

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*  
GIACHINO AND NANCY SARCONI

Docket No. 2008-463  
Complaint No. 308463

Complainant,

v

DAN PLANCK CUSTOM HOMES, INC.  
DAN PLANCK, QUALIFYING OFFICER  
License No. 21-02-056637

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 David Cohen, Administrative Law Judge, dated December 17, 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 90 days from the mailing of this Final Order. Complaint No. 308463 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 \$64,063.00 to Giachino and Nancy Sarconi by certified check made payable to Giachino and Nancy Sarconi and mailed to 657 Indian Lake Road, Oxford, MI 48371, within 90 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.

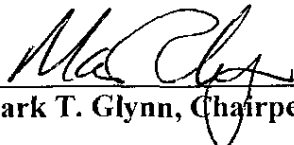
4. Respondent shall submit in writing to the Michigan Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Final Order Monitoring, P.O. Box 30018, Lansing, Michigan 48909, proof of compliance with each and every requirement of this Final Order, in a form acceptable to the Department.

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**

<b>In the matter of</b>	<b>Docket No.</b>	<b>2008-463</b>
<b>Bureau of Commercial Services, Petitioner</b>	<b>Agency No.</b>	<b>308463</b>
<b>v</b>	<b>Agency:</b>	<b>Bureau of Commercial Services</b>
<b>Dan Planck Custom Homes, Inc., Respondent</b>	<b>Case Type:</b>	<b>Sanction</b>

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**Issued and entered  
this 17<sup>th</sup> day of December, 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 February 20, 2008, charging Dan Planck Custom Homes, Inc., Dan Plank Qualifying Officer (Respondent) 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.*, 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 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.

The hearing was set for Monday, October 6, 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, and the same proceeded at about 9:35 a.m. David M. Cohen presided as Administrative Law Judge. Tiffany Daugherty, Esq., appeared on behalf of the Petitioner. Neither Respondent, nor anyone on Respondent's behalf, appeared for the hearing. Homeowners Giachino & Nancy Sarconi were present at the hearing, but did not offer formal testimony. At the outset of the contested case, 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 Respondent violated Sections 604(c) and 2411(2)(m) of the Occupational Code, 1980 PA 299; as amended; MCL 339.604(c), MCL 339.2411(2)(m), and Rules 51(2), (4) & (5) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated thereunder as 2006 AACRS, R 338.1551(2), (4) & (5) 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.**

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**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:**

**(m) Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official.**

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**R 338.1551 Complaints; filing.**

**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.**

**Rule 51(4) If a complaint is justified by the local building inspector or by a person authorized by the department to make inspections, the builder or contractor shall correct the complaint within a reasonable time. Failure or refusal by the licensee to correct a structural matter that is materially deficient, dangerous, or hazardous to the owners shall be presumed to be dishonest or unfair dealing.**

**Rule 51(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.**

**EXHIBIT**

The following six page exhibit was admitted:

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
1	Estimates for repairs to 657 Indian Lake Road, Oxford, Michigan.

**FINDINGS OF FACT**

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

2. A Statement of Complaint was filed with the Enforcement Division on November 26, 2007 by Giachino and Nancy Sarconi against Respondent.

3. On November 3, 2004, Respondent, Dan Planck Custom Homes, Inc., Dan Planck Qualifying Officer, entered into a contract to perform services, regulated by the Code, with the Sarconi family.

4. Respondent failed to perform the requirements of the contract in a workmanlike manner, contrary to MCL 339.2411(2)(m).

5. Respondent, in performance of the contract, failed to comply with Section R 406, R 703.10, R 703.7, R 903.2 and R 703.8 of the 2003 Michigan Residential Code, which was adopted pursuant to the Stille-DeRossett-Hale single state construction code act, effective February 29, 2004, contrary to 1979 AC, R 338.1551(5) and 2006 AACS, R 338.1551(5).

6. Respondent failed to correct the items identified by the Inspection Report of Thomas Burger within a reasonable period of time, contrary to 2006 AACCS, R 339.1551(4).

7. Respondent failed to respond to the Statement of Complaint in a timely manner, contrary to 2006 SSVD, T 338.1551(2).

8. Respondent has violated a rule of conduct in practicing an occupation.

9. Although Respondent was properly served with notice of these proceedings, no one on Respondent's behalf appeared 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 AACCS, 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 Respondent 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 Respondent acted as such by failing to properly construct the home located at 657 Indian Lake Road, Oxford, Michigan. Construction defects included

leaking, vertical cracks on foundation wall, cracks in floor, metal clips not removed from foundation wall, need for guy wire installation to secure chimney, roofing has improperly aligned shingles and bee caps are nailed to roof, roof flashings are loose, gutters need extensions to downspouts, improperly installed, loose, buckled and/or broken siding, caulking defects, unfinished/improper stone installation, brick veneer fallen from house, area above basement wall not insulated, electrical wiring not properly secured, racked interior door scraping door frame, inferior cabinet installation, unfilled nail holes, hole in interior garage wall, cemented front porch is atop plywood (Formal Complaint Exhibit 1 & 2).

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

**Violation of Section 2411(2)(m) of the Code**

By this charge, Petitioner asserts that Respondent performed poor workmanship or workmanship not meeting the standards of the custom or trade, verified by a building code enforcement official. As noted above, inspector Burger's December 4, 2007 inspection indicates the work performed by Respondent resulted in multiple code violations and workmanship defects (Formal Complaint Exhibit 2).

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

**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.

**Violation of Rule 338.1551(4)**

By this charge, Petitioner asserts that Respondent failed to correct a complaint within a reasonable time when the complaint was justified by the local building inspector or by a person authorized by the department to make inspections (Formal Complaint Exhibit 2). In the present matter, the lack of communication, failure and/or refusal by the licensee to correct the numerous code and workmanship deficiencies would indicate a violation of 51(4).

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Rule 338.1551(4) of the Residential Builders and Maintenance and Alteration Contractors Board Rules.

**Violation of Rule 338.1551(5)**

By this charge, Petitioner asserts that Respondent failed perform the construction in accordance with the local building code. As noted above, Respondent violated this section by failing to comply with Rules 406, 703.10, 703.7, 903.2, and 703.8 of the 2003 Michigan Residential Code.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Rule 338.1551(5) 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 Respondent violated Section 604(c), 2411(2)(m) of the Code and Rules 1551(2),(4)&(5) as described in this Hearing Report. Petitioner recommended that sanctions include restitution to the Sarconi family, the property owners, in an amount to be determined by the board.

Petitioner's Exhibit 1 consists of six repair estimates:

- The first estimate for basement repair is for the sum of \$11,995.00.
- The second and third estimate concerns roof repair. One estimate is for a total of \$710.00 and the other for \$750.00.
- The fourth estimate is for siding repair and totals \$19,810.00.
- The fifth and sixth estimates are for stone repair. One estimate is for \$31,548.00 and the other for \$32,500.00.

In the instances of two estimates for the same work, Petitioner wished to defer to the board regarding whether a specific estimate should be selected or an average of the numbers should be used to determine a fair number.

Additionally, Petitioner recommended that Respondent, Dan Planck Custom Homes, have his license revoked until such time as restitution is made in full.

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 civil fine in an amount deemed reasonable by the board.
- 2 Restitution to the Sarconi family in an amount deemed reasonable by the board in light of the estimates provided.
- 3 License revocation until all fines and restitution are satisfied.




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**David Cohen**  
**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 17<sup>th</sup> day of December, 2008.

  
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Tina E. Watson

State Office of Administrative Hearings and Rules

Dan Planck  
Dan Planck Custom Homes, Inc.  
1569 Hadley Road  
Lapeer, MI 48446

Dan Planck  
Dan Planck Custom Homes, Inc.  
85 Pine View Drive  
Lapeer, MI 48446

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

Tiffany N Daugherty  
Bureau of Commercial Services  
3026 W. Grand Blvd.  
Suite 11-300  
Detroit, MI 48202