

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*
JOHN JOHNSON

Docket No. 2008-1076
Complaint No. 307809

Complainant,

v

MARVIN B. DUBIN
License No. 21-01-038824

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 David Cohen, Administrative Law Judge, dated November 25, 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:

1. Respondent shall pay a FINE in the amount of \$5,000.00. The fine is payable to the State of Michigan within 180 days from the mailing of this Final Order. Complaint No. 307809 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, 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 \$104,489.08 to John Johnson, by certified check made payable to John Johnson and mailed to John Johnson, 16550 Fenmore, Detroit, MI 48235 within 180 days from the mailing date of this Final Order.

3. The licenses of Respondent are IMMEDIATELY SUSPENDED. Respondent's failure to comply with each and every condition of this Final Order within 180 days 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. It is also the intent of the Board that the fine and restitution be assessed one time in order to satisfy the Final Orders issued for complaint Numbers 307804 and 307809. Once the fine and restitution ordered in one of the companion Final Orders are 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, 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. Glynn, 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.	2008-1075
Bureau of Commercial Services, Petitioner	Agency No.	307804
v		
Regal Construction LTD Marvin Bernard Dubin, Qualifying Officer, Respondent	Agency:	Bureau of Commercial Services
	Case Type:	Sanction
and		
Bureau of Commercial Services, Petitioner	Docket No.	2008-1076
v	Agency No.	307809
Marvin B. Dubin, Respondent	Agency:	Bureau of Commercial Services
_____ /	Case Type:	Sanction

Issued and entered
this 25th day of November, 2008
by David Cohen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the filing 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 May 30, 2008, charging Regal Construction LTD, Marvin Bernard Dubin, Qualifying Officer and Marvin Bernard Dubin (Respondents) with one or more violations of the Occupational Code, 1980

PA 299, as amended (Code), MCL 339.101 et seq. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 et seq., 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 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 was set for Monday, September 29, 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, and the same proceeded at about 10:15 a.m. David M. Cohen presided as Administrative Law Judge. Mike Frezza, Esq., appeared on behalf of the Petitioner. Homeowner John Johnson testified for Petitioner. Neither Respondents, nor anyone on Respondents' behalf, appeared for the hearing.

At the outset of the proceeding, Petitioner requested that a default be entered on its behalf 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 Complaint were deemed true.

ISSUES AND APPLICABLE LAW

The general issue presented is whether Respondents violated Sections 604(c), and 2411(2)(a) & (c) of the Occupational Code, 1980 PA 299; as amended; MCL 339.604(c), MCL 339.2411(2)(a), MCL 339.2411(2)(c), and Rules 33(1) & 51(2) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated thereunder as 2006 ACCS, R 338.1533(1) & R 338.1551(2) which provide, in pertinent part:

Section 604. A person who violates 1 or more of the following 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.

Section 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.

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.

Rule 51(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a copy of the

complaint to the licensee. The licensee shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification of the complaint. A complaint acknowledged as justified shall be corrected within a reasonable time. If a complaint or a portion of the complaint is not acknowledged by the licensee as being justified, then the department shall notify the complainant of the area of disagreement.

EXHIBITS

The following exhibits were admitted by Petitioner and accepted into the record pursuant to the default:

<u>Exhibit</u>	<u>Description</u>
1	Copy of multiple cashed checks indicating payments made by homeowner, John Johnson to Respondents.

SUMMARY OF EVIDENCE

Mr. John Johnson, the homeowner of 16550 Fenmore, Detroit, Michigan and the author of the August 15, 2007 formal complaint which initiated the proceeding, was the sole witness for Petitioner.

Mr. Johnson related that Respondents were contracted to repair his home after it sustained severe damage in a house fire. Multiple checks issued by AAA insurance were signed over to Respondent Marvin Bernard Dubin. It was later learned that one substantial check was subsequently cashed by Respondent Dubin at a party store.

While the Johnson family spent months displaced from the house, they were forced to endure endless delays for work which was ultimately not completed on 16550 Fenmore. In fact, Mr. Johnson testified that the construction which was undertaken on the

property caused additional property damage, i.e. decorative bricks on the driveway were destroyed when Respondents backed a dumpster to the house. Functional plumbing was actually removed from the house by Respondents. Additionally, some slot windows which were installed were removed, the sub-contractor stating to Mr. Johnson that Respondent's had failed to pay for the work.

FINDINGS OF FACT

1. Respondent, Regal Construction LTD., Marvin Bernard Dubin Qualifying Officer has, at all relevant times to the incident in question, been licensed as a residential builder under the Code, except as to those events that occurred after May 31, 2006, at which time the license lapsed.

2. Respondent, Marvin Bernard Dubin, at all relevant times to the incident in question, been licensed as a residential builder under the Code, except as to those events that occurred after May 31, 2007, at which time his individual license lapsed.

3. A Statement of Complaint was filed with the Enforcement Division on August 15, 2007 by John Johnson against Respondents.

4. On or about April 30, 2007, Respondent, Regal Construction LTD, through its Qualifying Officer, Marvin Bernard Dubin, entered into a contract to perform services, regulated by the Code, with John Johnson.

5. Respondents, have, without legal excuse failed to perform the terms of the contract, contrary to MCL 339.2411(2)(a).

6. Respondents failed to provide John Johnson with a fully executed copy of the agreement, contrary to 2006 AACCS, R 338.1533(1).

7. Respondents failed to account for money belonging to John Johnson, contrary to MCL 339.2411(2)(c).

8. Respondents failed to respond to the formal complaint in a timely manner, contrary to 2006 AACS, R 338.1551(2).

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

10. Respondent Marvin Bernard Dubin was a party to the acts and omissions alleged hereinabove, 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.

11. Although Respondents were properly served with notice of these proceedings, they 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 AACS, 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 NW 2d 825 (1987).

Violation of Section 604(c) of the Code

By this charge, Petitioner asserts that Respondents violated Section 604(c). 604(c) states that an individual is subject to the penalties enumerated in Section 602 if

he/she is found to have violated a rule of conduct of an occupation. In the present matter, the record establishes that Respondents acted as such by failing to finish the construction, failing to account for the money they were paid, removing plumbing and other functional components from the house, damaging the property, and failing to communicate with the homeowner despite numerous attempts at communication.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondents violated Section 604(c) of the Code.

Violation of Section 2411(2)(a) of the Code

By this charge, Petitioner asserts that Respondents abandoned the construction project, and in so doing, willfully violated the building laws of the State of Michigan or of a political subdivision of the State of Michigan. The testimony of homeowner, John Johnson, indicates that Respondents did indeed abandon the project, ultimately deserting the property having caused damage to the already damaged house and without accomplishing the work that they had contracted to perform.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondents violated Section 2411(2)(a) of the Code.

Violation of Section 2411(2)(c) of the Code

By this charge, Petitioner asserts that Respondents failed to account for or remit money coming into their possession which belonged to the Johnson family. The testimony of homeowner, John Johnson and Exhibit 1 indicate that Respondents were paid approximately one hundred one thousand dollars for work that was left unaccomplished.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondents violated Section 2411(2)(c) of the Code.

Violation of Rule 338.1533(1)

By this charge, Petitioner asserts that Respondents failed to reduce the agreement with John Johnson to a written form signed by the parties and/or failed to provide copies of all agreements and changes to agreements in writing to the customer.

The record shows that the agreement between Respondents and Mr. Johnson was not properly established in a written contract.

Accordingly, Petitioner has proven, by a preponderance of the evidence that Respondents violated Rule 338.1533(1).

Violation of Rule 338.1551(2)

By this charge, Petitioner asserts that Respondents failed to reply to the department within 15 days from receipt of the formal complaint and did not confirm or deny the justification of the complaint. Pursuant to the default this allegation is taken as true.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondents violated Rule 338.1551(2) of the Residential Builders and Maintenance and Alteration Contractors Board Rules.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondents violated Section 604(c), 2411(a), & 2411(c), of the Code and Rule 1533(1) and Rule 1551(2) as described in this Hearing Report.

Petitioner recommended that sanctions include a \$5,000.00 civil fine, plus restitution to John Johnson, the property owner, in the amount of One Hundred Four Thousand, Four Hundred Eighty Nine Dollars and Eight Cents (\$104,489.08); this amount

reflects the amounts paid to Respondents or to correct damages and costs incurred due to Respondents.

This Administrative Law Judge concurs with Petitioner's recommendation in this matter. It is recommended that the Board include the following as sanctions in this matter:

1. Payment of a \$5,000.00 civil fine or a fine in an amount deemed reasonable by the board.
2. Restitution to John Johnson in the amount of \$104, 489.08.1,
3. License Suspension until all fines and restitution are satisfied.
4. In the event that the fine and restitution are not paid within 180 days following the issuance of a final order, Respondent's license should be Revoked; and no new licenses issued.



David Cohen
Administrative Law Judge

¹ This number reflects the actual loss of \$101,869.08 and an additional \$2,600.00 for related plumbing and electrical expenses incurred by the Johnson family.

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 25th day of November, 2008.



Tina E. Watson
State Office of Administrative Hearings and Rules

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