numerous objections by Complainants about the quality of the work and on going refusals by Complainant to release loan payments to Respondent at agreed upon stages of construction completion forced Respondent to quit construction before its completion because it could no longer pay its subcontractors.
4. While Respondent could no longer afford to pay its subcontractors by September 2004, it did manage to pay all subcontractors in full by the time it ceased work on the residence, and no mechanic's liens were filed or remained unpaid by the time it ceased work on the residence.
5. Although problems arose with the depth of the deck pad failing to meet the requirements of MRC R403.1.4, Complainants made the necessary repairs at their own expense and did not allow Respondent an opportunity to make the repair.

6. Although Complainants alleged that they spent an additional \$200,000.00 in correcting the workmanship and code deficiencies, which remained when Respondent ceased construction, no documentation of those costs have been submitted as exhibits in this matter.
7. By failing to install the ice shield and underlayment of the roof properly, or to install some of the roof shingles properly, despite numerous attempts to correct the situation, Respondent violated Section 604 (c) of the Code, MCL 339.604 (c), and MRC R903.1, R905.2.6, R905.2.7, and R905.2.7.1.
8. Since Complainants failed to produce as exhibits the estimates for the repairs needed to the roof to bring it into compliance with the applicable provisions of the MRC, Conklin's testimony of the maximum cost of such repairs, \$5,000.00, constitutes the only credible, competent evidence of the cost to correct the code violations.

RECOMMENDATIONS

Based upon the Findings of Fact and Conclusions of Law contained in this report, the ALJ recommends to the Board:

1. Require Respondent to pay Complainants \$5,000.00 to cover the cost of repairing the roof.
2. Do not require Respondent to make any additional restitution to Complainants for other, alleged expenditures to correct alleged workmanship and code violations because Complainants have not submitted any appropriate, substantial documentation to support the testimony presented as to the total cost of such corrections or the specific amount paid for each repair.
3. Payment by Respondent of a civil fine in the amount of \$1,000.00.
4. In the event that Respondent fails to pay restitution and the civil fine within 60 days following the issuance of the Board's final order, no new or renewal licenses or registrations should be issued to Respondent until those amounts have been paid in full.


JAMES SISK
ADMINISTRATIVE LAW JUDGE

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 29th day of July, 2008.



Julie Barbee

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