

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH¹
BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE & ALTERATION CONTRACTORS**

**DEPARTMENT OF ENERGY, LABOR &
ECONOMIC GROWTH,
BUREAU OF COMMERCIAL SERVICES *ex rel*
LORE J. BRUSS AND DAVID H. SCHREIBER**

**Docket No. 2008-1477
Complaint No. 307824**

Complainant,

v

**GANDY CONSTRUCTION, INC.
JOHN ROBERT GANDY, QUALIFYING OFFICER
License No. 21-02-175611**

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 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 Michelle Howie, Administrative Law Judge, dated February 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 \$2,500.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 307824 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, Michigan 48909.**

¹ 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).

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 and Respondent's Qualifying Officer. Respondent's Qualifying Officer may not serve as the Qualifying Officer of any licensed entity while any other Article 24 license held by Respondent or Respondent's Qualifying Officer 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 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
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.	2008-1477
Bureau of Commercial Services, Petitioner	Agency No.	307824
v	Agency:	Bureau of Commercial Services
Gandy Construction, Inc. John Robert Gandy, Q.O., Respondent	Case Type:	Sanction

**Issued and entered
this 24th day of February, 2009
by Michelle Howie
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuance of a Formal Complaint on August 27, 2008, by the Department of Labor & Economic Growth¹, Bureau of Commercial Services (Petitioner) against Gandy Construction, Inc., John Robert Gandy 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 was issued scheduling a contested case hearing at 9:00 a.m. on December 17, 2009 at the State Office of Administrative Hearings & Rules,

¹ Now known as the Department of Energy, Labor & Economic Growth (DELEG).

Cadillac Place, 2nd Floor Annex, 3026 W. Grand Blvd., Detroit, Michigan. The notice was sent to Respondent's last known address of record.

Administrative Law Judge Michelle Howie presided. Tiffany Daugherty, Administrative Law Specialist, appeared on behalf of Petitioner. Neither Respondent nor a representative on behalf of Respondent appeared at the hearing.

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 motion for a default judgment 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.

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Sections MCL 339.604(c) & (g) and MCL 339.2411(2)(m) of the Code; and Rule 51 (2) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated

thereunder, being 1979 AC, R 338.1551(2) and 2006 AACS, R 338.1551(2). Those sections provide 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.

(g) Commits an act which demonstrates incompetence.

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:

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

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. The licensee 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 a portion of the complaint is not acknowledged by the licensee as being justified, then the department shall notify the complainant of the area of disagreement.

FINDINGS OF FACT

Based on the record, the following findings of fact are established:

1. Respondent, has, at all times relevant to this Complaint, been licensed as residential builders under the Occupational Code, 1980 PA 299, as amended, Article 24; MCL 339.2401-2412.

2. The Department received a Complaint against Respondent, confirming to the requirements of § MCL 339.2411 of 1980 PA 299. (Petitioner Exhibit 7)

3. On or about November 1, 2006, Respondent entered into a contract with Lore J. Bruss and David Schreiber (homeowners) to perform services regulated by 1980 PA 299, as amended at the home located at 17516 Doris Fraser, Michigan 48026.

4. Respondents failed to perform the requirements of the contract in a workman like manner contrary to MCL 339.2411(2)(m).

5. Randy Warunek, Building Inspector for the City of Fraser, inspected the property on September 14, 2007. He substantiated (2) workmanship violations and (7) code violations.

6. Respondent, in performance of the contract, failed to comply with R703.1, R703.4, R903.2, R703.2, R703.3, R806 and R806.3 of the 2003 Michigan Residential Code, which was adopted pursuant to the Stille-DeRossett-Hale single state construction code act, effective February 29, 2004, contrary to 2006 AACRS, R 338.1551(5).

7. Respondent failed to meet minimal standards of acceptable practice for Respondent's occupation as a Residential Builder, contrary to MCL 339.604(g).

8. Respondents violated a rule of conduct in practicing an occupation, contrary to MCL 339.604(c).

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 AACRS, R

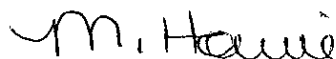
339.1763. Under § 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist, 428 Mich. 248 (1987).

Based upon the facts described herein, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Sections 604(c) & (g) and 2411(2)(m) of the Code and Rule 51(5) of the Residential Builders and Maintenance and Alteration Contractor Board Rules.

RECOMMENDATIONS

Based upon the above findings of fact and conclusions of law, the Administrative Law Judge makes the following recommendations to the Board:

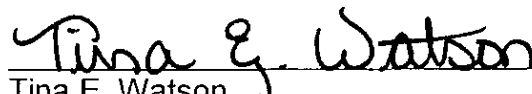
1. Respondent pay a civil fine in an amount to be determined by the Board.
2. In the event the civil fine has not been paid within 60 days following the issuance of a Final Order, then all Article 24 licenses should be suspended and no new or renewal licenses should be issued until the civil fine and restitution have been paid.



Michelle Howie
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 24th day of February, 2009.



Tina E. Watson
State Office of Administrative Hearings and Rules

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