

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. 2007-1402
Complaint No. 303656

Complainant,

v

DIPONIO GENERAL CONTRACTORS, INC
ANTHONY JAMES DIPONIO, QUALIFYING OFFICER
License No. 21-02-165709

Respondent.

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 Michelle Howie, Administrative Law Judge, dated February 15, 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. 303656 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 \$19,500.00 and \$7,497.00 in litigation costs, fees and interest at the statutory rate from July 19, 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 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 23rd day of July, 2008.

BY: 
Mark T. Glynn, Chairperson

Date mailed: July 23, 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.	2007-1402
Bureau of Commercial Services, Petitioner	Agency No.	303656
v	Agency:	Bureau of Commercial Services
DiPonio General Contractors, Inc. Anthony James DiPonio, Q.O., Respondent	Case Type:	Sanction

Issued and entered
this 15th day of February, 2008
by Michelle Howie
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuing of a Formal Complaint (Complaint) dated August 7, 2007 by the Department of Labor and Economic Growth, Bureau of Commercial Services (Petitioner) against Diponio General Contractors, Inc., Anthony James Diponio, Qualifying Officer, (Respondent), alleging one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101, et seq. and the administrative rules promulgated thereunder.

A Notice of Hearing (Notice) was issued scheduling a contested case hearing at 9:00 a.m. on December 11, 2007 at the State Office of Administrative Hearings & Rules, Cadillac Place, 2nd Floor Annex, Suite 2-700, Detroit, Michigan. The Notice was properly sent to Respondent's last known address of record. Neither Respondent nor an attorney

on behalf of Respondents appeared at the hearing. Administrative Law Judge Michelle Howie presided. Kim Breitmeyer, Administrative Law Specialist, appeared on behalf of Petitioner.

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.*, and a default was granted on behalf of Petitioner 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.

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	HCLRF payment (\$19,500)
2	Consent Judgment
3	Litigation Cost Report (\$7,497)

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Sections 2411(3) of the Code, being MCL 339.2411(3), which provides 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, has, at times relevant to this Complaint, been licensed as a residential builder under Occupational Code, 1980 PA 299 as amended, Article 24; MCL 339.2401-2412., except as to those events which occurred after January 18, 2006, at which time the license was revoked.
2. On July 21, 2005 as a result of Respondents' failure to pay one or more lien claimants (Stock Building Supply, LLC), a judgment was entered against the Homeowner Construction Lien Recovery Fund (HCLRF) in favor of Stock Building Supply, LLC in the amount of \$19,500.00 in the Circuit Court of Oakland County. (Petitioner Exhibit 2)
3. On August 23, 2005 the HCLRF made payment of \$19, 500.00 to Stock Building Supply LLC pursuant to the consent judgment. (Petitioner Exhibit 1)
4. The HCLRF incurred litigation costs in the amount of \$7,497.00.
5. The facts underlying the payment arose out of and in connection with the performance of Respondents' duties as licensed residential builder and/or residential maintenance and alteration contractor.

6. Respondent, on April 7, 2004, had a Judgment entered against it in the State of Michigan 16th Judicial District Court, in the case of Jean Klinski v Buy-Rite Window Corporation in the amount of \$6,586.00.

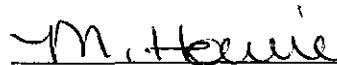
CONCLUSIONS OF LAW

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 Respondent violated Section 2411(3) of the Code.

RECOMMENDATIONS

The Administrative Law Judge makes the following recommendations to the Board:

1. Respondent pay \$26,997.00 reimbursement to the Home Construction Lien Recovery Fund.
2. In the event the reimbursement has not been paid within 6 months following the issuance of the Board's Penalty Order, then all licenses or registrations under the jurisdiction of the Code should be revoked and any request for reinstatement or renewal of any licenses denied until full reimbursement is made.



Michelle Howie
Administrative Law Judge