

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*
DORIS EILEEN LARSSON

Docket No. 2008-916
Complaint No. 298969

Complainant,

v

DAVID G. KALAVITZ
License No. 21-01-138471

Respondent.

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on March 10, 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 Edward F. Rodgers II, Administrative Law Judge, dated January 28, 2009;

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. 298969 must be clearly indicated on the check or money order, and the payment sent to the Department of Energy, Labor & Economic Growth, Final Order Monitoring, 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. Respondent shall pay RESTITUTION in the amount of \$7,000.00 to Doris Eileen Larsson by certified check made payable to Doris Eileen Larsson and mailed to 10821 Sharp Dr., Grand Haven, MI 49417, within 60 days from the mailing date of this Final Order.

3. Respondent's failure to comply with each and every condition of this Final Order shall result in 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. Respondent shall submit in writing to the Michigan Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Final Order Monitoring, 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 12th day of May, 2009.

BY: Mark T. Glyn
Mark T. Glyn, Chairperson

Date mailed: May 12, 2009

Proof of Compliance should be filed with:

Department of Energy, Labor & Economic Growth, Bureau of Commercial Services
Final Order Monitoring
P.O. Box 30018
Lansing, MI 48909

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of	Docket No.	2008-916
Bureau of Commercial Services, Petitioner	Agency No.	298969
v	Agency:	Bureau of Commercial Services
David G. Kalavitz, Respondent	Case Type:	Sanction

Issued and entered
this 31st day of January, 2009
by Edward F. Rodgers II
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Request for Hearing on October 20, 2008. Following the receipt of the Request for Hearing, the State Office of Administrative Hearings and Rules (SOAHR) issued a Notice of Hearing on October 23, 2008. The Notice of Hearing issued by SOAHR scheduled a contested case hearing to commence on December 8, 2008.

The Notice of Hearing was issued pursuant to allegations set forth in a Formal Complaint (Complaint) issued on May 9, 2008. The Complaint alleged that the Respondent violated the Occupational Code of 1980, 1980 PA 299, as amended (Code) being MCL 339.101 *et seq.* and the Administrative Rules promulgated thereunder.

Prior to forwarding the Request for Hearing to SOAHR, the Bureau of Commercial Services (Petitioner) issued and entered a First Amended Formal Complaint (Complaint) on August 27, 2008.

On November 21, 2008, Attorney William D. Wilhelm, Jr., on behalf of Petitioner, filed a request or motion that Petitioner's proposed witness Doris Larsson be allowed to testify by telephone at the hearing due to a disability. On November 25, 2008, the Judge granted this request and issued an Order.

The hearing in the above entitled matter commenced as scheduled on December 8, 2008 with Mr. Wilhelm appearing on behalf of the Petitioner. Neither the Respondent nor an attorney acting on behalf of the Respondent appeared at the hearing.

At the outset of the hearing on December 8, 2008, Mr. Wilhelm, on behalf of the Petitioner, requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72(1) of the Administrative Procedures Act of 1969, 1969 PA 306, as amended (APA), being MCL 24.272(1) and that a default be granted on behalf of the Petitioner pursuant to Section 78(2) of the APA, being MCL 24.278(2).

At the December 8, 2008 hearing, the Judge granted Petitioner's Motion for Default. As a result of the default, the factual allegations contained in Petitioner's Complaint were deemed proven.

During the contested case hearing on December 8, 2008, the following exhibits from the Petitioner were admitted into the record:

Petitioner's Exhibit 1 – A Licensing Certification for David G. Kalavitz.

Petitioner's Exhibit 2 – A Licensing History for David G. Kalavitz, Builder LLC.

Petitioner's Exhibit 3 – A copy of the Contract between the Respondent and Ms. Doris Larsson. The exhibit also contains copies of checks from Ms. Larsson with payments to the Respondent, David Kalavitz.

Petitioner's Exhibit 4 – An estimate from the John A. Zuidema, Construction Company, Grand Haven, Michigan which establishes an estimate of the amount of funds

needed to complete the project that was abandoned by the Respondent.

Petitioner's Exhibit 5 – A copy of the original Complaint form filled out by the consumer Ms. Doris Larsson.

Petitioner's Exhibit 6 – The First Inspection Report in this matter which was issued on December 20, 2004.

Petitioner's Exhibit 7 – A copy of the appropriate Code sections from the Building Code.

Petitioner's Exhibit 8 – A copy of an August 14, 2006 memo from Phil Former the prior building inspector who completed the first Building Inspection Report contained in Exhibit 6.

Petitioner's Exhibit 9 – A copy of the second Building Inspection Report in this matter.

Petitioner's Exhibit 10 – Is a series of letters to David Kalavitz.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether or not the Respondent violated the Code or the Rules. Specifically in this case whether or not the Respondent violated Sections 604(c); 2411(2)(a)(c) & (j); being respectively MCL 339.604(c) and MCL 339.2411(2)(a)(c) & (j). Further, Rules 213 and 515 being 1979 AC R338.1521(3) and R338.1551(5). Those sections of the Code and those Rules state in pertinent part:

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.

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:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

* * *

(c) Failure to account for or remit money coming into the person's possession which belongs to others.

* * *

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

R 338.1551

(5) Standards of construction shall be in accordance with the local building code, or in the absence of a code in accordance with the building code of the nearest political subdivision having a building code.

R 338.1521

(3) An applicant operating under an assumed name or d.b.a. shall submit a certified copy of the assumed name certificate. An applicant operating as a copartnership shall submit a certified copy of the certificate of copartnership. An applicant operating as a corporation shall submit a copy of the articles or incorporation and the latest corporation annual report, if any, and be in good standing as a corporation.

FINDINGS OF FACT

Based upon the record, including the default, the following Findings of Fact are established:

1. David G. Kalavitz (Respondent), has, at all times relevant to this Complaint, been licensed as a residential builder under the Occupational Code.
2. Respondent, on behalf of David Kalavitz Builder LLC entered into a contract to perform services regulated by Code with Doris Eileen Larsson on or about September 28, 2004.
3. At the time that Respondent entered into the contract on behalf of David Kalavitz Builder LLC, David Kalavitz Builder LLC was not licensed.
4. Respondent has acted as an agent, partner, or associate with David Kalavitz Builder LLC, an entity not licensed under the Code.
5. Respondent failed to file limited liability documents with the Department of Labor and Economic Growth before commencing doing business as David Kalavitz Builder LLC.
6. Respondent, in performance of the contract, failed to comply with Sections R109.4, R602.8, R109.3 and R309.2 of the 2003 Michigan Residential Code, which was adopted pursuant to the Stille-DeRossent-Hale Single State Construction Code Act, effective February 29, 2004.
7. Respondent has without legal excuse, failed to perform the terms of the contract with Ms. Larsson.
8. Respondent failed to account for money belonging to Ms. Larsson.
9. Respondent has violated a rule of conduct in practicing an occupation.

10. The record establishes that Ms. Larsson should receive \$7,000.00 in restitution to allow her to complete the necessary repairs for the project abandoned by Respondent.

CONCLUSIONS OF LAW

The principals that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleadings and Practice (2d ed), Section 60.48, page 230. The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions under 1990 AACS, R 339.1763. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all the alleged facts are taken as true. Smith v Lansing School District, 428 Mich. 248 (1987). Based upon the record as a whole in this matter, including the exhibits, the pleadings and the fact that a default has been granted, the Petitioner has proven by a preponderance of the evidence that the Respondent violated MCL 339.604(c) by violating a rule of conduct in practicing an occupation.

Further, the Petitioner has established on this record as a whole by a preponderance of the evidence that the Respondent violated MCL 339.2411(2)(a) by abandoning the project without legal excuse and failing to perform the terms of the contract with Ms. Larsson. Respondent also failed to account for monies belonging to Ms. Larsson in violation of MCL 339.2411(2)(c).

The Respondent has acted as an agent, partner, or associate with David Kalavitz Builder LLC, an entity not licensed under the Code. Thus the Petitioner has established by a preponderance of the evidence that the Respondent has violated MCL 339.2411(2)(j).

The Petitioner has proven that the Respondent failed to file limited liability documents with the Department of Labor and Economic Growth before he commenced doing business as David Kalavitz Builder LLC in violation of R338.1521(3).

The record as a whole establishes by preponderance of the evidence that the Respondent in performance of part of the contract, failed to comply with Sections R109.4, R602.8, R109.3 and R309.2 of the 2003 Michigan Residential Code, in violation of R338.1551(5). The Petitioner recommended that the Respondent pay a civil fine in the amount of \$3,000.00 for the violation of the four subsections of the Code and the two Rules. The Presiding Judge believes that this recommendation is too lenient and that the evidence supports that the Respondent should pay \$6,000.00 for his six violations of the Code and Rules. In addition, the Petitioner recommends restitution be paid to Ms. Doris Larsson in the amount of \$7,000.00 within 60 days that the Board issues its Penalty Order. This recommendation is reasonable. Finally, it is recommended that the Petitioner's license be suspended for 60 days after the issuance of the Board's Penalty Order. However, the Petitioner requests that if the civil fines and/or restitution is not paid within 60 days of the Board's Penalty Order, that the Respondent's license be revoked. This is a reasonable request.

DECISION

Based upon the Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the Respondent violated Sections 604(c) and 2411(2)(a)(c) and (j) of the Code. Further, the Respondent has violated Rules 213 and 515(5).

PENALTY RECOMMENDATIONS

Based upon the Findings of Fact, Conclusions of Law, and the recommendations of the Petitioner, the Administrative Law Judge makes the following penalty recommendation to the Board to be included in the Board's Penalty Order:

1. The Respondent is to pay a civil fine in the amount of \$6,000.00 for the four violations of the Code and the two Rule violations.
2. That all of the Respondent's licenses under the jurisdiction of the Code be suspended for a term of 60 days after the issuance of the Board's Penalty Order.
3. The Respondent is to pay restitution to Ms. Doris Larsson in the amount of \$7,000.00.
4. If the Respondent does not pay the civil fine in the amount of \$6,000.00 and the restitution of \$7,000.00 within 60 days of the Board's Penalty Order, the Respondent's license should be revoked. If the Respondent pays the fines and restitution timely, his license should be suspended for only 60 days.



Edward F. Rodgers II
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 24th day of January, 2009.



Lenore L. Baker

State Office of Administrative Hearings and Rules

David G Kalavitz
15362 Lost Channel
Grand Haven, MI 49417

David G Kalavitz
1827 Pine Ct.
Grand Haven, MI 49417

Stephen J. Gobbo
Bureau of Commercial Services
Compliance/Legal Unit
Enforcement Division
P.O. Box 30018
Lansing, MI 48909

William Wilhelm
Department Representative
Bureau of Commercial Services
Enforcement Division
P O Box 30018
Lansing, MI 48909

Lois Hopkins
Attorney Generals Office
2nd Floor, Williams Building
Lansing, MI 48909

Doris Larsson
10821 Sharp Drive
Grand Haven, MI 49417