

**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*
VIDA TEBBY**

**Docket No. 2008-998
Complaint No. 307304**

Complainant,

v

**JAMES SCOTT ERICKSON,
License No. 21-01-173848**

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 September 9, 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 \$7,500.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 307304 must be clearly indicated on the check or money order, and the payment sent to the Department of Labor & Economic Growth, Bureau of Commercial Services, Administrative Services Division, P.O. Box 30018, Lansing, Michigan 48909.**
- 2. Respondent shall make RESTITUTION to Vida Tibby in the amount of \$1,744.00 by certified check made payable to Vida Tibby and mailed to 1530 Glenwood Lane, Ishpeming, MI 49849 within 60 days from the mailing date of the Final Order.**

3. The license of Respondent, and any and all Article 24 licenses held by Respondent shall be and hereby are IMMEDIATELY REVOKED. Respondent may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 license held by Respondent is in suspended or revoked status. 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.

4. Respondent's failure to comply with each and every condition of this Final Order within 60 days shall result in CONTINUED REVOCATION of any and all Article 24 licenses held by Respondent.


5. 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.	2008-998
Bureau of Commercial Services, Petitioner	Agency No.	307304
V	Agency:	Bureau of Commercial Services
James Scott Erickson, Respondent	Case Type:	Sanction

Issued and entered
this 9th day of September, 2008
by James Sisk
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Request for Hearing on July 28, 2008. Pursuant to the Request for Hearing, the State Office of Administrative Hearings and Rules (SOAHR) issued a Notice of Hearing dated July 28, 2008. The Notice of Hearing scheduled a contested case hearing for August 7, 2008.

On August 4, 2008, the Bureau of Commercial Services (BCS) requested an adjournment of the hearing because the departmental representative had scheduling conflicts that made him unavailable to attend the hearing.

The Administrative Law Judge (ALJ) granted the Request for Adjournment and issued an ORDER GRANTING ADJOURNMENT on August 14, 2008. The ORDER also notified the parties that the contested case hearing had been rescheduled for September 4, 2008.

The hearing proceeded as scheduled on September 4, 2008. Hal Martin, Assistant Attorney General, appeared on behalf of Petitioner. Neither Respondent, nor an attorney representing Respondent, appeared at the hearing.

Vida Tebby, Complainant, Fred Martin, building inspector, and Greg Sicotte, Marquette County Building Official, attended the hearing. Tebby and Martin testified as witnesses at the hearing.

SOAHR issued the Notice of hearing pursuant to a Formal Complaint filed April 29, 2008, which alleged that Respondent violated the Occupational Code of 1980 (Code), 1980 PA 299, as amended, being MCL 339.101, *et. seq.* and the Administrative Rules promulgated pursuant thereto.

At the outset of the hearing, Petitioner moved to default Respondent for failing to appear at the hearing pursuant to §78(2) of the Administrative Procedures Act (APA), 1969 PA 306, as amended, being MCL 24.278(2). Petitioner also moved to be allowed to proceed in the Respondent's Absence pursuant to §72(1) of the APA, being MCL 24. 272(1).

§72(1) of the APA provides, in pertinent part:

If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

§78(2) of the APA provides, in pertinent part:

Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

The ALJ granted Petitioner's Motion for Default and Motion to Proceed. Pursuant to the granting of the default, the allegations contained in the Formal Complaint were deemed to be proven.

At the hearing, Petitioner admitted the following exhibits:

Petitioner's Exhibit #1	Complaint filed June 19, 2007
Petitioner's Exhibit #2	Building Inspection Report dated December 10, 2007
Petitioner's Exhibit #3	Remodeling Contract dated November 29, 2006

ISSUES AND APPLICABLE LAW

This matter raises the issue of whether Respondent violated the Code or the Rules; specifically, whether Respondent violated §2411(2)(m) of the Code, being MCL339.2411(2)(m).

§2411(2) A licensee or applicant who commits 1 of the following shall be subject to the penalties set forth in article 6:

(m) Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official.

FINDINGS OF FACT

Based upon the record, including the default, the pleadings, and the exhibits accepted into the record, the ALJ makes the following Findings of Fact:

1. At all times relevant to this proceeding, except for events occurring after February 5, 2008 when his license was suspended, Respondent has been a licensed residential builder pursuant to the Code, 1980 PA 299, as amended, being MCL339.2401-2412.
2. On November 29, 2006, Respondent entered into an agreement with Complainant (Exhibit #3) to perform certain remodeling work on Complainant's residence.
3. In return, Complainant agreed to pay Respondent the sum of \$3,488.00.

4. At the time the parties entered into the agreement, Complainant paid Respondent a down payment of \$1,744.00.
5. In the course of performing the work, Respondent damaged the Master Bath, and second floor baths, and knocked holes in a ceiling and some walls.
6. Complainant became concerned about the quality of Respondent's work and ordered him to cease.
7. Fred Martin, a local building inspector, performed an inspection of Complainant's residence.
8. On December 10, 2007, Martin issued a building inspection report (Exhibit #2).
9. Martin found the following workmanship violations:
 - a) In second story bathroom only 1 12" bar installed in tub/shower area;
 - b) Several holes above shower in 2nd floor bathroom not patched;
 - c) A single screw in fiberglass tub surround left exposed;
 - d) Only 1 toilet bar installed;
 - e) Rust shows from under 4-12" bars installed in Master Bathroom;
 - f) Two holes in fiberglass surround, which expose screws and washers in Master Bathroom;
 - g) Nail holes exposed above surround in Master Bathroom;
 - h) Paint strip applied does not match existing walls, and;
 - i) It appears that new caulking put in place;

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan's Michigan Pleading and Practice, 2 Ed., Section 60.48, page 230.*

Petitioner has the burden of proof to establish by a preponderance of the evidence that grounds exist for the imposition of sanctions against Respondent pursuant to MCL339.2411 (2) (m).

Pursuant to §72(1) of the APA, a full evidentiary hearing need not be held when a default has been entered pursuant to §78(2) of the APA, and the allegations in the

Formal Complaint are accepted as true. *Smith v Lansing School District*, 428 Mich. 248 (1987).

Based upon the allegations contained in the Formal Complaint, the testimony at the hearing, and the exhibits admitted into evidence, the ALJ finds that Petitioner has established by a preponderance of the evidence that Respondent engaged in several workmanship violations of MCL 339.2411(2)(m) of the Code.

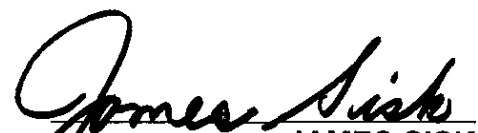
DECISION

Based upon the Findings of Fact and Conclusions of Law, the ALJ finds that Respondent has violated MCL339.2411 (2) (m) of the Code.

PENALTY RECOMMENDATIONS

Based upon the preceding Findings of Fact and Conclusions of Law, the ALJ makes the following penalty recommendations to the Board:

1. Respondent make restitution to Complainant in the amount of \$1,744.00.
2. Respondent pay a civil fine of \$7,500.00.
3. Suspend any and all licenses held by Respondent and/or Respondent's businesses subject to the jurisdiction of the Board, as well as any applications for new or renewal licenses, until restitution and the civil fine are paid in full by Respondent.


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 9th day of September, 2008.



Julie Barbee
State Office of Administrative Hearings and Rules

James Scott Erickson
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Ishpeming, MI 49849

Hal Martin
Dept of Attorney General
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Vida Tebby
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Stephen J Gobbo
Bureau of Commercial Services
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P.O. Box 30018
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