

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

Docket No. 2008-1039
Complaint No. 308057

Complainant,

v

BUILT RIGHT CONSTRUCTION COMPANY
JOSEPH CHRISTOPHER MAZZIO, QUALIFYING OFFICER
License No. 21-02-164327

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 David Cohen, Administrative Law Judge, dated October 13, 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 \$5,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 308057 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, Administrative Services Division, 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 the Homeowner Construction Lien Recovery Fund in the amount of \$9,500.00 and \$2,100.00 in litigation costs, fees and interest at the statutory rate from January 16, 2007, payable to the Homeowner Construction Lien Recovery Fund and mailed to Department of Energy, Labor & Economic Growth, Administrative Services Division, P.O. Box 30018, Lansing, MI 48909 within 60 days from the mailing date of the Final Order.

3. The licenses of Respondent and Respondent's Qualifying Officer, and any and all Article 24 licenses held by Respondent or Respondent's Qualifying Officer shall be and hereby are CONTINUED IN REVOCATION. Respondent's failure to comply with each and every condition of this Final Order within 60 days shall result in CONTINUED REVOCATION of any and all Article 24 licenses held by Respondent and Respondent's Qualifying Officer. 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.

4. 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 7th day of March, 2009.

BY: 
Mark T. Glynn, Chairperson

Date mailed: March 17, 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**

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| In the matter of | Docket Nos. | 2008-1033, 2008-1034, 2008-1035, 2008-1036, 2008-1037, 2008-1038, 2008-1039 |
| Bureau of Commercial Services, Petitioner | | |
| v | | |
| Built Right Construction Company, Inc., Joseph Christopher Mazzio, Q.O., Respondent | Agency Nos. | 308048, 308049, 308050, 308051, 308052, 308056, 308057 |
| | Agency: | Bureau of Commercial Services |
| _____ / | Case Type: | Sanction |

Issued and entered
this 13th day of October, 2008
by David Cohen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

These matters commenced with the issuing of Formal Complaints (Complaints) dated May 30, 2008 by the Department of Labor and Economic Growth, Bureau of Commercial Services (Petitioner) against Built Right Construction Company, Inc., Joseph Christopher Mazzio, Qualifying Officer (Respondent), alleging one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101, et seq. and the administrative rules promulgated thereunder.

Notices of Hearing (Notices) was issued scheduling contested case hearings at 9:00am on September 15, 2008 at the State Office of Administrative Hearings & Rules,

Cadillac Place, 2nd Floor Annex, Suite 2-700, Detroit, Michigan. The notices were properly sent to Respondent's last known addresses of record and several other addresses on file for the company and/or qualifying officer.¹ Neither Respondent nor an attorney on behalf of Respondent appeared at the hearing. Administrative Law Judge David M. Cohen presided. Katherine Kakish and Serene Katranji-Zeni, Assistant Attorney Generals, appeared on behalf of Petitioner.

At the onset of the initial proceeding, attorney Kakish motioned to consolidate all seven of the matters, and receiving no objections, said Motion was granted.

The hearing proceeded in Respondent's absence pursuant to Section 72 of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.*, and a default was granted on behalf of Petitioner pursuant to Section 78 of the APA.

§ 72(1) of the APA provides, in pertinent part:

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.

§ 78(2) of the APA provides, in pertinent part:

Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, *consent order*, waiver, default or other method agreed upon by the parties.

As a result of the default, the factual allegations contained in Petitioner's Formal Complaints were deemed proven.

¹ Although some letters were returned as undeliverable (Exhibit 3), it is clear from the record that legal service was made to the address of record for Respondent and actual service was made to the qualifying officer's last known address (Exhibit 1).

EXHIBITS

The following exhibits were admitted into the record at Petitioner's request:

| <u>Exhibit</u> | <u>Description</u> |
|-----------------------|--|
| 1 | Proof of Addresses (Respondent) |
| 2 | Affidavits of Service (Regarding Agency #s 308052, 308056, 308057) |
| 3 | Letters Returned from Postal Service (#s 308052, 308056, 308057) |
| 42 | Court Complaint (Alcona County Case # 06-690) |
| 5 | Consent Judgment in favor of Stock Building Supply (Alcona Case #06-690) |
| 6 | Proof of Payment from HCLRF (\$10,000.00) |
| 7 | Litigation Cost Report (\$2,800) |
| 83 | Court Complaint (Oakland County Case # 06-073426CH – Wire Works) |
| 9 | Consent Judgment (Oakland Case #06-073426CH – Wire Works) |
| 10 | Proof of Payment from HCLRF (\$3,885.00 – Wire Works) |
| 11 | Litigation Cost Report (\$1,050.00 – Wire Works) |
| 124 | Court Complaint (Oakland County Case # 06-073426CH-Stock Building) |
| 13 | Claims of Lien (Against Multiple Property Owners) |
| 14 | Consent Judgment (Oakland Case #06-073426CH – Stock Building) |
| 15 | Proof of Payment from HCLRF (\$9,500.00) |
| 16 | Litigation Cost Report (\$2,100.00) |
| 175 | Proof of Payment from HCLRF (\$3,000.00) |
| 18 | Consent Judgment (Oakland Case #06-073426CH – Ventcraft Heating) |
| 19 | Litigation Cost Report (\$1,050.00) |
| 20 | Proof of Service |
| 216 | Proof of Payment from HCLRF (\$9,400.00) |
| 22 | Consent Judgment (Macomb Case #06-001327-CH – Stock Building) |
| 23 | Litigation Cost Report (\$4,900.00) |
| 24 | Proof of Service |
| 257 | Proof of Payment from HCLRF (\$21,692.24) |
| 26 | Consent Judgment (Macomb Case #06-001327-CH – Stock Building) |
| 27 | Litigation Cost Report (\$4,900.00) |
| 28 | Proof of Service |
| 298 | Proof of Payment from HCLRF (\$1,000.00) |
| 30 | Consent Judgment (Oakland Case #06-001327-CH – Stock Building) |
| 31 | Litigation Cost Report (\$4,900.00) |
| 32 | Proof of Service |

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- 2 Exhibits 4-7 Reference 2008-1037, Agency #308052
 - 3 Exhibits 8-11 Reference 2008-1038, Agency #308056
 - 4 Exhibits 12-16 Reference 2008-1039, Agency #308057
 - 5 Exhibits 17-20 Reference 2008-1033, Agency # 308048
 - 6 Exhibits 21-24 Reference 2008-1034, Agency # 308049
 - 7 Exhibits 25-28 Reference 2008-1035, Agency #308050
 - 8 Exhibits 29-32 Reference 2008-1036, Agency #308051

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Section 2411(3) of the Occupational Code, 1980 PA 299; as amended; MCL 339.2411(3), which provides in pertinent part:

Section 2411. (3) The department shall suspend or revoke the license of a person licensed under this article whose failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892; or under 1929 PA 266, MCL 338.901 to 338.917. The department shall not renew a license or issue a new license until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

FINDINGS OF FACT

Based on the record, the following findings of fact are established:

1. Respondent, has, at times relevant to these Complaints, been licensed as a residential builder under Occupational Code, 1980 PA 299 as amended, Article 24; MCL 339.2401-2412. The license having been revoked November 20, 2006.
2. As a result of Respondents' failure to pay one or more lien claimants, multiple judgments were entered against the Homeowner Construction Lien Recovery Fund (HCLRF) in various amounts which totaling \$58,477.24. (Petitioner Exhibits 5, 9, 14, 18, 22, 26, 30)
3. The HCLRF made payments totaling \$58,477.24 pursuant to the consent judgments. (Petitioner Exhibits 6, 10, 15, 17, 21, 25 & 29)
4. The HCLRF incurred litigation costs in the amount of \$21,700.00. (Petitioner Exhibits 7, 11, 16, 19, 23, 27, 31)

5. The facts underlying the payment arose out of and in connection with the performance of Respondents' duties as licensed residential builder and/or residential maintenance and alteration contractor.
6. Although Respondent was properly served with notice of these proceedings, there was no appearance on behalf of Respondent at the hearing.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d ed.) Section 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 Respondent. 1990 AACS, R 339.1763. Under § 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 facts described herein, Petitioner has proven, by a preponderance of the evidence that Respondent violated on multiple occasions Section 2411(3) of the Code.

It should be noted for the Board's attention that counsel for Petitioner indicated that the seven matters before the Administrative Law Judge were not the only claims of violation of Section 2411(3) currently pending regarding this Respondent.

RECOMMENDATIONS

The Administrative Law Judge makes the following recommendations to the Board:

1. Respondent pay a civil fine in an amount to be determined by the Board.

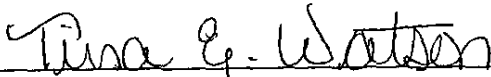
2. Respondent pay restitution to the HCLRF in the amount of \$80,177.24 which includes litigation cost of (\$21,700.00).
3. Respondent's license remained revoked until the civil fine and restitution have been paid.



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 13th day of October, 2008.



Tina E. Watson
State Office of Administrative Hearings and Rules

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