

**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*
EDWARD T. YOUNG**

**Docket No. 2008-721
Complaint No. 308577**

Complainant,

v

**RICHARD JOSEPH ADAMS
Not Licensed**

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 Ozburn, Administrative Law Judge, dated November 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, now, therefore,

IT IS ORDERED, that the following penalties authorized by Section 602 of the Code are imposed:

Any application for licensure shall not be considered or granted by the Department until the Respondent appears before the Board for approval.

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).

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.	2008-721
Bureau of Commercial Services, Petitioner	Agency No.	308577
v	Agency:	Bureau of Commercial Services
Richard Joseph Adams, Respondent	Case Type:	Sanction

Issued and entered
this 24th day of November, 2008
by Renee Ozburn
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

Appearances: William Wilhelm, Assistant Attorney General on behalf of Petitioner, Bureau of Commercial Services. Neither Richard Joseph Adams d/b/a D & R Construction, Respondent, nor an attorney on behalf of Respondent appeared at the hearing.

This matter commenced with the issuance of a Notice of Hearing, dated June 2, 2008, scheduling a contested case hearing for July 31, 2008. The Notice was mailed to Respondent's last known address. On July 24, 2008, Attorney Mark Fosdick on behalf of Respondent requested an adjournment. After an Order Granting Adjournment, the hearing was rescheduled to September 17, 2008.

The Notice was issued pursuant to allegations set forth in a Formal Complaint issued on March 21, 2008, by Petitioner that Respondent violated the Occupational Code (Code), 1980 PA 299, as amended, being MCL 339.101, *et seq.*

At the hearing, Petitioner's counsel requested that Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the Administrative Procedure Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.*, and that a default be granted on behalf of Petitioner pursuant to Section 78 of the APA.

Section 72(1) states 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. MCL 24.272(1).

Further, Section 78(2) of the APA states 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. MCL 24.278(2).

Petitioner's motion for default was granted. As a result of the default, the factual allegations in Petitioner's Formal Complaint are deemed true. Petitioner offered the following exhibits which were admitted as evidence into the record:

1. Petitioner's Exhibit 1 is a letter from Linda J. Clewley, Assistant Licensing Administrator, stating that Respondent was not licensed by the state of Michigan between January 1, 1987 to February 14, 2008.
2. Petitioner's Exhibit 2 is a copy of a Contract, dated September 23, 2005.
3. Petitioner's Exhibit 3 is an itemized list of payments made by Edward and Barbara Young to Respondent and creditors for the repair work to their 5279 Downington house.

The record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The specific issues in this case are whether Respondent violated Sections

604(c) and 2411(2)(c) & (l) of the Code, and Rule 33(1) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being 2006 AACCS, R 338.1533(1), which provide as follows:

Sec. 604. 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. MCL 339.604(c).

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. MCL 339.2411(2)(c) & (l).

Rule 33. (1) All agreements and changes to the agreements between a builder, or contractor, and the customer shall be in writing and signed by the parties. Copies of all agreements and changes to agreements shall be in writing, and provided to the customer. 2006 AACCS, R 338.1533(1).

FINDINGS OF FACT

Based on the entire record in this matter, including the default granted against Respondent, the following findings of fact are established:

1. Richard Joseph Adams (Respondent) was not licensed at any time relevant to this Complaint as a residential builder under the Code.

2. A Complaint against Respondent, conforming to the requirements of § 2411 of the Code has been filed with the Michigan Department of Labor & Economic Growth.
3. Respondent entered into a contract to perform services regulated by the Code with Edward T. Young on or about September 23, 2005, as evidenced by exhibit 3.
4. At the time Respondent entered into the contract, Respondent was not licensed, contrary to MCL § 339.601(1), although Respondent was required to be pursuant to the Code, evidenced by Exhibit 1.

CONCLUSIONS OF LAW

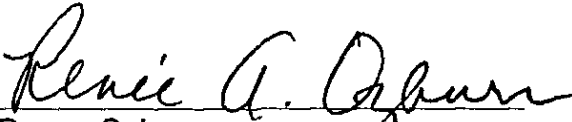
The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d. Ed.) §60.48, p. 230. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent. 1990 AACS, R 339.1763. Under Section 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; 406 NW2d 825 (1987). Based upon the facts described herein, Petitioner has proven by a preponderance of the evidence, that the Respondent has violated the Codes and Rules as follows:

1. At the time Respondent entered into the contract, Respondent was not licensed, contrary to MCL § 339.601(1), although Respondent was required to be pursuant to the Code, evidenced by Exhibit 1.
2. Respondent has violated a provision or rule for which a penalty is not otherwise prescribed, contrary to MCL § 339.604(h).

RECOMMENDATIONS

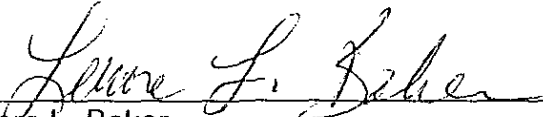
Based upon the above findings of facts and conclusions of law, the Administrative Law Judge makes the following recommendations to the Board of Residential Builders and Maintenance and Alteration Contractors, in accordance with Section 602 of the Code:

1. That the Board issue a sanction against Respondent's license in the Board's discretion pursuant to the Code.


Renee 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 20th day of November, 2008.



Lenore L. Baker

State Office of Administrative Hearings and Rules

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