

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*
MICHAEL L. FIFER

Docket No. 2009-81
Complaint No. 309124

Complainant,

v

JC DEVELOPMENT COMMUNITIES LLC
License No. 21-02-178410

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 Edward F. Rodgers II, Administrative Law Judge, dated March 5, 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.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 \$10,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 309124 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 Micheal L. Fifer by paying in full the Judgment dated November 15, 2007 entered in State of Michigan, in the Circuit Court for the County of Wayne, Case No 06-627314-CK in the amount of \$43,000.00, plus statutory interest by certified check made payable to Michael L. Fifer and Jennifer Gilhool and mailed to 49785 Baychester Blvd, Canton, MI 49187 within 60 days from the mailing date of the Final Order.

3. Respondent's license and all Article 24 licenses held by Respondent are IMMEDIATELY REVOKED. 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.	2009-81
Bureau of Commercial Services, Petitioner	Agency No.	309124
v	Agency:	Bureau of Commercial Services
JC Development Communities, LLC, Respondent	Case Type:	Sanction

Issued and entered
this 5th day of March, 2009
by Edward F. Rodgers II
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Request for Hearing on January 15, 2009. Following the receipt of the Request for Hearing, the State Office of Administrative Hearings and Rules (SOAHR) issued a Notice of Hearing on January 20, 2009 and February 6, 2009. The Notices of Hearing scheduled the contested case hearing to commence on February 18, 2009. The hearing in the above matter commenced as scheduled.

The Notice was issued pursuant to allegations set forth in a Formal Complaint (Complaint) issued on October 30, 2008. The Complaint alleged that Respondent violated the Occupational Code of 1980, 1980 PA 299, as amended (Code), being MCL 339.101 *et seq.*, and the Administrative Rules promulgated thereunder.

The Notice of Hearing was mailed to the last three known addresses of record for the Respondent: 8608 Newport Drive, White lake, MI 48386; 585 Belvedere Ct. S,

Canton, MI 48188; and 11750 Highland Rd., Ste. 100 and Ste. 300, Hartland, MI 48353.

The Notice of Hearing stated in pertinent part: "In the event you fail to appear at the hearing as scheduled, a default judgment or decision may be entered against you pursuant to the Administrative Procedures Act."

At the hearing, Attorney Kim Breitmeyer, appeared on behalf of the Petitioner. Neither Respondent nor an attorney on his behalf appeared at the hearing.

At the outset of the contested case hearing, Petitioner requested that the proceeding continue in Respondent's absence pursuant to Section 72(1) of the APA, being MCL 24.272(1). In addition, Petitioner requested that a default be granted on behalf of the Petitioner pursuant to Section 78(2) of the APA, being MCL 24.278(2).

Section 72 of the APA provides in pertinent part:

- (1) 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.

Also, Section 78 of the APA states in pertinent part:

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

The Judge determined that the Petitioner should be allowed to proceed in the Respondent's absence and granted the Petitioner's motion for default.

The Petitioner's exhibits were admitted into the record as follows:

1. Exhibit 1 is the Purchase Agreement between Respondent and Condominium owners Jennifer T. Gilhool and Michael L. Fifer;
2. Exhibit 2 is the Consent Judgment issued by Wayne County Circuit Court, dated November 15, 2007.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether the Respondent violated the Code or the Rules. The specific issue in this case is whether the Respondent violated Section 2411(2)(l) of the Code, being MCL 339.2411(2)(l); constituting grounds for the assessment of a penalty as defined in § 602 of the Code.

These Sections of the Code state in part:

MCL 2411(2)(l).

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

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.

MCL 339.602.

A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

- (a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.
- (b) Suspension of a license or certificate of registration.
- (c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- (d) Revocation of a license or certificate of registration.
- (e) In the case of a person licensed or registered under this act and except as otherwise provided for by this act, an administrative fine to be paid to the department, not to exceed \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) *A requirement that restitution be made, based upon proofs submitted to and findings made by the hearing examiner after a contested case.*

FINDINGS OF FACT

Based upon the entire record in this matter, including the exhibits and the granting of a default, the following Findings of Fact are made:

1. JC Development Communities, LLC, (Respondent), has at all times relevant to this Complaint, been licensed as a residential builder under the Code.
2. On or about November 28, 2005, Respondent entered into a contract to perform services regulated by the Code with Jennifer Gilhool and Michael L. Fifer for the subject property located at 48492 Ivybridge Court, Unit 60, Canton, MI 48188.
3. On November 15, 2007, the Respondent had a Judgment entered against it in Wayne County, Michigan, in the amount of \$43,000.00, plus interest.
4. Respondent failed to satisfy the Judgment.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleadings and Practice (2d. ed.), Section 60.48, at page 230. The burden of proof is on the Petitioner to prove by a preponderance of the evidence that grounds exist for the imposition of sanctions under 1990 AACRS, R 339.1763. Under Section 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 applicable sections of the Code, as well as the Findings of Fact, and the record as a whole in this matter, the Petitioner has proven by a

preponderance of the evidence that the following Conclusion of Law is that Respondent has acted contrary to § 2411(2)(l) of the Code, being MCL 339.2411(2)(l) constituting grounds for the assessment of a penalty as defined in § 602 of the Code.

Pursuant to the above Findings of Fact, the undersigned Administrative Law Judge concludes that the Petitioner has established by a preponderance of the evidence that Respondent violated Occupational Code, 1980 PA 299, as amended; MCL 339.2411(2)(l).

The Petitioner recommends a suspension, revocation, or denial of the Respondent's license pursuant to MCL 339.2405(3).

DECISION

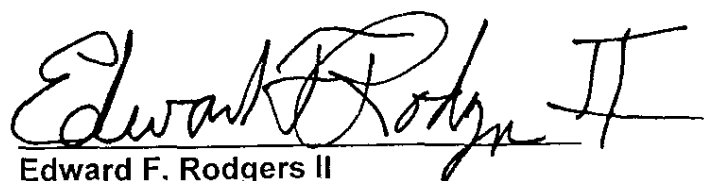
Based upon the Findings of Fact and the Conclusions of Law, the Administrative Law Judge finds that the Respondent violated Section 339.2411(2)(l) of the Code.

PENALTY RECOMMENDATION

Based upon the Findings of Fact, Conclusions of Law, and the recommendations of the Petitioner, the Administrative Law Judge makes the following penalty recommendations to the Board to be included in the Board's Penalty Order:

1. The Respondent is to pay a civil fine in the amount of \$1,000.00 for violating the code;
2. The Respondent is to pay restitution in the amount of \$43,000.00 pursuant to the Consent Judgment; and

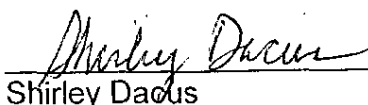
3. If the fine and restitution are not paid within 60 days then the Respondent's license shall be suspended and the civil fine shall increase to \$5,000.00.
4. If the fine and restitution are not paid after 6 months, all of the licenses held by Respondent are to be revoked.

A handwritten signature in black ink, reading "Edward F. Rodgers II". The signature is written in a cursive style with a large, stylized "E" and "R".

Edward F. Rodgers II
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 5th day of March, 2009.



Shirley Dacus
State Office of Administrative Hearings and Rules

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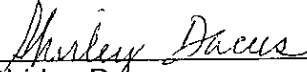
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Thomas L. Sparks
Butzel Long
110 West Michigan Ave., Ste. 1100
Lansing, MI 48933

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 5th day of March, 2009.


Shirley Dacus

State Office of Administrative Hearings and Rules

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