

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

Docket No. 2008-1371
Complaint No. 308794

Complainant,

v

ARCHON MANAGEMENT INC.
ABDULHADI TAYSEER SHAMAMIT, QUALIFYING OFFICER
License No. 21-02-154370

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 Roger E. Winkelman, Administrative Law Judge, dated February 6, 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 \$5,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 308794 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 within 60 days to the Homeowner Construction Lien Recovery Fund in the amount of \$7,000.00 and \$1,750.00 in litigation costs, fees and interest at the statutory rate from March 26, 2007, payable to the Homeowner Construction Lien Recovery Fund and mailed to Department of Energy, Labor & Economic Growth, Final Order Monitoring, P.O. Box 30018, Lansing, MI 48909 within 60 days from the mailing date of the Final Order.

3. The licenses of Respondent and Respondent's Qualifying Officer, and any and all Article 24 licenses held by Respondent or Respondent's Qualifying Officer 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's Qualifying Officer may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 license held by Respondent or Respondent's Qualifying Officer is in suspended or revoked status.

4. It is the intent of the Board that the fine and restitution be assessed one time in order to satisfy Final Orders issued for complaint Numbers 308794 and 308795. Once the fine and restitution ordered in one of the companion Final Orders is satisfied, the fine and restitution ordered in the other Final Order will be considered satisfied.

5. 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.	2008-1371
Bureau of Commercial Services, Petitioner	Agency No.	308794
v	Agency:	Bureau of Commercial Services
Archcon Management, Inc. Abdulhadi T. Shamamit, Q.O., Respondent	Case Type:	Sanction
and		
Bureau of Commercial Services, Petitioner	Docket No.	2008-1372
v	Agency No.	308795
Abdulhadi Tayseer Shamamit, Respondent	Agency:	Bureau of Commercial Services
_____ /	Case Type:	Sanction

Issued and entered
this 6th day of February, 2009
by Roger E. Winkelman
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the issuance of a Notice of Hearing upon a Formal Complaint issued by the Enforcement Division of the Department of Labor & Economic Growth's Bureau of Commercial Services (Petitioner) dated November 12, 2008. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA),), Archon Management, Inc., Abdulhadi Tayseer Shamamit, Qualifying Officer, and Abdulhadi Tayseer Shamamit, (Respondents) were afforded an

opportunity to demonstrate compliance prior to the commencement of formal proceedings.

Respondents failed to satisfactorily demonstrate compliance and, as a result, the matter was set and noticed for a formal hearing. The Notice of Hearing scheduled the contested case to commence on Wednesday January 21, 2008 at 9:00 a.m. at the State Office of Administrative Hearings & Rules of the Department of Labor & Economic Growth, Cadillac Place, 2nd Floor Annex, Room 2-700, and 3026 West Grand Boulevard, Detroit, Michigan. Further, the notice informed Respondents that if Respondents failed to appear at the hearing as scheduled, a default may be entered pursuant to Section 78 of the APA. The hearing commenced at about 9:40 a.m. Roger E. Winkelman presided as Administrative Law Judge. Kelley McLean, Assistant Attorney General, appeared on behalf of Petitioner. Stephanie Murphy, Bureau of Commercial Services Enforcement Division appeared as a witness. Neither Respondents nor anyone on Respondents' behalf appeared for the hearing.

At the outset of the contested case hearing, it was requested that a default be entered on behalf of Petitioner pursuant to Section 78 of the APA. Section 78 of the APA provides, in pertinent part:

“(2) Except as otherwise provided by law, disposition may be made of a contested case by...default...”

The judge granted Petitioner's motion for a default. As a result of the default, the factual allegations contained in Petitioner's Formal Complaint were deemed true.

ISSUES AND APPLICABLE LAW

The general issue presented is whether or not Respondents violated the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.*, with respect

to the practice of residential building. The specific issues are whether or not Respondents violated MCL 339.2411(2)(c) & (l) and MCL 339.2411(3), which provide in pertinent part:

Sec. 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.

(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.

(3) The department shall suspend or revoke the license of a person licensed under this article whose failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892; or under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569. The department shall not renew a license or issue a new license until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

EXHIBITS

Petitioner offered the following exhibit for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Account and remit letter to Respondents from the Regulation Agent

FINDINGS OF FACT

Respondent Archon Management, Inc., Abdulhadi Tayseer Shamamit, Qualifying Officer, has, at times relevant to this Complaint, been licensed as a residential builder under the Occupational Code, or was seeking renewal of such license, except as to those events that occurred after May 31, 2007, at which time the license lapsed and subsequently suspended on December 4, 2007.

Respondent Abdulhadi Tayseer Shamamit, has at times relevant to this Complaint, been licensed as a residential builder under the Occupational Code, or was seeking renewal of such license, except as to those events that occurred after December 4, 2007 at which time the license was suspended.

On May 14, 2007, as a result of Respondents failure to pay one or more lien claimants, payment was made by the Homeowner Construction Lien Recovery Fund in the amount of \$7,000.00 to Washtenaw Door & Trim, Inc. pursuant to a Consent Judgment in favor of Washtenaw Door & Trim, Inc. against the Homeowner Construction Lien Recovery Fund.

The Homeowner Construction Lien Recovery Fund incurred litigation costs in the amount of \$1,750.00.

The facts underlying said payments arose out of and in connection with the performance of Respondents' duties as licensed builders.

Respondents failed to remit money, which belonged to Stephen J. & Sheri Reck, to Washtenaw Door & Trim, Inc.

Respondents failed to satisfy a lien filed on February 28, 2005 by Washtenaw Door & Trim, Inc., in the County of Washtenaw, Michigan.

Respondent Abdulhadi Tayseer Shamamit was a party to the acts and omissions alleged hereinabove and was in a position to ensure compliance with the Occupational Code, and the Residential Builders and Maintenance and Alteration Contractors Board Rules, or otherwise prevent the violations that are the subject of this Complaint but failed to do so.

Respondents were properly served with notice of this proceeding but did not appear for the hearing.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading & Practice (2d ed) § 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 Respondents. 1990 AACS, R 339.1763.

Under Section 72 of the APA, there is no need to provide a full evidentiary hearing when all alleged facts are taken as true. *Smith v Lansing School District*, 428 Mich 248; 406 NW2d 825 (1987).

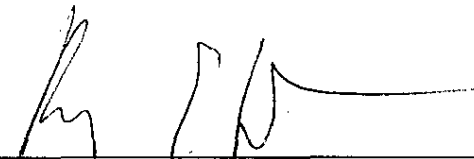
Based upon the facts described herein, Petitioner has established that Respondents violated MCL 339.2411(2)(c) & (l) and MCL 339.2411(3), as described in the Formal Complaint.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondents have violated MCL 339.2411(2)(c) & (l) and MCL 339.2411(3), subjecting Respondents to disciplinary sanctions under Section 602 of the Code. Petitioner recommended that sanctions include what the Board determines as fair and reasonable.

It is recommended that the Board include the following as sanctions in this matter:

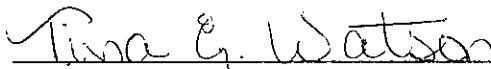
- 1 Payment of a civil fine in the amount that the Board deems fair and reasonable.
- 2 Payment of restitution to the Homeowner Construction Lien Recovery Fund in the amount of \$7,000.00 plus litigation costs of \$1,750.00 for a total restitution to be paid of \$8,750.00.
- 3 All Article 24 licenses should be suspended and no new or renewal licenses should be issued until the civil fine and restitution have been paid.



Roger E. Winkelman
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 6th day of February, 2009.



Tina E. Watson

State Office of Administrative Hearings and Rules

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