

**STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH<sup>1</sup>  
BOARD OF RESIDENTIAL BUILDERS AND  
MAINTENANCE & ALTERATION CONTRACTORS**

**DEPARTMENT OF ENERGY, LABOR &  
ECONOMIC GROWTH,  
BUREAU OF COMMERCIAL SERVICES *ex rel*  
DENNIS KLIMASZEWSKI**

**Docket No. 2008-1030  
Complaint No. 307841**

**Complainant,**

**v**

**GANDY CONSTRUCTION, INC.  
JOHN ROBERT GANDY, QUALIFYING OFFICER  
License No. 21-02-175611**

**Respondent.**

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**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 Gregory Holiday, Administrative Law Judge, dated January 15, 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, 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 \$1,500.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 307841 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.**

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<sup>1</sup> 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 \$1,725.00, to Dennis Klimaszewski by certified check made payable to Dennis Klimaszewski and mailed to 4405 Newberry, Wayne, MI 48184, 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 SUSPENSION of any and all Article 24 licenses held by Respondent or Respondent's Qualifying Officer. 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's Qualifying Officer may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 license held by Respondent or Respondent's Qualifying Officer is in suspended or revoked status.

4. Respondent shall submit in writing to the Michigan Department of 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 12<sup>th</sup> 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. | 2008-1030                        |
| Bureau of Commercial Services,<br>Petitioner                                        | Agency No. | 307841                           |
| v                                                                                   | Agency:    | Bureau of Commercial<br>Services |
| Gandy Construction, Inc.<br>John Robert Gandy, Qualifying<br>Officer,<br>Respondent | Case Type: | Sanction                         |

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Issued and entered  
this 15<sup>th</sup> day of January, 2009  
by Gregory Holiday  
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 April 29, 2008. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA), Gandy Construction Inc., John Robert Gandy, Qualifying Officer (Respondent) was afforded an opportunity to demonstrate compliance prior to the commencement of formal proceedings. Respondent 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 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, 2<sup>nd</sup> Floor Annex, Room 2-700, 3026 West Grand Boulevard, Detroit, Michigan. Further, the notice informed Respondent that if Respondent failed to appear at the hearing as scheduled, a default may be entered pursuant to Section 78 of the APA. At Petitioner's request, the hearing was postponed to Monday, November 10, 2008 at 9:00 a.m. The hearing commenced at about 9:35 a.m. Gregory Holiday presided as Administrative Law Judge. Tiffany Daugherty, Esq., appeared on behalf of Petitioner. Neither Respondent nor anyone on Respondent's 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 Respondent violated the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.*, with respect to the practice of a residential builder. The specific issue is whether or not Respondent violated Section 2411(2)(m) of the Code, which provides 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:**

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(m) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

### EXHIBITS

Petitioner offered the following exhibit for consideration at the hearing:

| <u>Exhibit</u> | <u>Description</u>                                                                                  |
|----------------|-----------------------------------------------------------------------------------------------------|
| 1              | Copy of \$1,850.00 Estimate from McFarland Painting and \$1,725.00 Estimate from Gunterman Services |

### FINDINGS OF FACT

1. Respondent has, at all relevant times, been licensed as a residential builder under the Code.

2. A Statement of Complaint (Exhibit 1 attached to the Formal Complaint) was filed with the Department of Labor & Economic Growth.

3. City of Wayne Building Inspector Keith Montresor submitted two evaluations of the Statement of Complaint (Exhibits 2 and 3 attached to the Formal Complaint).

4. Respondent entered into a contract (Exhibit 4 attached to the Formal Complaint) to perform services regulated by the Code with Dennis Klimaszewski on about July 29, 2007.

5. Respondent failed to perform the requirements of the contract in a workmanlike manner. Mr. Klimaszewski secured two estimates to correct the defective work performed by Respondent – one for \$1,725.00 from Gunterman Services and the other for \$1,850.00 from Macfarland Painting (See Petitioner Exhibit 1).

6. Respondent was properly served with notice of this proceeding but did not appear for the hearing.

### **CONCLUSIONS OF LAW**

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 Respondent violated Section 2411(2)(m) of the Code, as described in the Formal Complaint.

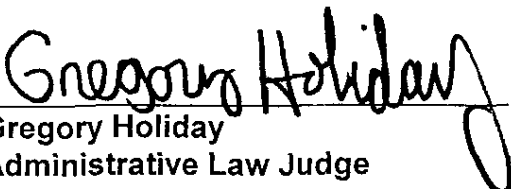
### **DECISION AND RECOMMENDED SANCTIONS**

It is the decision of this Administrative Law Judge that Respondent has violated Section 2411(2)(m) of the Code, subjecting Respondent to disciplinary sanctions under Section 602 of the Code. Petitioner recommended that sanctions include restitution to Dennis Klimaszewski in the amount of \$1,725, revocation of any Article 24 licenses until the restitution has been paid, and a maximum civil fine.

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

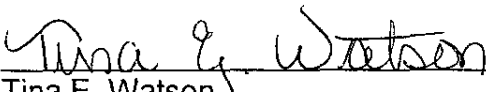
1. Payment of a civil fine in the amount of \$1,500.00.
2. Payment of \$1,725 in restitution to Dennis Klimaszewski.

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.

  
Gregory Holiday  
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 15<sup>th</sup> day of January, 2009.

  
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Tina E. Watson  
State Office of Administrative Hearings and Rules

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