

**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*  
MARK T. LATTING**

**Docket No. 2007-1252  
Complaint No. 96619**

**Complainant,**

**v**

**CURT FISHER, JR  
D/B/A FISHER BUILDERS  
License No. 21-01-102885**

**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 Edward F. Rodgers II, Administrative Law Judge, dated March 11, 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 make RESTITUTION to Mark T. Latting by paying the amount of \$25,000.00 in accordance with the Consent Order of Settlement and Dismissal entered by the 54<sup>th</sup> Judicial Circuit Court, filed February 1, 2008, Case No. 04-22556-CH, within 60 days from the mailing date of this Final Order, by certified check made payable to Mark T. Latting and mailed to 5770 Ormes Road, Vassar, MI 48768.**
- 2. Failure to pay the restitution within 60 days from the date of mailing of the Final Order shall result in a FINE in the amount of \$80,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 96619 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.

3. Respondent's failure to comply with each and every condition of this Final Order shall result in **SUSPENSION** of any and all Article 24 licenses held by Respondent. 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 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.	2007-1252
Department of Labor and Economic Growth	Agency No.	96619
Bureau of Commercial Services, Petitioner	Agency:	Bureau of Commercial Services
v	Case Type:	Sanction
Curt Fisher, Jr. d/b/a Fisher Builders, Respondent		

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Issued and entered  
this 14<sup>th</sup> day of March, 2008  
by Edward F. Rodgers II  
Administrative Law Judge

**HEARING REPORT**

**PROCEDURAL HISTORY**

This matter commenced with the filing of a Request for Hearing on October 17, 2007. Following the receipt of the Request for Hearing, the State Office of Administrative Hearings and Rules (SOAHR) issued a Notice of Hearing dated October 19, 2007. The Notice of Hearing issued by SOAHR scheduled a hearing to commence on November 21, 2007.

On November 14, 2007, the Bureau of Commercial Services, Petitioner, requested an adjournment of the hearing scheduled for November 21, 2007. No objection was filed. An Order Granting Adjournment was issued on November 26, 2007 rescheduling the hearing for December 19, 2007. On December 19, 2007, the Bureau of

Commercial Services, Petitioner, requested an adjournment of the hearing scheduled for December 19, 2007. No objection was filed. An Order Granting Adjournment was issued on December 21, 2007 rescheduling the hearing for February 14, 2008.

The Notice was issued pursuant to allegations set forth in a Formal Complaint issued on July 26, 2007. The Complaint alleged that the Respondent violated the Occupational Code of 1980, 1980 PA 299, as amended, (Code), being MCL 339.101, *et seq.* (Code) and the Administrative Rules promulgated thereunder.

The hearing in the above matter commenced as scheduled. At the hearing, Ms. Susan K. Balkema, Assistant Attorney General, appeared on behalf of the Petitioner. Neither the Respondent nor an attorney acting on behalf of the Respondent appeared at the hearing.

At the outset of the hearing on February 14, 2008, Ms. Balkema, on behalf of Petitioner, requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the Administrative Procedure Act of 1969, 1969 PA 306, as amended (APA), being MCL 24.272 and that a default be granted on behalf of Petitioner pursuant to Section 78 of the APA, being MCL 24.278.

Section 72(1) of the APA provides in pertinent part:

If a party fails to appear in a contested case after proper services 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.

At the hearing the Judge granted Petitioner's Motion for Default. As a result of the default, actual allegations contained in the Petitioner's formal complaint were deemed proven.

During the contested case hearing on February 14, 2008, the following exhibits from the Petitioner were admitted into the record:

1. Petitioner's Exhibit 1 is a Building Inspection Report, dated August 24, 2004, for the Residence of Mark T. Latting at 5770 Ormes Rd., Vassar, MI 48768.
2. Petitioner's Exhibit 2 is a contract between Respondent and Mark Latting for construction of the Residence at 5770 Ormes Rd., Vassar, MI 48768, including plans and specifications.
3. Petitioner's Exhibit 3 is a Consent Order of Settlement and Dismissal, from Tuscola County, entered upon the consent of Respondent and Mark T. Latting.

#### **ISSUES AND APPLICABLE LAW**

The general issue in this matter is whether or not the Respondent violated the Code or the Rules. The specific issue in this case is whether or not the Respondent violated Section 604(c) of the Code being MCL 339.604(c), and/or Section 2411(c), (d), & (m) of the Occupational Code, being MCL 339.2411 (2)(c), (d), & (m), and/or Rules 33(1) & (3) and 51(2) & (5) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being 1979 AC, R 338.1533(1) & (3), 1979 AC, R 338.1551 (2) & (5) and 2006 AACS, R 338.1551(2). These Sections of the Code and those Rules state in pertinent part:

**Section 604.** A person who violates 1 or more of the 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 604:

\* \* \*

(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:

\* \* \*

(c) Failure to account for or remit money coming into the person's possession which belongs to others.

\* \* \*

(d) A willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

\* \* \*

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

**Rule 33.**

(1) All agreements and changes to the agreements between a builder, or contractor, and the customer shall be in writing and signed by the parties. Copies of all agreements and changes to agreements shall be in writing, and provided to the customer.

\* \* \*

(3) If a purchase or sales agreement is for a new structure which is either substantially completed or in substantial conformance with a model, plans and specifications need not be furnished if the structure is specifically identified or related to the model and any changes, additions to or subtractions from the model are specifically agreed to and noted in writing.

**Rule 51**

\* \* \*

(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a

copy of the complaint to the licensee. He shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification of the complaint. A complaint acknowledged as justified shall be corrected within a reasonable time. If a complaint or portion thereof is not acknowledged by the licensee as being justified, the department shall notify the complainant of the area of disagreement.

\* \* \*

(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, including the default, the pleadings, and the exhibits accepted into the record, the following Findings of Fact are established:

1. Curt Fisher, Jr., d/b/a Fisher Builders (Respondent), has, at all times relevant to this Complaint, been licensed as a residential builder under the Code, except as to those events that occurred after May 31, 2006, at which time the license had lapsed.
2. Respondent entered into a contract to perform services regulated by the Code with Mark T. Latting on or about July 2, 2002.
3. Respondent has failed to provide an executed copy of the entire agreement reached by Respondent and Mark T. Latting to Mark T. Latting.
4. Respondent failed to reduce changes to the agreement in writing, dated and initialed by the parties.
5. Respondent failed to perform the requirements of the contract in a workmanlike manner.
6. Respondent, in performance of the contract, failed to comply with §R502.1.4, R314.2, R502.2.1, R502.9, R803.1, and R802.11 and Table 602.3(1) of the 2000 Michigan Residential Code, which was adopted pursuant to the Stille-DeRossett-Hale

single state construction code act, effective July, 2001.

7. Respondent, without consent of Mark T. Latting, failed to complete the contract in accordance with the plans and specifications contemplated in the contract.

8. Respondent failed to account for money belonging to Mark T. Latting.

9. Respondent failed to respond to the Complaint in a timely manner.

10. 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 230. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions under 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 record as a whole in this matter, including the exhibits and the fact that a default has been granted, the Petitioner has proven by a preponderance of the evidence that the Respondent violated Sections 604(c) and 2411(c), (d), & (m) of the Code and Rules 33(1) & (3) and 51(2) & (5).

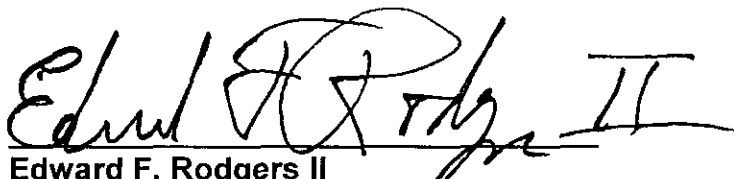
### **DECISION**

Based upon the Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the Respondent has violated Sections 604(c) and 2411(c), (d), & (m) of the Code and Rules 33(1) & (3) and 51(2) & (5).

**PENALTY RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following penalty recommendations to the Board for inclusion in the Penalty Order:

1. Respondent pay restitution to Mark Latting in the amount of \$25,000.00 in accordance with the Consent Order of Settlement and Dismissal from Tuscola County.
2. If Respondent fails to pay restitution to Mr. Latting within 60 days, then Respondent to pay a civil fine in the amount of \$80,000.00 for eight violations of the Code and Rules and all licenses under the jurisdiction of the Code should be suspended until the restitution and civil fine are paid.

  
Edward F. Rodgers II  
Administrative Law Judge