

**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*  
GLORIA WILLIS**

**Docket No. 2007-1055  
Complaint No. 303036**

**Complainant,**

**v**

**CLEVELAND JUNIOR DUCRE  
D/B/A DUCRES BUILDING & HOME IMPROVEMENT  
License No. 21-01-154288**

**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 8, 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 \$50,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 303036 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 Gloria Willis in the amount of \$12,156.00 by certified check made payable Gloria Willis and mailed to Gloria Willis, 2522 Robinwood, Saginaw, MI 48601 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 CONTINUED IN REVOCATION. 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 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**

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|---|-------------------|--|
| <b>In the matter of</b>   | <b>Docket No.</b> | <b>2007-1055</b>                         |
| <b>Bureau of Commercial Services,<br/>Petitioner</b>  | <b>Agency No.</b> | <b>303036</b>                            |
| <b>v</b>  | <b>Agency:</b>    | <b>Bureau of Commercial<br/>Services</b> |
| <b>Cleveland Junior Ducre<br/>d/b/a Ducre Building &amp; Home<br/>Improvement,<br/>Respondent</b> | <b>Case Type:</b> | <b>Sanction</b>                          |

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Issued and entered  
this 8<sup>th</sup> day of February, 2008  
by Robert H. Mourning  
Administrative Law Judge

**HEARING REPORT**

**PROCEDURAL HISTORY**

This matter is commenced with the issuance of a Formal Complaint dated July 9, 2007, charging Cleveland Junior Ducre, d/b/a Ducre's Building & Home Remodeling (Respondent), with one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101 *et seq.* On September 4, 2007, a Notice of Hearing was mailed to the parties, scheduling a contested case hearing for November 1, 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.

On November 1, 2007, Assistant Attorney General Susan Balkema appeared on behalf of the Bureau of Commercial Services (Petitioner). Neither Respondent, nor an

attorney on behalf of Respondent appeared at the hearing.

Assistant Attorney General Balkema requested that Petitioner be allowed to proceed in 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.

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.

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

- Exhibit 1: Proposal, 3/24/05.
- Exhibit 2: Statement of Complaint, 4/19/06.
- Exhibit 3: Building Inspection Report, 5/22/06.
- Exhibit 4: Estimate for Repairs, 11/07.

To afford Petitioner an opportunity to submit additional evidence for the record, the hearing record was left open until December 1, 2007. On December 1, 2007, the Petitioner filed an estimate for repairs which was marked and admitted as Petitioner's Exhibit 4.

**ISSUES AND APPLICABLE LAW**

The general issue is whether Respondent violated the Code. The specific issues are whether Respondent violated MCL 339.604(c), MCL 339.2411(2)(h) and (m), and 1979 AC, R 338.1533(3), and 2006 AACS, R 338.1551(4).

**FINDINGS OF FACT**

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

1. At all times relevant to this Formal Complaint, Respondent has been licensed as a residential builder under the Code.
2. An authority, charged with the enforcement of the laws governing construction of residential or residential and commercial buildings in the political subdivision in which the building is located, has submitted an evaluation (Building Inspection Report) of the Statement of Complaint against Respondent.
3. On or about March 24, 2005, Respondent entered into a contract with Gloria Willis to perform services regulated by the Code.
4. Respondent has failed to perform the requirements of the contract in a workmanlike manner.
5. Respondent has failed to correct items as justified by the Building Inspection report within a reasonable time. It is estimated that it will cost the homeowner approximately \$12,156.00 to replace and to repair work performed by Respondent.
6. Respondent has failed to provide a copy of the entire agreement between himself and Gloria Willis to Gloria Willis.

7. Respondent failed to reduce changes in the agreement to a writing, dated and initialed, by the parties.
8. Respondent has violated a rule of conduct in practicing an occupation.

### **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 Respondent 1990 AACS, 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). Based upon the facts described herein, Petitioner has proven, by a preponderance of the evidence, that Respondent violated the following sections of the Code and rules:

1. Respondent has failed to perform the requirements of the contract in a workmanlike manner, contrary MCL 339.2411(2)(m).
2. Respondent has failed to correct those items as justified by the Building Inspection Report within a reasonable time, contrary to Rule 338.1551(4).
3. Respondent has failed to provide a copy of the entire agreement reached between himself and Gloria Willis to Gloria Willis, contrary to MCL 339.2411(2)(h).
4. Respondent failed to reduce changes in the agreement to a writing, dated and initialed by the parties, contrary to Rule 338.1533(3).

5. Respondent has violated a rule of conduct in practicing an occupation, contrary to MCL 339.604(c).


### Restitution

Petitioner has requested restitution in this matter and submitted an estimate to repair and replace work performed by the Respondent. The Administrative Law Judge believes that the penalty of restitution is appropriate in this case.

### RECOMMENDATIONS

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

1. Revocation of Article 24 licenses.
2. A civil fine in the amount of \$50,000.00.
3. Restitution payable to Gloria Willis in the amount of \$12,156.00.
4. In the event the civil fine and restitution are not paid within 60 days following the issuance of a final order by the Board, Respondent's Article 24 licenses should be suspended. No licenses should be renewed nor should any new licenses be issued until the civil fine and restitution are paid in full.

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