

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH<sup>1</sup>  
BOARD OF RESIDENTIAL BUILDERS AND  
MAINTENANCE & ALTERATION CONTRACTORS

DEPARTMENT OF ENERGY, LABOR &  
ECONOMIC GROWTH,  
BUREAU OF COMMERCIAL SERVICES *ex rel*  
RODNEY MILLER

Docket No. 2008-1524  
Complaint No. 305930

Complainant,

v

DENISE MICHELLE BOMAN  
D/B/A D & J BUILDING CO.  
License No. 21-01-151038

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 5, 2009

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 James Sisk, Administrative Law Judge, dated February 25, 2009;

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 \$10,000.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 305930 must be clearly indicated on the check or money order, and the payment sent to the Department of Energy, Labor & Economic Growth, Final Order Monitoring, P.O. Box 30018, Lansing, MI 48909.

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<sup>1</sup> Effective December 28, 2008, by Executive Order 2008-20, the Department of Labor & Economic Growth (DLEG) was reorganized and renamed as the Department of Energy, Labor & Economic Growth (DELEG).

2. Any and all Article 24 licenses held by Respondent shall be and hereby are **CONTINUED IN REVOCATION**. 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 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.

3. Respondent shall submit in writing to the Michigan Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Final Order Monitoring, 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 Energy, 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 day of July, 2009.

BY: \_\_\_\_\_

Mark T. Glynn, Chairperson

Date mailed: \_\_\_\_\_

July 22, 2009

Proof of Compliance should be filed with:

Department of Energy, Labor & Economic Growth, Bureau of Commercial Services  
Final Order Monitoring  
P.O. Box 30018  
Lansing, MI 48909

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

In the matter of	Docket No.	2008-1524
Bureau of Commercial Services, Petitioner	Agency No.	305930
V	Agency:	Bureau of Commercial Services
Denise Michelle Boman, d/b/a D & J Building Co., Respondent	Case Type:	Sanction

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Issued and entered  
this 25<sup>th</sup> day of February, 2009  
by James Sisk  
Administrative Law Judge

**HEARING REPORT**

**PROCEDURAL HISTORY**

This matter commenced with the filing of a Request for Hearing (Request) on November 5, 2008. Pursuant to receipt of the Request, the State Office of Administrative Hearings and Rules (SOAHR) issued a Notice of Hearing (Notice) on November 6, 2008. The Notice scheduled a contested case hearing for January 22, 2009.

The hearing commenced as scheduled. John P Mack, Assistant Attorney General (AAG), appeared for Petitioner. Denise Michelle Boman, Respondent, appeared *in pro per*.

During the hearing, Petitioner admitted the following exhibits into the record:

Petitioner's Exhibit #1	Building Agreement dated August 29, 2005
Petitioner's Exhibit #2	Checks Payable to Respondent and Mantai
Petitioner's Exhibit #3	Application for Building Permit

Petitioner's Exhibit #4	Affidavit of Clewley dated June 22, 2007 re Mantai License
Petitioner's Exhibit #5	Affidavit of Clewley dated June 22, 2007 re Boman License
Petitioner's Exhibit #6	Affidavit of Clewley dated March 4, 2008

### **ISSUES AND APPLICABLE LAW**

This matter raises the general issue of whether Respondent violated the Code and the Rules. Specifically, this matter raises the issue of whether Respondent violated §§ 601(1), 604(c), and 2411(2)(j) of the Code, being MCL339.601(1), MCL 339.604(c), and MCL 339.2411(2)(j), and Rule 36 of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being R338.1536. Those Sections and Rules provide in pertinent part:

Section 601(1) of the Code, being MCL 339.601(1), provides:

(1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or certification of registration issued by the department for the occupation.

Section 604(c) of the Code, being MCL 339.604(c), provides:

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 602:

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

Section 2411(2)(j) of the Code, being MCL 339.2411(2)(j), provides:

(2) A licensee or applicant who commits 1 of the following shall be subject to the penalties set forth in article 6:

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

Rule 36 of the Residential Builders and Maintenance and Alteration Contractors Board Rules, R338.1536, provides:

Acceptance or performance of a contract procured by a salesperson not licensed under a builder or contractor, or acceptance or performance of a contract, other than the sale of real property, procured by anyone not licensed under the act, is prohibited.

### **FINDINGS OF FACT**

Based upon the record, including the pleadings, and exhibits accepted into the record, the ALJ makes the following Findings of Fact:

1. Respondent has at all times relevant hereto through May 31, 2006 possessed a valid, residential builder's license issued pursuant to the Code.
2. On June 1, 2006, the Bureau of Commercial Services (BCS) suspended Respondent's residential builder's license.
3. On July 16, 2006, BCS revoked Respondent's residential builder's license.
4. Respondent with John Mantei began a home construction business, D&J Building Co., in 1999.
5. John Mantei never possessed nor obtained a valid, residential builder's license from BCS for any of the period in issue in this matter.
6. Neither did John Mantei possess or obtain a valid, builder's sales license for any of the relevant period of time involved in this matter.

7. On August 29, 2005, Mantei entered into a contract with Complainant (Petitioner's Exhibit #1), Rodney Miller, to build a new house for Complainant at a total price of \$294,000.00.
8. The contract (Petitioner's Exhibit #1) contained the following statement:  

“(make checks payable to John R. Mantei)”
9. Respondent applied for and obtained a building permit to perform the construction.
10. Respondent, herself, did not see the contract until after construction commenced.
11. When Respondent learned that her name did not appear on the contract, she sought, without success, to have the contract amended to include her name.
12. Pursuant to the contract, construction commenced in September 2005 with an anticipated completion date in May 2006.
13. Between September 22, 2005 and April 21, 2006, Mantei received payments totaling \$140,900.00 (Exhibit #2) for work performed pursuant to the contract.
14. Mantei completed more than 50% of the construction but did not complete all of the work required by the contract.
15. When Mantei stopped work, construction had not been completed with respect to installation of the electrical wiring, plumbing, heating system, interior walls and doors, and insulation.
16. After Mantei ceased work on the house, Respondent attempted, without success, to have him finish the work that need to be completed.
17. Respondent made no attempt to have another contractor complete the work required by the contract because she understood that Complainant planned to hire another contractor to finish the job.
18. Complainant did manage to obtain an occupancy permit for the house.

**CONCLUSIONS OF LAW**

The principles that govern judicial proceedings also apply to administrative hearings. *8 Callaghan's Michigan Pleading and Practice (2ed.)*, §60.48, page 230.

Petitioner has the burden of proof to establish by a preponderance of the evidence that grounds exist for the imposition of sanctions pursuant to 1990 AACS, R339.1763.

Considering the record of this matter, including the pleadings, exhibits, and testimony, the ALJ finds that Petitioner has proven by a preponderance of the evidence that Respondent engaged in the following violations of the Code and Rules:

By allowing Mantei, a person not possessing a valid, builder's license nor a valid, building contractor's sales license, to negotiate a contract for the construction of a new home on behalf of Respondent's home construction business, Respondent violated §§ 601(1), 604(c), and 2411(2)(j) of the Code, being MCL 339.601(1), MCL 339.604(c), and MCL 339.2411(2)(j) and Rule 36, being R338.1536 of the Residential Builders and Maintenance and Alteration Contractors Board Rules.

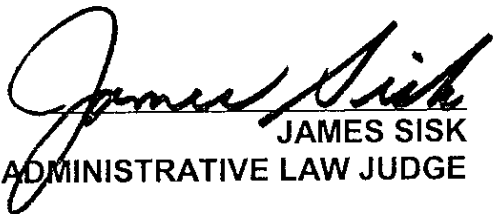
**DECISION**

Based upon the findings of Fact and Conclusions of Law, the ALJ finds that Respondent has violated §§601(1), 604(c), and 2411(2)(j) of the Code, being MCL339.601(1), MCL 339.604(c), and MCL 339.2411(2)(j) and Rule 36, being R338.1536, of the Rules.

**RECOMMENDATIONS**

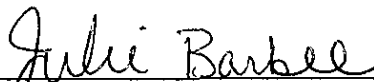
Based upon the Findings of Fact and Conclusions of Law contained in this Decision, the ALJ makes the following recommendations for disposition of this matter:

1. Require Respondent to pay a civil fine in the amount of \$5,000.00 within 60 days of the date of the Board's Order.
2. Revoke any and all licenses held by Respondent and/or any businesses owned by Respondent that falls within the jurisdiction of the Code.

  
JAMES SISK  
ADMINISTRATIVE LAW JUDGE

**PROOF OF SERVICE**

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 25<sup>th</sup> day of February, 2009.



Julie Barbee

State Office of Administrative Hearings and Rules

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