

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

Docket No. 2008-915
Complaint No. 308097

Complainant,

v

MICHAEL C. GOODMAN
License No. 21-01-058322

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 David Cohen, Administrative Law Judge, dated September 11, 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, and the Board having elected to exercise its authority pursuant to MCL 339.514 to impose penalties different from those recommended by the Administrative Law Judge; 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 \$5,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 308097 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 the Homeowner Construction Lien Recovery Fund in the amount of \$14,600.00 and \$1,260.00 in litigation costs, fees and interest at the statutory rate from May 4, 2007, payable to the Homeowner Construction Lien Recovery Fund and mailed to Department of Labor & Economic Growth,

Administrative Services Division, P.O. Box 30018, Lansing, MI 48909 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'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. 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 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.

4. It is also the intent of the Board that the fine and restitution be assessed one time in order to satisfy the Final Orders issued for complaint numbers 308096 and 308097. Once the fine and restitution ordered in one of the companion Final Orders are satisfied, the fine and restitution ordered in the other Final Order will be considered satisfied.

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
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.	2008-914
Bureau of Commercial Services, Petitioner	Agency No.	308096
v	Agency:	Bureau of Commercial Services
Stylus I Builders, Inc.	Case Type:	Sanction
Michael C. Goodman, Q.O., Respondent		
and		
Bureau of Commercial Services, Petitioner	Docket No.	2008-915
v	Agency No.	308097
Michael Cary Goodman, Respondent	Agency:	Bureau of Commercial Services
_____ /	Case Type:	Sanction

Issued and entered
this 11th day of September, 2008
by David Cohen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of Formal Complaints issued March 19, 2008 against Stylus I Builders, Inc. (Stylus), and Michael Cary Goodman, both individually and as Qualifying Officer of Stylus, (Respondent(s)), by the Department of Labor and Economic Growth, Bureau of Commercial Services (Petitioner) alleging one or

more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101, et seq.

Notices of Hearing (Notices) were issued July 10, 2008, scheduling a contested case hearing for August 19, 2008. Administrative Law Judge David Cohen presided. Kathy Kakish, Assistant Attorney General, appeared on behalf of Petitioner. Neither Respondents, nor an attorney on behalf of the Respondents appeared at the hearing. The Notices were mailed to the address of record and to all of Respondents last known addresses.

The hearing proceeded in Respondent's absence pursuant to Section 72 of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.* Petitioner requested a motion for default judgment against Respondent pursuant to Section 78 of the APA.

§ 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.

Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in Petitioner's Formal Complaint were deemed proven.

EXHIBITS

The following exhibits were admitted into the record at Petitioner's request:

<u>Exhibit</u>	<u>Description</u>
1	Copy of Department of Labor and Economic Growth Address and License Status Verification for Stylus Builders, Inc. (Four Pages)
2	Copy of Department of Labor and Economic Growth Address and License Status Verification for Michael Cary Goodman (Four Pages)
3	Copy of Proof of Service for Respondent's Notice of Opportunity to Show Compliance dated March 25, 2008 and Formal Complaint dated March 19, 2008 with Exhibits (Two Pages)
4	Copy of Claim of Lien by Ulrich Lumber & Builder's Supply, Inc. (Five Pages)
5	Copy of Consent Judgment in Favor of Ulrich Lumber & Builder's Supply, Inc against the Homeowner Construction Lien Recovery fund. (Six Pages)
6	Copy of check from State of Michigan to Ulrich Lumber & Builders Supply, Inc. in the amount of Fourteen Thousand Six Hundred Dollars (\$14,600.00) (One Page)
7	Copy of Department of Labor & Economic Growth Litigation Cost Report indicating legal costs and fees in the amount of One Thousand Two Hundred Sixty Dollars (\$1,260.00)

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Sections 2411(2)(c)& (l) and 2411 (3) of the Code, being MCL 339.2411(2)(c) & (l), and MCL 339.2411 (3). Those sections state in pertinent part:

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

(c) Failure to account for or remit money coming into the person's possession which belongs to others.

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

Section. 2411. (3) The department shall suspend or revoke the license of a person licensed under this article whose failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892; or under 1929 PA 266, MCL 338.901 to 338.917. The department shall not renew a license or issue a new license until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

FINDINGS OF FACT

Based on the record, the following findings of fact are established:

1. Respondent, Stylus I Builders, Inc. has at times relevant to this Complaint, been licensed as residential builders under the Occupational Code, 1980 PA 299, as amended, Article 24; MCL 339.2401-2412 or was seeking renewal of such license, except as to those events that occurred after May 31, 2007, at which time the license lapsed and was subsequently suspended September 18, 2007.
2. Respondent, Michael Cary Goodman has at times relevant to this Complaint, been licensed as residential builders under the Occupational Code, 1980 PA 299, as amended, Article 24; MCL 339.2401-2412 or was seeking renewal of such license, except as to those events that occurred after September 18, 2007, at which time the license was suspended.
3. A complaint against Respondents, conforming to the requirements of MCL 339.2411, has been filed with the Department.
4. On May 4, 2007, as a result of Respondents failure to pay one or more lien claimants, payment was made by the Homeowner Construction Lien

Recovery Fund in the amount of \$14,600.00 to Ulrich Lumber & Builder's Supply, Inc. pursuant to a Consent Judgment in favor of Ulrich Lumber & Builder's Supply, Inc. against the Homeowner Construction Lien Recovery Fund. (Petitioner Exhibit 5)

5. The Homeowner Construction Lien Recovery Fund incurred litigation costs in the amount of \$2,331.00. (Petitioner Exhibit 7)
6. The facts underlying the payment arose out of and in connection with the performance of Respondents' duties as licensed residential builders and/or maintenance and alteration contractors.
7. Respondents failed to remit money belonging to Peter Samet and Janene Samet to Ulrich Lumber & Builder's Supply, Inc.
8. Respondents failed to account for money, which belonged to Peter Samet and Janene Samet.
9. Respondent failed to satisfy a lien filed on April 24, 2006 by Ulrich Lumber & Builder's Supply, Inc. in the County of Oakland, Michigan. (Petitioner Exhibit 4)
10. Respondent Michael Cary Goodman was a party to the acts and omissions and was in a position to ensure compliance with the Code or otherwise prevent the violations but failed to do so.

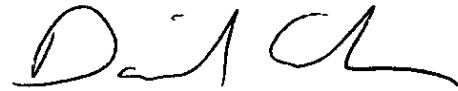
CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d ed.) Section 60.48, page 230. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence that grounds exist for the imposition of sanctions upon Respondent. 1990 AACS, R 339.1763. Under § 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist, 428 Mich. 248 (1987). Based upon the facts described herein, Petitioner has proven, by a preponderance of the evidence, that Respondents violated Sections 2411(2) (c) & (l) and 2411 (3) of the Code

RECOMMENDATIONS

Based upon the above findings of fact and conclusions of law, this Administrative Law Judge makes the following recommendations to the Board:

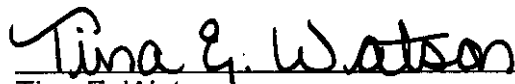
1. Respondents pay a civil fine in an amount to be determined by the Board.
2. Respondents pay restitution to HCLRF in the total amount of \$15,860.00 which includes litigation cost of (\$1,260.00).
3. Respondents' licenses remain suspended until the civil fine and restitution have been paid.



David Cohen
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 11th day of September, 2008.



Tina E. Watson
State Office of Administrative Hearings and Rules

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