

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*
LEWIS EQUIPMENT CO.

Docket No. 2008-1474
Complaint No. 307831

Complainant,

v

EDWARD EARL CARTER
License No. 21-01-136302

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 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 \$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. 307831 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).

2. Respondent shall make RESTITUTION to Lewis Equipment Co. by paying in full the Judgment dated October 18, 2006 entered in State of Michigan, 36th Judicial District Court, Case No. 06-132870 GC in the amount of \$5,376.20, plus statutory interest and any additional costs by certified check made payable Lewis Equipment Co. and mailed to 14711 Nine Mile, Eastpointe, MI 48021 within 60 days from the mailing date of the Final Order.

3. Respondent's failure to comply with each and every condition of this Final Order shall result in REVOCATION 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 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.	2008-1474
Bureau of Commercial Services, Petitioner	Agency No.	307831
v	Agency:	Bureau of Commercial Services
Edward Earl Carter, Respondent	Case Type:	Sanction

Issued and entered
this 25th day of February, 2009
by Michelle Howie
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

A Formal Complaint dated September 3, 2008, was issued by the Department of Energy, Labor and Economic Growth, Bureau of Commercial Services (Petitioner), against Edward Earl Carter (Respondent) alleging one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101-605, and the administrative rules promulgated thereunder.

A Notice of Hearing was issued scheduling the contested case hearing at 9:00 a.m. on December 18, 2008 at the State Office of Administrative Hearings & Rules, Cadillac Place, 2nd Floor Annex, Suite 2-700, 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 his behalf appeared at the hearing.

The hearing proceed 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.

ISSUES AND APPLICABLE LAW

The specific issue is whether Respondent violated sections MCL 339.604(c), MCL 339.2411(2) of the Occupational Code, 1980 PA 299; and Rule 51(2) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated there under, being 2006 AC, R 338.1551(2). Those sections 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:

(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.

Rule 51. (2)...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. Edward Earl Carter (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. On October 18, 2006, a judgment was entered against Respondent in the 36th Judicial District Court of Michigan in favor of Lewis Equipment Co. in the amount of \$5,376.20 plus interest.
3. Respondent has failed to satisfy the judgment contrary to MCL 339.2411(2)(l).
4. The facts underlying the payment arose out of and in connection with the performance of Respondents' duties as licensed residential builder and/or residential maintenance and alteration contractor.

5. Respondent failed to respond to the Complaint in a timely manner contrary to 2006 AACRS, R 338.1551(2).
6. Respondent has violated a rule of conduct in practicing an occupation, contrary to MCL 339.604(c).

CONCLUSIONS OF LAW

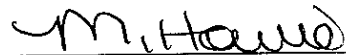
The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d ed.) Section 60.48, page 230. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence that grounds exist for the imposition of sanctions 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, Respondents have acted contrary to Sections 604(c), and 2411(2)(l) of the Code, and rule 51(2) of the Residential Builders and Maintenance and Alteration Contractors Board Rules.

RECOMMENDATIONS

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

1. Respondent satisfy judgment in the amount of \$5,376.20 plus interest.
2. Respondent pay a civil fine in an amount deemed appropriate by the Board.
3. In the event the civil fine and judgment have not been paid within 60 days following the issuance of the Board's Final Order, then all licenses or registrations under the jurisdiction

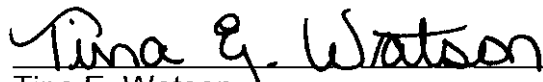
of the Code should be revoked and no new licenses or registrations should be issued until the civil fine and judgment has been paid.



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 25th day of February, 2009.



Tina E. Watson

State Office of Administrative Hearings and Rules

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Detroit, MI 48235

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