

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*
ARIEL ANDERSON AND RICHARD UNDERWOOD

Docket No. 2009-80
Complaint No. 309184

Complainant,

v.

STEVEN LAURENCE BOVEN
D/B/A STEVEN BOVEN BUILDER
License No. 21-01-129576

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 10, 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 \$10,000.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 309184 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, MI 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 pay RESTITUTION in the amount of \$18,614.66 to Ariel Anderson and Richard Underwood, by certified check made payable to Ariel Anderson and Richard Underwood, and mailed to 2322 Chevy Chase Road, Kalamazoo, MI 49008 within 60 days from the mailing date of this Final Order.

3. Any and all Article 24 licenses held by Respondent shall be and hereby 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. 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.

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.	2009-80
Bureau of Commercial Services, Petitioner	Agency No.	309184
v	Agency:	Bureau of Commercial Services
Steven Laurence Boven d/b/a Steven Boven Builder, Respondent	Case Type:	Sanction

Issued and entered
this 10th 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. 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 November 20, 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 five known addresses of record for the Respondent:

1. 49731 CR 653, Paw Paw, MI 49079;

2. 5637 Tiffin, Kalamazoo, MI 49002;
3. 711 S. Rose St., Kalamazoo, MI 49001;
4. 2901 Stadium Dr., #D-1, Kalamazoo, MI 49009; and
5. 7433 Finnigan, Mattawan, MI 49071.

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 Respondent's repair estimate to the homeowners totaling \$10,140.00.

2. Exhibit 2 is a list created by the homeowners of all of the repair costs and the amount paid to the Respondent totaling \$10,839.00.
3. Exhibit 3 is the Building Inspection Report, dated March 12, 2008.
4. Exhibit 4 is the 2003 Michigan Residential Code for one- and two-family dwellings.
5. Exhibit 5 is copies of the Notices sent to the Respondent by BCS, dated April 7, 2008 and May 20, 2008.

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 of the Code, being MCL 339.2411; constituting grounds for the assessment of a penalty as defined in § 602 of the Code.

These Sections of the Code state in part:

MCL 339.2411.

(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) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

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.

MCL 339.604.

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.

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. Steven Laurence Boven d/b/a Steven Boven Builder, Respondent, has at all times relevant to this Complaint been licensed as a residential builder under the Code.
2. Respondent entered in a contract to perform services regulated by the Code with Ariel Anderson and Richard Underwood.
3. Respondent failed to ensure that the contract was signed by all parties.
4. Respondent failed to perform the requirements of the contract in a workmanlike manner.
5. Respondent, in performance of the contract, failed to comply with §§

R802.10.3, R802.3, R503.2.1.1(1) footnote d, R802.10.5, R802.10.1, R802.5.1(3), R602.3(1), R502.5(1), Figure 602.3(2), R403.1.6, and R602.3.2 of the Michigan Residential Code, which was adopted pursuant to the Stille-DeRossett-Hale single state construction code act, effective February 29, 2004.

6. Respondent failed to correct those items which required repair within a reasonable time.
7. Respondent failed to meet minimal standards of acceptable practice for Respondent's occupation as a residential builder.
8. Respondent failed to respond to the Complaint in a timely manner.
9. Respondent has violated a rule of conduct in practicing an occupation.

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 AACS, 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, the following Conclusion of Law:

1. Respondent failed to ensure that the contract was signed by all of the parties, contrary to 2006 AACS, R338.1533(l).

2. Respondent failed to perform the requirements of the contract in a workmanlike manner, contrary to MCL 339.2411(2)(m).
3. Respondent, in performance of the contract, failed to comply with §§ R802.10.3, R802.3, R503.2.1.1(1) footnote d, R802.10.5, R802.10.1, R802.5.1(3), R602.3(1), R502.5(1), Figure 602.3(2), R403.1.6, and R602.3.2 of the Michigan Residential Code, which was adopted pursuant to the Stille-DeRossett-Hale single state construction code act, effective February 29, 2004, contrary to 2006 ACCS, R 338.1551(5).
6. Respondent failed to correct those items which required repair within a reasonable time, contrary to 2006 AACS, R 338.1551(4).
7. Respondent failed to meet minimal standards of acceptable practice for Respondent's occupation as a residential builder, contrary to MCL 339.604(g).
3. Respondent failed to respond to the Complaint in a timely manner, contrary to 2006 AACS, R 338.1551(2).
4. Respondent has violated a rule of conduct in practicing an occupation, contrary to MCL 339.604(c).

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)(m) and MCL 339.604(c) and (g), constituting grounds for the assessment of a penalty as defined in § 602 of the Code.

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

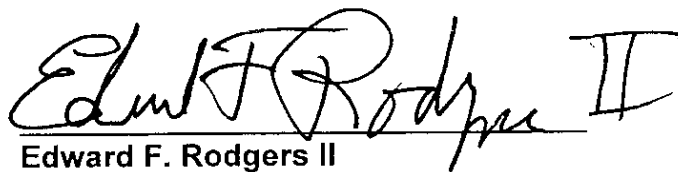
DECISION

Based upon the Findings of Fact and the Conclusions of Law, the Administrative Law Judge finds that the Respondent violated Sections 339.2411(2)(m) and 339.604(c) and (g) 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:

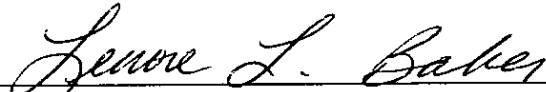
1. The Respondent is to pay a civil fine in the amount of \$7,500.00 for violating the code;
2. The Respondent is to pay restitution in the amount of \$18,614.66 pursuant to the Consent Judgment; and
3. If the fine and restitution are not paid within 60 days then the Respondent's license shall be suspended.
4. If the fine and restitution are not paid after 6 months then the Respondent's license shall be revoked.



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 10th day of March, 2009.



Lenore L. Baker
State Office of Administrative Hearings and Rules

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Compliance/Legal Unit
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