

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. 2007-1047  
Complaint No. 301999

Complainant,

v

P JENKINS FAMILY CONSTRUCTION LLC  
PERCY MALCOLM JENKINS, QUALIFYING OFFICER  
License No. 21-02-154192

Respondent.

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FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on May 6, 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 Robert H. Mourning, Administrative Law Judge, dated February 5, 2007 (sic) 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. 301999 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 \$15,500.00 and \$1,400.00 in litigation costs, fees and interest at the statutory rate from November 14, 2005 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 IMMEDIATELY. 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 22<sup>nd</sup> day of July, 2008.

BY:   
Mark T. Glynn, Chairperson

Date mailed: July 22, 2008

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. 2007-1047**

**Bureau of Commercial Services,  
Petitioner**

**Agency No. 301999**

**v**

**Agency: Bureau of Commercial  
Services**

**P Jenkins Family Construction, Inc.  
Percy Malcolm Jenkins, Q.O.,  
Respondent**

**Case Type: Sanction**

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**Issued and entered  
this 5th day of February 2007  
by Robert H. Mourning  
Administrative Law Judge**

**HEARING REPORT**

**PROCEDURAL HISTORY**

This matter is commenced with the issuance of a Formal Complaint dated April 12, 2007, charging P Jenkins Family Construction, Inc., Percy Malcolm Jenkins, Qualifying Officer (Respondent), with one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101 *et seq.* On August 31, 2007, a Notice of Hearing was mailed to the parties, scheduling a contested case hearing for October 4, 2007 at 9:00 a.m., in the hearing rooms of the Department of Labor & Economic Growth, State Office of Administrative Hearings and Rules, Ottawa Building, 611 West Ottawa, 2<sup>nd</sup> Floor, Lansing, Michigan. The Notice of Hearing was mailed to the Respondent's last known address.

On October 4, 2007, Assistant Attorney General Attorney Susan Balkema appeared on behalf of the Bureau of Commercial Services (Petitioner). Neither the Respondent nor an attorney on behalf of the Respondent appeared at the hearing.

Assistant Attorney General Balkema requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.272 (APA), and that a default be granted on behalf of Petitioner pursuant to Section 78 of the APA, being MCL 24.278.

Sec. 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.

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

The Petitioner offered the following exhibits, which were admitted into evidence:

Exhibit 1:        Litigation Cost Report.

Exhibit 2:        Payment from HCLRF.

### **ISSUES AND APPLICABLE LAW**

The general issue is whether the Respondent violated the Code. The specific issues are whether the Respondent violated MCL 339.2411(2)(c) and (l) and MCL 339.2411(3).

### **FINDINGS OF FACT**

Based on the record, the following Findings of Fact are established:

1. At all times relevant to this Formal Complaint, the Respondent has been licensed as a residential builder under the Code.

2. On October 18, 2005, as a result of the Respondent's failure to pay one or more lien claimants, payment was made by the Homeowner Construction Lien Recovery Fund (HCLRF) in the amount of \$15,500 to Wolohan Lumber pursuant to a Stipulation and Order for Subrogation and Dismissal and Assignment of Claim.
3. The HCLRF incurred litigation costs in the amount of \$1400.
4. The facts underlying said payment arose out of and in connection with the performance of the Respondent's duties as a licensed residential builder and/or residential maintenance and alteration contractor.
5. The Respondent failed to remit money, which belonged to Rodney R. Nimitz to Wolohan Lumber.
6. The Respondent failed to satisfy a lien on June 2, 2004, by Central Michigan Lumber Co./Wolohan Lumber.

### **CONCLUSIONS OF LAW**

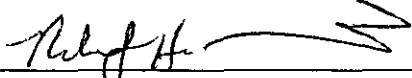
The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d ed.) Section 60.48, page 30. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent 1990 AACRS, R 339.1763. Under Section 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).

Having granted a default in this case, it is concluded that the Petitioner has established, by a preponderance of the evidence, that the Respondent has violated MCL 339.2411(2)(c) and (l) and MCL 339.2411(3) under the Code.

**RECOMMENDATIONS**

The Administrative Law Judge recommends that the Board impose the following sanctions on the Respondent:

1. The Respondent's Article 24 licenses shall be revoked.
2. The Respondent shall pay restitution to the HCLRF in the amount of \$16,900.00. The restitution shall be paid within 60 days after the date of the Final Order by the Board. Statutory interest shall accrue from the date of the Final Order of the Board until the restitution is fully paid by the Respondent.
3. The Respondent's Article 24 licenses shall not be renewed, nor shall any new licenses be issued to the Respondent until the Respondent has paid in full to the HCLRF the amount paid out plus the cost of litigation and accrued statutory interest.

  
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**Robert H. Mourning**  
**Administrative Law Judge**