

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*  
MELISSA OVALLE

Docket No. 2009-272  
Complaint No. 306450

Complainant,

v

ROD P. BAUM  
License No. 21-01-132906

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 Erick Williams, Administrative Law Judge, dated March 24, 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, 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 of this Final Order. Complaint No. 306450 must be clearly indicated on the check or money order, and the payment sent to the Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Final Order Monitoring, P.O. Box 30018, Lansing, MI 48909.

2. The license of Respondent is CONTINUED IN REVOCATION. No application for licensure, relicensure, reinstatement or renewal shall be considered or granted by the

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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).

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. It is also the intent of the Board that the fine be assessed one time in order to satisfy the Final Orders issued for complaint Numbers 306449 and 306450. Once the fine ordered in one of the companion Final Orders is satisfied, the fine ordered in the other Final Order will be considered satisfied.

4. 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. 2009-268

Bureau of Commercial Services,  
Petitioner

Agency No. 306449

v

Agency: Bureau of Commercial  
Services

RB Custom Homes Inc,  
Respondent

Case type: Sanction

Issued and entered  
this 24th day of March 2009  
by Erick Williams  
Administrative Law Judge

HEARING REPORT

BACKGROUND

The Bureau of Commercial Services issued a complaint against RB Custom Homes Inc on December 23, 2008, under MCL 339.604 and MCL 339.2411. A hearing convened under MCL 24.271 et seq. on March 23, 2009. William Wilhelm Jr represented the Bureau of Commercial Services. RB Custom Homes was sent notice of the hearing at its last known address, 85 South Royston in Eaton Rapids, but no representative of RB Custom Homes appeared at the hearing. This opinion finds the complaint substantiated.

ISSUES AND APPLICABLE LAW

**MCL 339.604** reads:

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: ...

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....

(g) Commits an act which demonstrates incompetence.

**MCL 339.2411 (2) (m)** reads:

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

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

**1979 AC R 338.1551 (5)** reads:

(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**

The evidentiary hearings in cases 2009-268 and 2009-272 were combined. The following facts apply to both cases.

In January 2006, RB Custom Homes Inc entered into a contract with Melissa Burch Ovalle to construct a finished basement at 160 S Michigan in Eaton Rapids. Exhibit 4.

Rodney Baum, the licensed qualifying officer for the corporation, pulled the permits and did the work.

Some of the work involved plumbing and mechanical construction. However, Mr. Baum did not pull plumbing or mechanical permits. Baum does not have mechanical or plumbing licenses.

In March 2007, in response to a complaint by the homeowner, Bob Simons, Eaton County building inspector, inspected the job. Exhibit 6.

Mr. Simons testified that the basement has a low ceiling. There is special heating ductwork designed for areas with low clearance. However, Mr. Baum used normal ductwork for this project, below which he installed a drop ceiling, which resulted in ceilings in the finished basement that are too low to meet the height requirements in the building code.

In addition, the rooms were framed in such a way as to restrict access to the furnace room and sump pump. The furnace and water heater cannot be removed without dismantling those appliances or removing some of the basement walls. The sump pump is completely inaccessible.

Mr. Simons testified that Mr. Baum failed to pull mechanical and plumbing permits for the project. If he had pulled permits and filed plans, these defects might have been caught in advance, and the job might have been constructed differently.

The basement as currently constructed is a health hazard. The homeowner will need to redo the job entirely to comply with ceiling height and other access requirements. The homeowner will also need to install a new septic field to accommodate the additional bedrooms in the basement.

Melissa Burch Ovalle obtained a \$1,575 estimate from a carpentry contractor to do certain trim work that was left undone. Exhibit 8. However, trim work is the least of her problems. Mr. Simons, who owns a building company, estimated that it will cost between \$15,000 and \$20,000 to reconstruct the basement to comply with the building code, and it could cost anywhere from \$5,000 to \$30,000 more to install a new septic field.

**CONCLUSIONS OF LAW**

RB Custom Homes Inc constructed a basement with inadequate ceiling height in violation of 2003 MRC R 311.3, MCL 339.604 (c), MCL 339.2411 (2) (m), and 1979 AC R 338.1551 (5).

RB Custom Homes Inc acted incompetently, in violation of MCL 339.604(g), having failed to pull mechanical and plumbing permits for the project.

The Bureau of Commercial Services recommends a \$20,000 fine to be paid by RB Custom Homes Inc and Rodney Baum, who will bear joint and several liability.

The Bureau of Commercial Services recommends a \$16,575 restitution to be paid to Melissa Burch Ovalle by RB Custom Homes Inc, with no restitution award against Mr. Baum who is protected by a bankruptcy discharge.

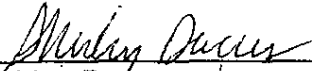


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**Erick Williams**  
**Administrative Law Judge**

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 24<sup>th</sup> day of March, 2009.

  
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Shirley Dacus  
State Office of Administrative Hearings and Rules

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Bureau of Commercial Services  
Compliance/Legal Unit  
Enforcement Division  
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Department Representative  
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