

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. 2008-786
Complaint No. 308108

Complainant,

v

LARRY DALE ERICKSON
D/B/A LARRY ERICKSON BUILDERS
License No. 21-01-154746

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 Renee A. Ozburn, Administrative Law Judge, dated October 27, 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. 308108 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 \$2,733.43 and \$822.50 in litigation costs, fees and interest at the statutory rate from January 26, 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 any and all Article 24 licenses held by Respondent or Respondent 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. 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 the intent of the Board that the fine and restitution be assessed one time in order to satisfy Final Orders issued for complaint Numbers 308107 and 308108. Once the fine and restitution ordered in one of the companion Final Orders is 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, 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 17th 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

In the matter of

Docket No. 2008-786

Bureau of Commercial Services,
Petitioner

Agency No. 308110

v

Agency: Bureau of Commercial Services

Larry Dale Erickson
d/b/a Larry Erickson Builders,
Respondent

Case Type: Sanction

Issued and entered
this 27th day of October, 2008
by Renee A. Ozburn
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

On March 6, 2008, the Bureau of Commercial Services (BCS/Petitioner) issued a Formal Complaint alleging that Larry Dale Erickson, d/b/a Larry Erickson Builders, Inc.; (Respondent), violated the Occupational Code, 1980 PA 299, as amended, Article 24; MCL 339.2401-2412 *et seq.*, in the course of practicing as a licensed residential builder.

On June 12, 2008, a Notice of Hearing was issued scheduling this matter for hearing at 9 a.m., on July 8, 2008, at the State Office of Administrative Hearings and Rules, in Lansing, Michigan. The Notice of Hearing was mailed to the last two known addresses of record for the Respondent: 825 First St., Tawas City, MI, 48763 and 4683 Grantwood Avenue, S.E., Kentwood, MI, 49508. The Notice of Hearing informs parties that failure to appear for a hearing may result in a default judgment or decision against the non-appearing party.

On July 8, 2008, at the time scheduled for hearing, Attorney Corey Arendt appeared and was ready to proceed on behalf of BCS. Neither Respondent, nor an attorney or representative on his behalf, appeared at the hearing. The undersigned Administrative Law Judge deemed that the Respondent had been duly served with notice, and the hearing could proceed in his absence pursuant to Section 72 of the Administrative Procedures Act, 1969 PA 306, as amended, (APA) MCL 24.201 *et seq.* Mr. Arendt motioned to default Respondent pursuant to Section 78 of the APA, being MCL 24.278. The undersigned Administrative Law Judge granted a default.

A default judgment constitutes a decision that allegations in the Complaint are true as alleged.

Section 72(1) of the APA provides as follows:

Sec. 72. (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. MCL 24.272(1).

Further, Section 78(2) of the APA provides as follows:

Sec. 78. (2) 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. MCL 24.278(2).

On September 9, 2008, Petitioner's Attorney filed the Litigation Cost Report, which is admitted into the record as follows:

1. Petitioner's Exhibit #1 is the Lien Recovery Check for the amount of \$2,733.43;

2. Petitioner's Exhibit #2 is the Litigation Cost Report signed by Belinda C. Wright, Assistant Administrator for the Homeowner Construction Lien Recovery Fund, for claim paid on January 23, 2007 (HCLRF Record No. 3081); and

3. Petitioner's Exhibit #3 is the Consent Judgment in favor of Stock Building Supply, L.L.C. and against Homeowner Construction Lien Recovery Fund on Count VI of Stocking Building Supply's Complaint.

ISSUES AND APPLICABLE LAW

The issue is whether the Respondent violated Occupational Code Section 2411(3) which states:

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 the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569. 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 entire record in this matter, the following findings of fact are established by a preponderance of the evidence:

1. Larry Dale Erickson Qualifying Officer, d/b/a Larry Erickson Builders, Inc., (Respondent), has at all times relevant to this Complaint, been licensed as a residential builder under the Code, or was seeking renewal of such license, except as to those events that occurred after May 31, 2007, at which time the license lapsed.

2. On January 23, 2007, as a result of Respondent's failure to pay one or more lien claimants, payment was made by the Homeowner Construction Lien Recovery Fund in the amount of \$2,733.43, as evidenced by attached Exhibit 1, to Stock Building Supply, L.L.C., pursuant a Consent Judgment in Favor of Stock Building Supply, L.L.C., and Against Homeowner Construction Lien Recovery Fund on Count VI of Stock Building Supply's Complaint, attached to Exhibit 2.

3. The Homeowner Construction Lien Recovery Fund incurred litigation costs in the amount of \$822.50, as evidenced by Exhibit 3.

4. That the facts underlying said payment arose out of and in connection with the performance of Respondent's duties as a licensed residential builder and/or residential maintenance and alteration contractor.

5. Respondent failed to remit money, which belonged to Rodney A. Collier and Jill M. Collier to Stock Building Supply, L.L.C., contrary to the Code.

6. Respondent failed to account for money, which belonged to Rodney A. Collier and Jill M. Collier, contrary to the Code.

7. Respondent failed to satisfy a lien filed on November, 18, 2005, by Stock Building Supply, L.L.C., in the County of Iosco, Michigan, attached as Exhibit 4, contrary to the Code.

8. Respondent failed to respond to the Complaint in a timely manner, contrary to the Code.

9. Respondent violated a rule of conduct in practicing an occupation, contrary to the Code.

10. Respondent Larry Dale Erickson was a party to the acts and omissions alleged herein above and was in a position to ensure compliance with the Occupational Code or, otherwise, prevent the violations that are the subject of this complaint but failed to do so.

CONCLUSIONS OF LAW

Petitioner bears the burden of proving, by a preponderance of the evidence, that the Respondent violated the Code as alleged, and that grounds exist for imposing sanctions.

Based upon the facts described herein, Petitioner has proven that Respondent violated the Code as follows:

1. Respondent failed to remit money, which belonged to Rodney A. Collier and Jill M. Collier to Stock Building Supply, L.L.C., contrary to MCL 339.2411(2)(c).

2. Respondent failed to account for money, which belonged to Rodney A. Collier and Jill M. Collier, contrary to MCL 339.2411(2)(c).

3. Respondent failed to satisfy a lien filed on November, 18, 2005, by Stock Building Supply, L.L.C., in the County of Iosco, Michigan, attached as Exhibit 4, contrary to MCL 339.2411(2)(1).

4. Respondent failed to respond to the Complaint in a timely manner, contrary to 2006 AACCS, R 338.1551(2).

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

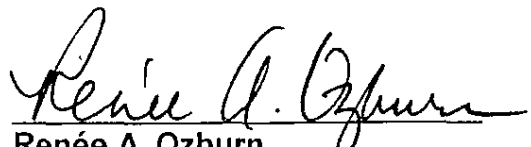
6. Respondent Larry Dale Erickson was a party to the acts and omissions alleged herein above and was in a position to ensure compliance with the Occupational Code or, otherwise, prevent the violations that are the subject of this complaint but failed to do so.

Pursuant to the above Findings of Fact, the undersigned Administrative Law Judge concludes that Petitioner has established by a preponderance of the evidence that Respondent violated Code §§ 604(c), 2411(2)(c)&(1), and 2411(3) of the Occupational Code, 1980 PA 299; as amended; MCL 339.604(c), MCL 339.2411(2)(c)&(1) and MCL 339.2411(3), and Rule 51(2) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated thereunder, being 2006 AACS, R 338.1551(2) constituting grounds for the assessment of a penalty as defined in § 602 of the Occupational Code.

RECOMMENDED SANCTION

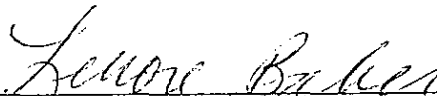
The Petitioner recommends, and the undersigned Administrative Law Judge concurs, that the Board should order as follows:

1. Suspension or revocation of any existing licenses, and
2. Denial of any requests for reinstatement or renewal of any licenses in the future until such time as reimbursement in full has been made to the Homeowner Construction Lien Recovery Fund in accordance with the law provided. MCL 339.2405(3).


Renée A. Ozburn
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 October, 2008.



Lenore Baker
State Office of Administrative Hearings and Rules

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Assistant Attorney General
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