

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*
JOHN AND MARY BLISS

Docket No. 2007-1067
Complaint No. 305677

Complainant,

v

WAYNE BRIAN PINCH
License No. 21-01-135058

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 \$20,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 305677 must be clearly indicated on the check or money order, and the payment sent to the Department of Labor & Economic Growth, Bureau of Commercial, Administrative Services Division, P.O. Box 30018, Lansing, Michigan 48909.
- 2 Respondent shall pay RESTITUTION in the amount of \$97,619.84 which includes \$3,040.00 to satisfy the lien filed by Tom Ward & Sons, Inc. in Oakland County, Michigan, to John and Mary Bliss by certified check made payable to John and Mary Bliss and mailed to 27811 Gilbert, Warren, MI 48093, within 60 days from the mailing date of this Final Order.

2. The license of Respondent, and any and all Article 24 licenses held by Respondent shall be and hereby are IMMEDIATELY REVOKED. Respondent may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 licenses held by Respondent are 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.

3. 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.


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 ^{22nd} 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
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES

DEPARTMENT OF LABOR
& ECONOMIC GROWTH,
BUREAU OF COMMERCIAL SERVICES, ex rel
JOHN AND MARY BLISS

Complaint No. 305677

Complainant,

v

WAYNE BRIAN PINCH
License No. 21-01-135058

Respondent.

FORMAL COMPLAINT

NOW COMES the Department of Labor & Economic Growth, Bureau of Commercial Services, ex rel John and Mary Bliss, Complainants, pursuant to MCL 339.101-605, and its rules promulgated thereunder, upon information and belief alleges as follows:

1. Wayne Brian Pinch (Respondent), 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.
2. A Complaint against Respondent, conforming to the requirements of § 2411 of 1980 PA 299, as amended; MCL 339.2411 has been filed with the Michigan Department of Labor & Economic Growth and is attached hereto as Exhibit 1.
3. 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 of the Complaint submitted. This evaluation is attached hereto as Exhibit 2.

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2007-1067
Bureau of Commercial Services, Petitioner	Agency No.	305677
v	Agency:	Bureau of Commercial Services
Wayne Brian Pinch, 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 dated July 9, 2007 by the Department of Labor and Economic Growth, Bureau of Commercial Services, (Petitioner), against Wayne Brian Pinch, (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 was issued scheduling a contested case hearing at 9:00am on October 11, 2007 at the State Office of Administrative Hearings & Rules, Cadillac Place, 2nd Floor Annex, Suite 2-700, Detroit, Michigan. An Order Granting Adjournment was issued October 17, 2007 at the request of Petitioner scheduling a new hearing for November 14, 2007 at 9:00am. On November 1, 2007, Petitioner requested a

second adjournment of the new scheduled hearing date. The request was denied. On November 14, 2007, Respondent appeared at the hearing but left the building prior to the hearing proceeding without notification or an adjournment request. Administrative Law Judge Michelle Howie presided. Kim Breitmeyer, Administrative Law Specialist, appeared on behalf of Petitioner. Steve Sternecki and Mary Bliss testified for Petitioner.

The hearing proceed at 10:40am 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	Statement of Complaint
2	Building Inspection Report (12/11/06)
3	Contract Agreement (4/18/05)

- 4 Claim of Lien, Tom Ward & Sons (\$3,040)
- 5 Blight Violation Notice (1/5/06)
- 7 Property Photo (5/9/06)
- 8 Property Photos (A-D)
- 9 Blight Violation Notice (7/3/06)
- 10 Notice to Respondent (City Building Inspector)
- 11 Summary Letter (Building Inspector)
- 12 Proof of Contract Payment (\$94,579.81)
- 13 Cost Estimate to Re-build (\$100,807)
- 14 Subcontractor Letter (2/20/07)
- 15 City of Warren Judgment against Respondent (1/31/07)
- 16 City of Warren Judgment against Respondent (7/26/06)
- 17 Property Tax Value (2007)

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Sections 604(c) and 2411(2)(a), (c), (l) & (m) of the Occupational Code, being MCL 339.604(c) and MCL 339.2411(2)(a),(c),(l), & (m) and rules 51(4) & (5) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated thereunder, being 1979 AC, R 338.1551(4) & (5). Those sections and rules state in pertinent part:

Section. 604. A person who violates 1 or more of the following provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

(c) Violates a rule of conduct of an occupation.

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:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

(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.

(m) Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official.

Rule 51. (4) If a complaint is justified by the local building inspector or by a person authorized by the department to make inspections, the builder or contractor shall correct the complaint within a reasonable time. Failure or refusal by the licensee to correct a structural matter that is materially deficient, dangerous or hazardous to the owners shall be presumed to be dishonest or unfair dealing.

(5) Standards of construction shall be in accordance with the local building code, or in the absence of a code in accordance with the building code of the nearest political subdivision having a building code.

FINDINGS OF FACT

Based on the record as a whole, 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.
2. A Complaint was filed against Respondent, conforming to the requirements of § 2411 of the Code, with the Department.
3. Respondent entered into a contract on or about April 18, 2005 with homeowners, John and Mary Bliss to build an addition to their home and remodel existing home for a total of \$107,637.00, services regulated by 1980 PA 299, as amended. (Petitioner Exhibit 3)
4. Respondent received payment from the homeowners in the amount of \$94,579.81 to perform the services of the contract. (Petitioner Exhibit 12)

5. Respondent failed to perform the requirements of the contract in a workmanlike manner.
6. On November 4, 2005, Herman McMillen, building inspector for the city of Warren, sent Respondent a letter informing him of several code violations at issue at that time. Respondent was given 14 days to correct the violations.
7. On January 5, 2006 and July 3, 2006 Respondent was given blight violation tickets by Steve Sternecki, building inspector for the city of Warren, for disregarding code requirements during construction, failure to make timely code violation corrections and failure to comply with approved plans. (Petitioner Exhibit 5).
8. On July 27, 2006, in the City of Warren Administrative Hearings Respondent was found responsible for blight violation and fined \$300. Respondent was further ordered to pay a compliance bond of \$94,579.81.
9. On December 11, 2006, Steve Sternecki, building inspector for the city of Warren, inspected the project and cited more than 29 workmanship and code violations. He further determined the home uninhabitable due to the cited violations. (Petitioner Exhibit 2)
10. On January 13, 2007, in the City of Warren Administrative Hearings a judgment of \$111,000.00 was entered against Respondent for remediation costs and a contempt of court fine. Respondent failed to comply with the Hearings Officers July 26, 2006 Order by failing to bring the home located at 27118 Gilbert Warren, Michigan into compliance with the city ordinances and failing to post the compliance bond. (Petitioner Exhibit 15)
11. Respondent, in performance of the contract, willfully failed to comply with § R106, R903.1, R905.1, R802.104, R802.11.1, R801.2, R802.2, R802.10.1, R703.1, R703.2, R602.3, R602.10, AJ 102.1, R602, R102.7, R602.3.2, R106.4, R703.8, R702.3.1, R702.3.5, R403.1.5, R403.1.6, R502.8.1, R502.9, R113.1, R502.2, R502.3, R408.5, R601.2.1, R311.4.3, R309.3, R401.3, R903.2, R109.6, R104.9, R106.1.2, R105.5, R105.6, R113.2, R113.3, R113.4, Tables 602.3(1) & R702.3.5 and Chapters 18 & 24 of the 2003 Michigan Residential Code, which was adopted pursuant to the Stille-DeRossett-Hale single state construction code act, effective February 29 2004.

12. Respondent failed to correct those items within a reasonable time.
13. Respondent has, without legal excuse, failed to perform the terms of the contract.
14. Respondent failed to satisfy a Claim of Lien filed on February 22, 2006 by Tom Ward & Sons, Inc in Oakland County, Michigan for contracted work perform on real property commonly known as 27811 Gilbert in Warren, Michigan.
15. Respondent failed to pay money to subcontractors with whom Respondent contracted to perform the services required by the contract.
16. Respondent violated a rule of conduct in practicing an occupation.
17. Petitioner submitted on behalf of homeowners an estimate to restore house back to original condition from Jay Built Construction in the amount of \$100,807.00.

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 Sections 604(c) and 2411(2)(m) of the Occupational Code and rule 51(5).

Petitioner recommends a fine of \$10,000.00 due to the severity of the case and restitution to the homeowner in the amount of \$100,807.00 which represents the estimated cost to put the house back to the original condition.

RECOMMENDATIONS

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

1. Respondent pay a civil fine in the amount of \$10,000.
2. Respondent pay \$97,619.84 in restitution to homeowners which include the \$3,040.00 for the unsatisfied claim of lien.
3. Immediate revocation of all licenses or registrations under the jurisdiction of the Code and no new or renewal licenses or registrations should be issued until the civil fine and restitution is paid.



Michelle Howie
Administrative Law Judge