

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*
DAVID AND CRIS HATTER

Docket No. 2009-35
Complaint No. 309018

Complainant,

v

MICHAEL R. GOLICH
License No. 21-01-116178

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 Erick Williams, 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 \$1,500.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 309018 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.

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. Respondent may not serve

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).

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

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. 2009-35

Bureau of Commercial Services,
Petitioner

Agency No. 309018

v

Agency: Bureau of Commercial
Services

Michael R. Golich,
Respondent

Case type: Sanction

Issued and entered
this 24th day of February 2009
By Erick Williams
Administrative Law Judge

HEARING REPORT

BACKGROUND

The Bureau of Commercial Services issued a complaint against Michael Golich on November 13, 2008, under MCL 339.604 and MCL 339.2411. A hearing convened under MCL 24.271 et seq. on February 19, 2009. Kim Brietmeyer represented the Bureau of Commercial Services. Michael Golich appeared without counsel. This opinion finds violations of MCL 339.2411 (2) (m), 2006 AACS R 338.1551 (4) and MCL 339.604 (g) and recommends a fine.

ISSUES AND APPLICABLE LAW

MCL 339.604 (c) and (g) read:

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....

(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.

2006 AACRS R 338.1551 (4) and (5) read:

(4) If a complaint is justified by the local building inspector or by a person authorized by the department to make inspections, the builder or contractor shall correct the complaint within a reasonable time. Failure or refusal by the licensee to correct a structural matter that is materially deficient, dangerous, or hazardous to the owners shall be presumed to be dishonest or unfair dealing.

(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

In January 2007, David and Chris Hatter bought a recently-built house in Howell from the builder, Golich and Associates, Inc, a company operated by Michael Golich. In the first few months after moving in to the house, the Hatters discovered some construction defects.

James Berry, Livingston County Building Inspector, inspected the house in February and March 2008 at the Hatters' request. Mr. Berry verified several construction defects.

During 2008, Mr. Golich visited the job site several times and sent workers to the site on several occasions to correct the defects.

Mr. Berry visited the site most recently in February 2009 to evaluate the builder's corrective work.

The outstanding construction defects are described below.

Item 1:

The floors are uneven. Photos showing uneven floors are in Exhibit 3a, pp 5-7. In the basement, Mr. Berry was able to examine the understructure beneath the first floor. He found that many of the floor joists were out of alignment. Photos showing the misaligned floor joists are in Exhibit 3a, p 8. Berry cited the builder for violations of 2003 MRC R 502.6 and 2003 MRC R 503.1.1.

2003 MRC R 502.6 reads:

The ends of each joist, beam or girder shall have not less than 1.5 inches (38 mm) of bearing on wood or metal and not less than 3 inches (76 mm) on masonry or concrete except where supported on a 1-in-by-4-inch (25.4 mm by 102 mm) ribbon strip and nailed to the adjacent stud or by the use of approved joist hangers.

2003 MRC R 503.1.1 reads in part:

End joints in lumber used as sub-flooring shall occur over supports unless end-matched lumber is used, in which case each piece shall bear on at least two joists....

The homeowner commissioned a June 2008 engineering report, Exhibit C. The engineer found that the joists were too weak to keep the floor from sagging.

The builder visited the site three or four times after March 2008 in an attempt to correct the problem. Workers installed some shims, and some additional horizontal and vertical supports. See Exhibit 3a, pp 15-17, and 20.

Mr. Hatter testified that, even after the builder's corrective work, there are still gaps in the floor support. See Exhibit 3a, p 18.

Mr. Berry testified that the floor problem was still unresolved as of February 2009.

There is no evidence that anything was done to correct the problem on the second floor, since the second floor joists are not easily accessible.

The homeowner and builder are currently involved in civil litigation. Mr. Golich says he would like to come back to the house and do more corrective work, and Mr. Hatter says he is willing to have Golich perform more corrective work. But Golich says he has been advised by his lawyer not to come back to the house because of the pending litigation.

Item 3:

There were humps in the roof. Photos showing distortions in the roof are in Exhibit 3a, pp 1 and 2. Mr. Berry was not able to examine the roof structure, since the roof has been shingled. He speculates that the roof sheathing has distortions.

The builder visited the site three or four times after March 2008 in an attempt to correct the problem. Mr. Golich testified that workers removed some shingles and found some sheathing material that had not been nailed properly. The nails did not penetrate the trusses. The sheathing was re-glued and re-nailed.

Mr. Hatter and Mr. Berry testified that the problem was still evident in 2009.

Item 5:

Some of the siding was moving and pulling loose at the bottom, creating gaps. Mr. Berry testified that he could poke his finger under some pieces of siding. When Berry re-inspected the house in early February 2009, he found that nails had been driven through the siding. Berry did not know if it was appropriate to nail the siding in that way; the manufacturer's instructions would govern that point, but Berry has not consulted the manufacturer's instructions.

Berry found violations of 2003 MRC R 703.3.2 and 2003 MRC 703.4.

2003 MRC R 703.3.2 reads:

Horizontal lap siding shall be lapped at a minimum of 1 inch (25.4 mm), or 0.5 inch (12.7 mm) if rabbeted,

and shall have the ends caulked, covered with a batten, or sealed and installed over a strip of flashing.

2003 MRC 703.4 reads:

Unless specified otherwise, all wall coverings shall be securely fastened in accordance with Table R703.4 or with other approved aluminum, stainless steel, zinc-coated or other approved corrosion-resistive fasteners.

Mr. Golich testified that 5 or 8 pieces of siding had come loose. His workers came back to the site and corrected the problem by driving finish nails through the siding from the outside. Golich does not know if it was appropriate to secure the siding in that way; he has not checked the manufacturer's instructions.

Item 6:

Berry found water marks in the dining room, suggestive of a leak. Berry speculated that the roof had leaked. Berry cited a violation of 2003 **MRC 903.1**, which reads in part:

... Roof assemblies shall be designed and installed in accordance with this code and the approved manufacturer's installation instructions such that the roof assembly shall serve to protect the building or structure.

Golich testified that he sent workers back to correct the problem. They found that flashing was missing or misplaced in a corner of the roof. The corner was re-flashed. Golich speculates that the problem has been corrected.

Item 7:

Berry found cracks and protruding drywall nails in the walls of several rooms, both upstairs and downstairs. Berry cited the builder for poor workmanship.

Mr. Golich testified (and Berry agreed) that nail pops are a common problem in new houses.

Mr. Golich testified that his workers did not repair any nail pops or cracks during their visits to the house in the Fall of 2008 because he was trying to re-level the floors, which would probably strain some of the walls and create even more nail pops and cracks. He expected to return later and correct those problems. But his lawyers advised him not to return to the house during the pending litigation.

Item 8:

Berry found that there was peeling paint around the garage door jamb. In March 2008 he cited the builder for poor workmanship. However, during his visit in February 2009, Berry found that the builder had corrected the problem by installing aluminum around the door jamb. Berry concludes that the problem has been corrected.

Item 9:

Berry found chipping, peeling paint in some places. He cited the builder for poor workmanship. During his testimony, Mr. Berry could not remember the locations of the chipping and peeling paint.

Mr. Golich testified that he did not know where the chipping and peeling paint was, either.

Item 11:

Berry found a hole in a brick wall. During his testimony, Mr. Berry testified that he did not recall the location of the hole. It was probably a hole cut for a water pipe or gas line that was cut too large and then was filled with caulk. His March 2008 inspection report cited the builder for poor workmanship.

Berry testified that the homeowner was "Okay with that."

Mr. Golich testified that the hole may have been cut for an air conditioning unit.

Item 12:

During his March 2008 inspection, Berry found that some corner boards on the roof had peeling paint and they were cut in such a way that they did not conform to the slope of the roof. The job did not look good. He cited the builder for poor workmanship.

Mr. Golich testified that he sent workers back to correct the problem. They recut some wood on the roof, but there were still some gaps.

Mr. Berry testified that item 12 was still uncorrected as of February 2009.

Item 13:

The bi-fold closet doors in the upstairs bedroom were missing a handle, and do not stay in the tracks. Berry cited the builder for poor workmanship. He testified that they were probably installed wrong.

Mr. Golich testified that his workers corrected the problem by tightening the handle and popping the door back into the track.

Mr. Hatter testified that the doors are still coming off the track. Mr. Berry testified that item 13 was still uncorrected as of February 2009.

Item 14:

In the upstairs bathroom, caulking was missing in some spots, the wall was distorted toward the bottom, and the backsplash was pulled loose. Berry cited the builder for poor workmanship.

Mr. Golich testified that the countertop caulking had come loose, and his workers re-caulked it.

Mr. Berry testified that item 14 was still uncorrected as of February 2009.

Items 16 and 17:

The basement windows made of glass brick had poor mortar work. One of the windows had an air leak, probably due to the poor mortar work. Photos of the mortar work are in Exhibit 3a, p 9. Berry cited the builder for poor workmanship.

Golich agreed that the mortar work on the basement windows was poor. His workers have not corrected the problem; he was planning to do that, but the lawsuit intervened, and his lawyers advised him to "hold off" on more corrective work.

Item 18:

There are leaks in the basement. Berry found water stains on the concrete wall. Photos showing infiltration of water and vermin are in Exhibit 3a, pp 10-

14, and 19. Berry cited the builder for violations of 2003 MRC 4 401.1, 2003 MRC R 406.1, and 2003 MRC R 703.1.

2003 MRC 4 401.1 reads in part:

The provisions of this chapter shall control the design and construction of the foundation and foundation spaces for all buildings....

2003 MRC R 406.1 reads in part:

Except where required to be waterproofed by section R 406.2, foundation walls and walls that retain earth and enclose habitable or usable spaces located below grade shall be damp-proofed from the top of the footing to the finished grade....

2003 MRC R 703.1 reads:

Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in section R 703.8. the exterior wall envelope shall be designed and constructed in such a manner as to prevent the accumulation of water within the wall assembly by providing a water-resistive barrier behind the exterior veneer as required by section R 703.2.

Mr. Golich testified that the leaks are in two spots. Water had leaked from a pipe going out of the house, and water had also leaked from a poorly installed front door opening on the first floor.

The front door was replaced. Mr. Hatter confirmed that the front door does not leak.

Mr. Berry testified that item 18 was still uncorrected as of February 2009.

CONCLUSIONS OF LAW

Item 1:

The first floor and second floor are out of level. This is probably due to inadequacy of the underlying support beams. The builder has violated the building code and is subject to penalties under MCL 339.2411 (2) (m).

After several efforts aimed at addressing this problem during the Fall of 2008, the builder has not corrected it. The problem persists on the first floor, and the builder has not even attempted to correct the problem on the second floor, which might require dismantling part of the house.

Mr. Golich argues that he has been prevented from performing more corrective work by advice of counsel; but legal advice does not excuse nonperformance. Under 2006 AACRS R 338.1551 (4), corrective work must be performed within a "reasonable time" and there is no good faith exception to that rule.

We are approaching the anniversary of Mr. Berry's inspection report, and corrections that have not been made yet are overdue. In my view, the floor problem has not been fixed within a reasonable time, in violation of 2006 AACRS R 338.1551 (4).

Level floors are an elementary feature of a well-built house. Having built a house with out-of-level floors, the builder has demonstrated incompetence, in violation of MCL 339.604 (g).

Item 3:

The distortions in the roof indicate poor workmanship in violation of MCL 339.2411 (2) (m).

The builder visited the site three or four times after March 2008 in an attempt to correct the roof problem, but according to the building inspector, the problem persists. Corrections have not been made within a reasonable time, in violation of 2006 AACRS R 338.1551 (4).

Item 5:

Some of the siding was loose. During the Fall of 2008, the builder made attempts to correct the problem by nailing the siding down. It is not clear whether the builder has properly fixed the siding problem. The manufacturer's instructions govern that issue. The building inspector has not seen the manufacturer's instructions and did not offer an opinion as to whether that method of fixing the siding was proper. The siding is no longer loose. The State has the burden of proof. There is not enough evidence here to conclude that the builder in fixing the problem has committed a violation of the building code or licensing laws. No violation.

Item 6:

The dining room has water marks suggestive of a roof leak. The builder attempted to correct the problem by replacing flashing on the roof. There is not enough evidence to conclude that the roof is still leaking into the dining room. However, the water damage in the dining room from the original leak persists. To that extent, the builder

violated 2003 MRC 903.1, MCL 339.2411 (2) (m), and failed to fully correct the problem in violation of 2006 AACRS R 338.1551 (4).

Item 7:

There are cracks and protruding drywall nails in the walls of several rooms, upstairs and downstairs. Problems of this sort are minor, common in new construction, and are usually corrected in the normal course of warranty servicing. There is not enough evidence to find poor workmanship.

In this case, the builder has not attempted to correct the cracks and protruding nails. The builder has been waiting until other structural corrective work was finished. Re-leveling the floors will probably produce more cracks and protruding nails as the house settles. The major problem in this case -- the out-of-level floors -- has not been corrected within a reasonable time. By the same token, corrections to the cracks and protruding nails have not been made within a reasonable time, in violation of 2006 AACRS R 338.1551 (4)

Item 8:

The problem of peeling paint around the garage door jamb has been corrected. No violation.

Item 9:

According to the March 2008 inspection report, paint was chipped and peeling in some places. The builder did not rebut the allegations in the inspection

report. Accordingly, the builder is liable for poor workmanship, in violation of MCL 339.2411 (2) (m).

Whether the problem has been corrected is a different issue. The building inspector cannot remember the locations of the chipping and peeling paint. He did not make specific observations during his February 2009 inspection. Without specific information about the location of the problem, there is not enough evidence to conclude that the builder has failed to correct it.

Item 11:

The inspection report noted a hole in a brick wall cut to accommodate a thru-wall fitting. The March 2008 inspection report cited the builder for poor workmanship because the hole was too large. That supports a violation of MCL 339.2411 (2) (m).

According to the building inspector, the homeowner is "okay with that" and has not demanded that the problem be fixed. No violation of 2006 AACRS R 338.1551 (4).

Item 12:

Corner boards on the roof had peeling paint and do not conform with the roof slope. That constitutes a violation of MCL 339.2411 (2) (m).

Although the builder attempted to correct the problem, the building inspector found that it was uncorrected as of February 2009. That constitutes a violation of 2006 AACRS R 338.1551 (4).

Item 13:

The bi-fold closet doors in the upstairs bedroom were missing a handle, and do not stay in the tracks. The builder corrected the problem by tightening the handle and popping the door back into the track, but the homeowner testified that the doors are still coming off the track. The inspector concluded that item 13 was still uncorrected as of February 2009. That constitutes a violation of MCL 339.2411 (2) (m) and 2006 AACRS R 338.1551 (4).

Item 14:

In the upstairs bathroom, caulking was missing in some spots, the wall was distorted toward the bottom, and the backsplash was pulled loose. The builder re-installed and re-caulked the countertop. There is no evidence that the builder fixed or even tried to fix the distortion in the wall near the bottom.

The caulking, countertop and backsplash problem was minor and was corrected in a reasonable time. I find no workmanship violation with respect to those items.

However, the distortion in the wall was not corrected. It is poor workmanship in violation of MCL 339.2411 (2) (m) and has not been corrected, in violation of 2006 AACRS R 338.1551 (4).

Items 16 and 17:

Both sides agree that the mortar work on the glass brick basement windows is unsightly and possibly leaky. It amounts to poor workmanship in violation of

MCL 339.2411 (2) (m) and has not been corrected, in violation of 2006 AACRS R 338.1551 (4).

Item 18:

The basement leaks. The builder has violated 2003 MRC 4 401.1, 2003 MRC R 406.1, and 2003 MRC R 703.1 and is subject to penalties under MCL 339.2411 (2) (m).

The builder has addressed part of the leak problem by replacing the front door and its frame.

There may be another leak problem related to a thru-wall pipe; that problem has, evidently not been corrected. The leak has not been fixed within a reasonable time, in violation of 2006 AACRS R 338.1551 (4).

RECOMMENDATION

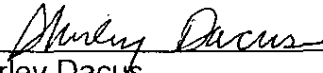
The Bureau of Commercial Services has recommended a fine but no restitution in light of the ongoing civil litigation.

Erick Williams

**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 27th day of February, 2009.



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