

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. 2008-997
Complaint No. 308105

Complainant,

v

LAKELAND HOMES, INC
JEROME JAMES GALBA, QUALIFYING OFFICER
License No. 21-02-162090

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 19, 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. 308105 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 \$5,000.00 and \$1400.00 in litigation costs, fees and interest at the statutory rate from April 16, 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 licenses of Respondent and Respondent's Qualifying Officer, and any and all Article 24 licenses held by Respondent or Respondent's Qualifying Officer shall be and hereby are CONTINUED IN REVOCATION. 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 and 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.	2008-997
Bureau of Commercial Services, Petitioner	Agency No.	308105
v	Agency:	Bureau of Commercial Services
Lakeland Homes, Inc., Jerome James Galba, Qualifying Officer, Respondent	Case Type:	Sanction

**Issued and entered
this 19th day of September, 2008
by David Cohen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Formal Complaint issued May 1, 2008 against Lakeland Homes, Inc. (Lakeland), Jerome James Galba, Qualifying Officer of Lakeland, (Respondent), 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.

A Notice of Hearing was issued July 28, 2008, scheduling a contested case hearing for 9:00 a.m., August 28, 2008. Administrative Law Judge David Cohen presided. Assistant Attorney General Kelley McLean appeared on behalf of Petitioner. Neither Respondent, nor an attorney on behalf of the Respondent appeared at the hearing. The Notices were mailed to the address of record and to additional addresses of Respondent.

The hearing proceeded at 9:45 a.m. 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. A separate Hearing stemming from an independent Formal Complaint against this Respondent was heard immediately prior to this proceeding.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.

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

EXHIBITS

The following exhibits were attached to Petitioner's Formal Complaint and are accepted as part of the formal record pursuant to the default.

<u>Exhibit</u>	<u>Description</u>
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- | | |
|---|--|
| 1 | Copy of check from State of Michigan to CRS Enterprises, LLC. in the amount of Five Thousand Dollars (\$5,000.00) (one page) |
|---|--|

¹ BCS v Lakeland Homes, Inc. 2008-996. A default was also entered.

- 2 Copy of Consent Judgment in Favor of CRS Enterprises, LLC against the Homeowner Construction Lien Recovery fund. (five pages)
- 3 Copy of Department of Labor & Economic Growth Litigation Cost Report indicating legal costs and fees in the amount of One Thousand Four Hundred Dollars (\$1,400.00) (one page)

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Section 2411 (3) of the Code, being MCL 339.2411 (3). This section states in pertinent part:

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, Lakeland Homes, Inc., Jerome James Galba Qualifying Officer has at all times relevant to this Complaint, been licensed as a residential builder 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 June 7, 2006, at which time the license was suspended, and was subsequently revoked November 20, 2007.
2. A complaint against Respondent, conforming to the requirements of MCL 339.2411, has been filed with the Department.

3. On May 17, 2007, as a result of Respondent's failure to pay one or more lien claimants, payment was made by the Homeowner Construction Lien Recovery Fund in the amount of \$5, 000.00 to CRS Enterprises, LLC. pursuant to a Consent Judgment in favor of CRS Enterprises, LLC. against the Homeowner Construction Lien Recovery Fund. (Formal Complaint Exhibit 1)
4. The Homeowner Construction Lien Recovery Fund incurred litigation costs in the amount of \$1,400.00. (Formal Complaint Exhibit 3)
5. The facts underlying the payment arose out of and in connection with the performance of Respondent's duties as a licensed residential builder and/or maintenance and alteration contractor.
6. Respondents failed to remit money belonging to CRS Enterprises, LLC.

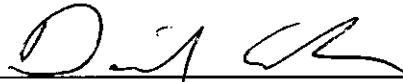
CONCLUSIONS OF LAW

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 Section 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. Respondent pay a civil fine in an amount to be determined by the Board.
2. Respondent pay restitution to HCLRF in the total amount of \$6,400.00 which includes litigation costs of (\$1,400.00).²
3. Respondent's license remain revoked until the civil fine and restitution have been paid.




David Cohen
Administrative Law Judge

² The \$1,400.00 cost amount encompasses the litigation costs for both this matter and the litigation addressed by BCS v Lakeland Homes, Inc 2008-996. As such, it need only be satisfied once through either proceeding.

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 19th day of September, 2008.



Tina E. Watson
State Office of Administrative Hearings and Rules

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