

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. 2008-1010
Complaint No. 308479

Complainant,

v

MICHAEL C. GOODMAN
License No. 21-01-058322

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 Roger E. Winkelman, Administrative Law Judge, dated October 20, 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. 308479 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 (DLEEG) 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 \$2,600.00 and \$1,260.00 in litigation costs, fees and interest at the statutory rate from August 14, 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 shall be and hereby are IMMEDIATELY REVOKED. 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 308478 and 308479. 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 MAY, 2009.

BY: 
Mark T. Glynn, Chairperson

Date mailed: MAY 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.	2008-1010
Bureau of Commercial Services, Petitioner	Agency No.	308479
v	Agency:	Bureau of Commercial Services
Michael Cary Goodman, Respondent	Case Type:	Sanction
and		
Bureau of Commercial Services, Petitioner	Docket No.	2008-1011
v	Agency No.	308478
Stylus I Builders, Inc. Michael C. Goodman, Q.O., Respondent	Agency:	Bureau of Commercial Services
	Case Type:	Sanction

Issued and entered
this 20th day of October, 2008
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 July 30, 2008. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA), 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 Tuesday September 30, 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, 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. Katherine Kakish, Assistant Attorney General, appeared on behalf of Petitioner. Neither Michael Cary Goodman (Goodman) nor Stylus I Builders, Inc. (Stylus I) (collectively 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 339.2411(2)(c) & (l) and MCL 339.2411(3), which provide in pertinent part:

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.

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 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.

EXHIBITS

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

<u>Exhibit</u>	<u>Description</u>
1	Licensing information regarding Stylus I Builders, Inc.
2	Licensing information regarding Michael Cary Goodman
3	Proof of Service
4	Claim of Lien
5	Cross-Claims and Counter-Complaint
6	Consent Judgment
7	Payment of Lien
8	Litigation Cost Report

FINDINGS OF FACT

That Stylus I, Michael C. Goodman Qualifying Officer (Respondent), has, at 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 and was subsequently suspended September 18, 2007.

That Goodman (Respondent), has at times relevant to this Complaint, been licensed as a residential builder under the Code, or was seeking renewal of such license, the license having been suspended September 18, 2007.

That on the 14th day of October, 2007, as a result of the Respondents' failure to pay one or more lien claimants, payment was made by the Homeowner Construction Lien Recovery Fund in the amount of \$2,600.00, pursuant to a Consent Judgment in favor of Erie Electric, Inc. against the Defendant Homeowner Construction Lien Recovery Fund.

The Homeowner Construction Lien Recovery Fund incurred litigation costs in the amount of \$1,260.00.

That the facts underlying said payments arose out of and in connection with the performance of Respondents' duties as licensed residential builders.

Stylus I, failed to remit money, which belonged to Peter Samet and Janene Samet to Paul Young d/b/a Erie Electric.

Respondents failed to account for money belonging to Peter Samet and Janene Samet.

Stylus I failed to satisfy a lien filed on January 9, 2007 by Paul Young d/b/a Erie Electric in the County of Oakland, Michigan.

Goodman was a party to the acts and the omissions alleged hereinabove and was in a position to ensure compliance with the Code or otherwise prevent the 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 Respondent. 1990 AACRS, 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 339.2411(2)(c) & (l) and MCL 339.2411(3), as described in the Formal Complaint.

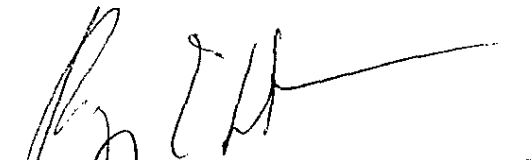
DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondents have violated MCL 339.2411(2)(c) & (l) and MCL 339.2411(3) subjecting Respondents to disciplinary sanctions under Section 602 of the Code. Petitioner recommended that

sanctions include restitution in the amount of \$3,860.00 to the Homeowner Construction Lien Recovery Fund.

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

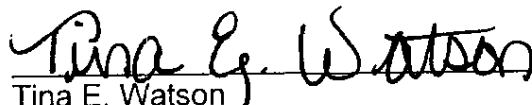
1. Payment of a civil fine by each Respondent, in the amount that the Board deems fair and reasonable.
2. Payment of restitution to Homeowner Construction Lien Recovery Fund by either Respondent in the amount of \$3,860.00.
3. In the event the civil fine and restitution have not been paid within 60 days 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 20th day of October, 2008.


Tina E. Watson
State Office of Administrative Hearings and Rules

Michael Cary Goodman
15887 Southfield Road
Allen Park, MI 48101

Michael Cary Goodman
32950 Utica Road
Fraser, MI 48026

Michael Cary Goodman
36099 Plymouth Road
Livonia, MI 48150

Michael Cary Goodman
4390 Savoie Trail
West Bloomfield, MI 48323

Stephen J. Gobbo
Bureau of Commercial Services
2501 Woodlake Circle
Okemos, MI 48864

Katherine Kakish
Department of Attorney General
3030 W. Grand Blvd.
Suite 10-200
Detroit, MI 48202