

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*
DARICE D. COLEMAN

Docket No. 2008-1466
Complaint No. 309237

Complainant,

v

MARSHALL KALLEN
License No. 21-01-097571

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, February 4, 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 \$1,000.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 309237 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.
2. Respondent shall pay RESTITUTION to Darice D. Coleman by paying Alex Painting LLC in the amount of \$400.00, by certified check made payable to Alex Painting LLC and mailed to Alex Painting LLC, 2473 Lochaven, West Bloomfield, MI 48324 and by paying

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).

Floorwox in the amount of \$645.00, by certified check made payable to Floorwox, Inc. and mailed to Floorwox, 29200 Lyon Oaks Drive, Wixom, MI 48393 within 60 days from the mailing date of this Final Order.

3. Failure to comply with this Final Order shall result in **SUSPENSION** of all Article 24 licenses of Respondent. 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. It is also the intent of the Board that the fine be assessed one time in order to satisfy the Final Orders issued for complaint Numbers 309236 and 309237. Once the fine and restitution ordered in one of the companion Final Orders are 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.	2008-1466
Bureau of Commercial Services, Petitioner	Agency No.	309237
v	Agency:	Bureau of Commercial Services
Marshall Kallen, Respondent	Case Type:	Sanction
and		
Bureau of Commercial Services, Petitioner	Docket No.	2008-1467
v	Agency No.	309236
Galaxy Builders, Inc., Marshall Kallen, Qualifying Officer, Respondent	Agency:	Bureau of Commercial Services
	Case Type:	Sanction

Issued and entered
this 4th 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 October 20, 2008. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA), Galaxy Builders, Inc., Marshall Kallen, Qualifying Officer, and Marshall Kallen (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 December 3, 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. Tiffany Daugherty, Administrative Law Specialist, appeared on behalf of Petitioner. 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 339.604(c), MCL 339.2411(2)(c) & (l), and 2006 AACS, R 338.1551(2),

which provide in pertinent part:

Sec. 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.

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.

Rule 51. (2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a copy of the complaint to the licensee. 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.

EXHIBITS

Petitioner offered the following two exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Claim of Lien by Alex Painting L.L.C. for \$400.00
2	Claim of Lien by Floorworx, Inc. for \$645.00

FINDINGS OF FACT

Galaxy Builders, Inc., Marshall Kallen Qualifying Officer, (Respondent), has at all times relevant to this Complaint, been licensed as a residential builder under the Code.

Marshall Kallen (Respondent), has at all times relevant to this Complaint, been licensed as a residential builder under the Code.

A Complaint against Respondents, conforming to the requirements of Section 2411 of 1980 PA 299, as amended; MCL 339.2411 has been filed with the Michigan Department of Labor & Economic Growth.

On or about April 7, 2007, Respondent Galaxy Builders, Inc. entered into a purchase agreement to sell to Darice Coleman, a residential structure which was constructed by and under the licenses of Respondents and which construction was regulated by the Code.

On or about June 27, 2007, the sale was consummated pursuant to the purchase agreement between the parties.

Respondents failed to satisfy a lien filed on September 24, 2007, by Alex Painting L.L.C. in the County of Wayne, Michigan.

Respondents failed to satisfy a lien filed on September 19, 2007, by Floorworx, Inc. in the County of Wayne, Michigan.

Respondents have failed to pay money to subcontractors with whom Respondents have contracted to perform the services required by the contract.

Respondents failed to account for money belonging to Darice Coleman.

Respondents failed to respond to the Complaint in a timely manner.

Respondents have violated a rule of conduct in practicing an occupation.

Respondent Marshall Kallen was a party to the acts and omissions alleged herein and was in a position to ensure compliance with the Code or otherwise prevent 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).

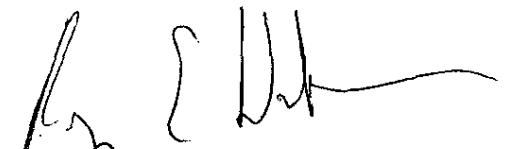
Based upon the facts described herein, Petitioner has established that Respondents violated MCL 339.604(c), MCL 339.2411(2)(c) & (l), and 2006 AACS, R 338.1551(2), as described in the Formal Complaint.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondents have violated MCL 339.604(c), MCL 339.2411(2)(c) & (l), and 2006 AACS, R 338.1551(2) subjecting Respondents to disciplinary sanctions under Section 602 of the Code. Petitioner recommended that sanctions include Respondents' licenses shall be revoked until both liens have been satisfied.

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

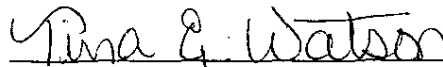
1. Payment of a civil fine in the amount that the Board deems fair and reasonable.
2. Payment of restitution of \$400.00 to Alex Painting L.L.C. and \$645.00 to Floorworx, Inc.
3. In the event the civil fine and restitution have not been paid within 60 days following the issuance of a final order, then 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 4th day of February, 2009.



Tina E. Watson

State Office of Administrative Hearings and Rules

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Sylvan Lake, MI 48320

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