

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*
SHARON K. THEISEN

Docket No. 2008-1580
Complaint No. 309819

Complainant,

v

SALVATORE P. CUSAMANO
D/B/A CENTURY SUNROOMS
License No. 21-01-157905

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 David Cohen, Administrative Law Judge, dated February 27, 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 \$5,000.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 309819 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 \$9,950.00 to Sharon K. Theisen, by certified check made payable to Sharon K. Theisen, and mailed to 331 Sandalwood, Monroe, MI 48161 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. | 2008-1580 |
| Bureau of Commercial Services, Petitioner | Agency No. | 309819 |
| v | Agency: | Bureau of Commercial Services |
| Salvatore P. Cusamano d/b/a Century Sunrooms, Respondent | Case Type: | Sanction |

Issued and entered
this 27th day of February, 2009
by David Cohen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the filing of a Notice of Hearing upon a Formal Complaint issued by the Enforcement Division of the Department of Labor & Economic Growth's¹, Bureau of Commercial Services (Petitioner) dated October 1, 2008, charging Salvatore P. Cusamano, d/b/a Century Sunrooms (Respondent) with one or more violations of the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.* Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*, Respondent was afforded an opportunity to demonstrate compliance prior to the commencement of formal proceedings. Respondent failed to satisfactorily demonstrate compliance and, as a result, the matter was set and noticed for a formal hearing. The Notice of Hearing informed Respondent that if Respondent failed to

appear at the hearing as scheduled, a default may be entered pursuant to Section 78 of the APA.

The hearing was set for Tuesday, January 27, 2009 at 9:00 a.m., at the State Office of Administrative Hearings & Rules of the Department of Energy, Labor & Economic Growth, Cadillac Place, 2nd Floor Annex, Room 2-700, 3026 West Grand Boulevard, Detroit, Michigan, and the same proceeded at about 9:40 a.m. David M. Cohen presided as Administrative Law Judge. Tiffany Daugherty, Esq., appeared on behalf of the Petitioner. Neither Respondent, nor anyone on Respondent's behalf, appeared for the hearing. Homeowner Sharon Theisen was present at the hearing, as was Building Inspector Mike Black, but neither offered formal testimony. At the outset of the contested case, Petitioner requested that a default be entered on its behalf 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 Complaint were deemed true.

ISSUES AND APPLICABLE LAW

The general issue presented is whether Respondent violated Sections 604(c) & (g) and 2411(2)(m) of the Occupational Code, 1980 PA 299; as amended; MCL 339.604(c), MCL 339.604(g), MCL 339.2411(2)(m), and Rule 51(4) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated thereunder as 2006 AACS, R 338.1551(4) which provide, in pertinent part:

¹ Now known as the Department of Energy, Labor & Economic Growth (DELEG)

Section 604. A person who violates 1 or more of the following 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.

Section 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) Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official.

R 338.1551 Complaints; filing.

Rule 51(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.

EXHIBIT

The following three page exhibit was admitted:

Exhibit

Description

1

Copies of three cashed checks from homeowner Sharon Theisen to Respondent, totaling Nine Thousand Nine Hundred Fifty Dollars (\$9,950.00).

FINDINGS OF FACT

1. Respondent has, at all relevant times to the incident in question, been licensed as a residential builder under the Code, except as to those events that occurred after May 31, 2008, at which time the license lapsed.

2. A Statement of Complaint was filed with the Michigan Department of Energy, Labor & Economic Growth on May 21, 2008 by homeowner Sharon Theisen against Respondent.

3. On or about May 20, 2008, Monroe Charter Township Building Inspector Mike Black justified workmanship complaints by the homeowner, noting poor caulking which revealed visible openings between the sunroom installed by Respondent and the residence, as well short or improper vertical siding/skirting.

4. On or about June 17, 2007, Respondent, entered into a contract to perform services, regulated by the Code, with the Sharon Theisen.

5. Respondent failed to perform the requirements of the contract in a workmanlike manner, contrary to MCL 339.2411(2)(m).

6. Respondent failed to meet minimal standards of acceptable practice for Respondent's occupation as a residential builder, contrary to MCL 399.604(g).

7. Respondent failed to correct the items identified by the Inspection Report of Mr. Mike Black within a reasonable period of time, contrary to 2006 AACRS, R 339.1551(4).

8. Respondent has violated a rule of conduct in practicing an occupation.

9. Although Respondent was properly served with notice of these proceedings, no one on Respondent's behalf appeared for the hearing.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon Respondent. 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 NW 2d 825 (1987).

Violation of Section 604(c) & 604(g) of the Code

By this charge, Petitioner asserts that Respondent violated Section 604(c). 604(c) states that an individual is subject to the penalties enumerated in Section 602 if he/she is found to have violated a rule of conduct of an occupation. 604(g) states that an individual is subject to the penalties enumerated in Section 602 if he/she is found to have committed an act which demonstrates incompetence

In the present matter, the record establishes that Respondent acted as such by failing to properly install the sunroom at the home located at 331 Sandalwood, Monroe, Michigan. Construction defects included poor caulking which revealed visible openings between the sunroom installed by Respondent and the home, as well short or improper vertical siding/skirting.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Section 604(c) and Section 604(g) of the Code.

Violation of Section 2411(2)(m) of the Code

By this charge, Petitioner asserts that Respondent performed poor workmanship or workmanship not meeting the standards of the custom or trade, verified by a building code enforcement official. As noted above, inspector Black's May 20, 2008 inspection indicates the work performed by Respondent resulted in multiple code violations and workmanship defects (Formal Complaint Exhibit 2).

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Section 2411(2)(m) of the Code.

Violation of Rule 338.1551(4)

By this charge, Petitioner asserts that Respondent failed to correct a complaint within a reasonable time when the complaint was justified by the local building inspector or by a person authorized by the department to make inspections (Formal Complaint Exhibit 2). In the present matter, the lack of communication, failure and/or refusal by the licensee to correct the code and workmanship deficiencies would indicate a violation of 51(4).

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Rule 338.1551(4) of the Residential Builders and Maintenance and Alteration Contractors Board Rules.


DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondent violated Section 604(c), 604(g), 2411(2)(m) of the Code and Rule 1551(4) as described in this Hearing Report. Petitioner recommended that sanctions include restitution to the Sharon Theisen, the property owner, in the amount of Nine Thousand Nine Hundred Fifty

Dollars (\$9,950.00). Additionally, Petitioner recommended that Respondent, Salvatore P. Cusamano, d/b/a Century Sunrooms, have his license revoked until such time as restitution is made in full.

This Administrative Law Judge concurs with Petitioner's recommendation in this matter, and would further recommend assessment of an appropriate fine against Respondent. It is recommended that the Board include the following as sanctions in this matter:

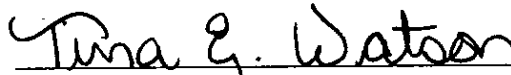
1. Payment of a civil fine in an amount deemed reasonable by the board.
2. Restitution to Sharon Theisen in the amount of Nine Thousand Nine Hundred Fifty Dollars (\$9,950.00).
3. License revocation until all fines and restitution are satisfied.



David Cohen
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.



Tina E. Watson

State Office of Administrative Hearings and Rules

Salvatore P Cusamano
d/b/a Century Sunrooms
14382 Gautz Rd.
La Salle, MI 48145

Salvatore P Cusamano
d/b/a Century Sunrooms
15375 S. Dixie Hwy.
Monroe, MI 48161

Stephen J. Gobbo
Bureau of Commercial Services
Compliance/Legal Unit
Enforcement Division
P.O. Box 30018
Lansing, MI 48909

Tiffany N Daugherty
Bureau of Commercial Services
3026 W. Grand Blvd.
Suite 11-300
Detroit, MI 48202