

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
LAFRAN STEVENS

Docket No. 2008-894
Complaint No. 303398

Complainant,

v

AT WORK CONSTRUCTION LLC
DASHAWN STEWART, QUALIFYING OFFICER
License No. 21-02-179564

Respondent.

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on January 6, 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 C. David Jones, Administrative Law Judge, dated October 6, 2008;

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. 303398 must be clearly indicated on the check or money order, and the payment sent to the Department of Energy, Labor & Economic Growth, Administrative Services Division, 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. The license of Respondent and any and all Article 24 licenses held by Respondent or Respondent's Qualifying Officer 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's Qualifying Officer may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 license held by Respondent or Respondent's Qualifying Officer is in suspended or revoked status.

3. Respondent shall submit in writing to the Michigan Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Administrative Services Division, 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 19th day of March, 2009.

BY: 
Mark T. Glynn, Chairperson

Date mailed: March 19, 2009

Proof of Compliance should be filed with:

Department of Energy, Labor & Economic Growth, Bureau of Commercial Services
Administrative Services Division
P.O. Box 30018
Lansing, MI 48909

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2008-894
Bureau of Commercial Services, Petitioner	Agency No.	303398
v	Agency:	Bureau of Commercial Services
At Work Construction, LLC, Dashawn Stewart, Q.O., Respondent	Case Type:	Sanction

Issued and entered
this 6 day of October, 2008
by C. David Jones
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Formal Complaint against Respondent on February 28, 2008. On July 9, 2008, Notice of Hearing was mailed to the parties (at last known addresses) scheduling the hearing to commence on September 16, 2008, at 9:30 a.m., at Suite 2-700, 3026 W. Grand Blvd., Detroit, Michigan.

On September 16, 2008, the hearing commenced at 10:15 a.m. Petitioner was represented by Serene Katranji-Zeni, Assistant Attorney General. Respondent did not appear in-person or by authorized representated. No adjournment had been requested or granted. A default was granted at Petitioner's request.

At hearing, no witness testified. However, the following exhibits were admitted into evidence:

Petitioner's Exhibit 1: Proof of License

Petitioner's Exhibit 2: Proof of Service

Petitioner's Exhibit 3: Licensure Statement

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Petitioner's Exhibit 4: Agreement

Petitioner's Exhibit 5: Check

ISSUES AND APPLICABLE LAW

The applicable law in this case is the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.*, and the rules promulgated thereunder.

The issues in this case are as follows:

1. Did Respondent accept a contract procured by an unlicensed person, contrary to 1979 AC, R 338.1536?
2. Did Respondent practice fraud, deceit, or dishonesty, contrary to MCL 339.604(b)?
3. Did Respondent fail to account for money belonging to another, contrary to MCL 339.2411(2)(c)?
4. Did Respondent violate a rule of conduct in practicing an occupation, contrary to MCL 339.604(c)?

FINDINGS OF FACT

1. At Work Construction LLC, Dashawn Stewart Qualifying Officer (Respondent), has, at all times relevant to this Complaint, been licensed as a residential builder under the Occupational Code, 1980 PA 299, as amended, Article 24; MCL 339.2401-2412.
2. A Complaint against Respondent, conforming to requirements of § 2411 of 1980 PA 299, as amended; MCL 339.2411 has been filed with Michigan Department of Labor & Economic Growth.
3. Andre Scott, negotiated, sold and agreed to furnish the goods and services of a residential builder, Respondent At Work Construction LLC, to LaFran

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Stevens, which services are regulated by 1980 PA 299, as amended, on or about April 5, 2006.

4. At the time Andre Scott negotiated, sold and agreed to furnish the goods and services of a residential builder, Andre Scott was not licensed although required to be licensed pursuant to §§ 601(1) and 2407 of the Occupational Code, 1980 PA 299, as amended.

5. On or about April 5, 2006, Respondent's Qualifying Officer, Dashawn Stewart, executed a contract to perform the services agreed to between Andre Scott and LaFran Stevens.

6. Respondent accepted a contract negotiated by a person not licensed under Respondent, contrary to 1979 AC, R 338.1536.

7. On the 14th day of April, 2006, Complainant LaFran Stevens did pay Respondent the amount of \$25,202.73 by a check issued by OCWEN Loan Servicing LLC.

8. Respondent accepted and/or negotiated the check, but has not performed the services for which payment was accepted.

9. Complainant LaFran Stevens requested return of the monies so paid to Respondent, but that Respondent has failed and refused to return said monies, thereby engaging in conduct which is fraudulent, deceitful, or dishonest within the meaning of §604(b) of the Occupational Code, MCL 339.604(b).

10. Respondent failed to account for money belonging to LaFran Stevens, contrary to MCL 339.2411(2)(c).

11. Respondent has violated a rule of conduct in practicing an occupation, contrary to MCL 339.604(c).

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CONCLUSIONS OF LAW

A. Default

At the outset of the contested case hearing, the Petitioner's Attorney requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the Administrative Procedures Act. In addition, the attorney requested that a default be granted on behalf of the State pursuant to Section 78 of the APA

Section 72 of the APA, MCL 24.272(1) states, 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.

Furthermore, 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. This amounts to an admission by Respondent of the factual and legal allegations.

B. Unlicensed Salesperson

Petitioner accused Respondent of accepting a contract procured by an unlicensed person contrary to the following:

Acceptance or performance of a contract procured by a salesman not licensed under a builder or contractor, or acceptance or performance of a contractor, other than the sale of real property, procured by anyone not licensed under the act is prohibited.

1979 AC, R 388.1536

Respondent did violate the above authority as charged. Respondent's default is essentially an admission of the alleged violation.

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C. Fraud, Deceit or Dishonesty

Petitioner accused Respondent of failing to return money, after failing to perform services, contrary to the following:

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:...

(b) Practices fraud, deceit, or dishonesty in practicing an occupation.

MCL 339.604(b)

Respondent did violate the above authority as charged. Respondent's default is essentially an admission of the alleged violation.

D. Failure to Account

Petitioner accused Respondent of failing to account for money belonging to another, contrary to the following:

(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.

MCL 339.604(c)

Respondent did violate the above authority as charged. Respondent's default is essentially an admission of the alleged violation.

E. Rule of Conduct

Petitioner accused Respondent of violating the following:

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.

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Respondent did violate the above authority as charged. Respondent's default is essentially an admission of the alleged violation.

F. Penalty

MCL 339.602 provides that a person who violates a section of the Act shall be assessed one or more of certain penalties: placement of limitation on license, for occupation regulated under articles 8 to 25; suspension of license; denial of license; revocation of license; civil fine not to exceed \$10,000; censure; probation; and restitution.

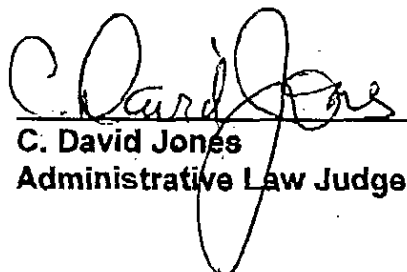
Petitioner requested that a penalty be imposed. Petitioner is not requesting restitution, but otherwise did not specify any penalty. Likewise, I recommend a penalty be imposed but do not recommend any specific penalty.

DECISION AND RECOMMENDED PENALTY

The undersigned Administrative Law Judge decides as follows:

1. Respondent accepted a contract procured by an unlicensed person, contrary to 1979 AC, R 338.1536.
2. Respondent practiced fraud, deceit, or dishonesty, contrary to MCL 339.604(b).
3. Respondent failed to account for money belonging to another, contrary to MCL 339.2411(2)(c).
4. Respondent violated a rule of conduct in practicing an occupation, contrary to MCL 339.604(c).

The undersigned Administrative Law Judge recommends the Board impose the appropriate penalty.


C. David Jones
Administrative Law Judge