

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

Docket No. 2008-1373
Complaint No. 308796

Complainant,

v

CHUGGWATER CONSTRUCTION, INC.
JEFFREY SCOTT FRIEND, QUALIFYING OFFICER
License No. 21-02-163945

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 January 22, 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 \$5,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 308796 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, Michigan 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 make RESTITUTION within 60 days to the Homeowner Construction Lien Recovery Fund in the amount of \$7,900.00 and \$1,610.00 in litigation costs, fees and interest at the statutory rate from September 5, 2007, payable to the Homeowner Construction Lien Recovery Fund and mailed to Department of Energy, Labor & Economic Growth, Final Order Monitoring, P.O. Box 30018, Lansing, MI 48909 within 60 days from the mailing date of the Final Order.

3. The licenses of Respondent and Respondent's Qualifying Officer, and any and all Article 24 licenses held by Respondent or Respondent's Qualifying Officer shall be and hereby are IMMEDIATELY REVOKED. 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. It is the intent of the Board that the fine and restitution be assessed one time in order to satisfy Final Orders issued for complaint Numbers 308796 and 308797. Once the fine and restitution ordered in one of the companion Final Orders is 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

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|---|-------------------|--|
| Bureau of Commercial Services, Petitioner | Docket No. | 2008-1373 |
| v | Agency No. | 308796 |
| Chuggwater Construction, Inc. Jeffrey Scott Friend, Q.O., Respondent | Agency: | Bureau of Commercial Services |
| | Case Type: | Sanction |

and

| | | |
|--|-------------------|--|
| Bureau of Commercial Services, Petitioner | Docket No. | 2008-1374 |
| v | Agency No. | 308797 |
| Jeffrey Scott Friend, Respondent | Agency: | Bureau of Commercial Services |
| <hr/> | Case Type: | Sanction |

**Issued and entered
this 22nd day of January, 2009
by David Cohen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

These matters commenced with the issuing of Formal Complaints (Complaint) dated July 29, 2008 by the Department of Labor and Economic Growth, Bureau of Commercial Services (Petitioner) against Chuggwater Construction, Inc., Jeffrey Scott Friend, Qualifying Officer, and Jeffrey Scott Friend individually (Respondents),

alleging one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101, et seq. and the administrative rules promulgated thereunder. Notices of Hearing (Notices) was issued scheduling contested case hearings at 9:00 a.m. on November 12, 2008 at the State Office of Administrative Hearings & Rules, Cadillac Place, 2nd Floor Annex, Suite 2-700, Detroit, Michigan. The notices were properly sent to Respondent's last known address of record and another address on file for the company and/or qualifying officer. Neither Respondents nor an attorney on behalf of Respondents appeared at the hearing. Administrative Law Judge David M. Cohen presided. Katherine Kakish, Assistant Attorney General, appeared on behalf of Petitioner.

At the onset of the initial proceeding, Attorney Kakish motioned to consolidate both matters solely for hearing purposes, and said Motion was granted.

The hearing proceeded in Respondent's absence pursuant to Section 72 of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 et seq., and a default was granted on behalf of Petitioner pursuant to Section 78 of the APA.

§ 72(1) of the APA provides, 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.

§ 78(2) of the APA provides, 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.

As a result of the default, the factual allegations contained in Petitioner's Formal Complaints were deemed proven.

EXHIBITS

The following eight exhibits were admitted into the record at Petitioner's request:

| <u>Exhibit</u> | <u>Description</u> |
|-----------------------|--|
| 1 | Proof of Address Regarding Respondent Chuggwater Construction Inc. |
| 2 | Proof of Address Regarding Respondent Jeffrey Scott Friend |
| 3 | Proof of Service (Regarding Agency #s 308796 &308797) |
| 4 | Undated Correspondence from Respondent Jeffrey Scott Friend |
| 5 | Claim of Lien filed by Iverson's Lumber Company |
| 6 | Consent Judgment in favor of Iverson Lumber (Oakland Circuit #06-078873) |
| 7 | Photostat of check to Iverson Lumber (\$7,900.00) |
| 8 | Litigation Cost Report (\$1,610.00) |

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Sections 2411(2)(c) and 2411(3) of the Occupational Code, 1980 PA 299; as amended; MCL 339.2411(2)(c), MCL 339.2411(2)(l) and MCL 339.2411(3), which provides in pertinent part:

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:

(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.

Section 2411. (3) The department shall suspend or revoke the license of a person licensed under this article whose failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892; or under 1929 PA 266, MCL 338.901 to 338.917. The department shall not renew a license or issue a new license until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

FINDINGS OF FACT

Based on the record, the following findings of fact are established:

1. Respondent, Chuggwater Construction, Inc., has, at all times relevant to this Complaint, been licensed as a residential builder under Occupational Code, 1980 PA 299 as amended, Article 24; MCL 339.2401-2412, or was seeking renewal of such license, except as to those events which occurred after May 31, 2007, at which time the license lapsed.
2. Respondent, Jeffrey Scott Friend, has, at all times relevant to this Complaint, been licensed as a residential builder under Occupational Code, 1980 PA 299 as amended, Article 24; MCL 339.2401-2412.
3. On October 1, 2007, as a result of Respondents' failure to pay lien claimant, Iverson Lumber Company, payment was made on a consent judgment entered against the Homeowner Construction Lien Recovery Fund (HCLRF) in favor of Iverson Lumber Company in the amount of \$7,900.00 (Petitioner Exhibit 7).
4. The HCLRF incurred litigation costs in the amount of \$1,610.00. (Petitioner Exhibit 8).
5. The facts underlying the payment arose out of and in connection with the performance of Respondents' duties as licensed residential builders and/or residential maintenance and alteration contractors.
6. Respondents, failed to remit money, which belonged to the Nabila Farooq Trust, contrary to MCL 339.2411(2)(c).

7. Respondents, failed to account for money, which belonged to the Nabila Farooq Trust, contrary to MCL 339.2411(2)(c).
8. Respondents failed to satisfy a lien filed on July 7, 2006 by Iverson's Lumber Company in the County of Oakland, Michigan. (Petitioner Exhibit 5).
9. Respondent Jeffrey Scott Friend was a party to the above-referenced acts and omissions and was in a position to ensure compliance with the Occupational Code but failed to do so.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d ed.) Section 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 Respondents. 1990 AACS, R 339.1763. Under § 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 (1987).

Petitioner's Exhibit 4 is an undated letter from Respondent Jeffrey Scott Friend. In the letter, Mr. Friend asks for leniency, indicating that he is without funds to hire a lawyer and intoning his love of being a general contractor. The letter also draws attention to the more than six year relationship that Respondent had with lien holder, Iverson Lumber Company, and faults the homeowners for failing to sign a change order that they had commissioned. The ALJ is not unsympathetic to Respondents situation, but it does not alter the reality of the Oakland County Judgment or HCLRF payout, and the statutory ramifications triggered by these events.

Based upon the facts described herein, Petitioner has proven, by a preponderance of the evidence, that Respondents violated MCL 339.2411(2)(c), MCL 339.2411(2)(l) and MCL 339.2411(3).

Petitioner recommended that restitution be made in the amount of \$9,510.00. As to a civil fine and license revocations, Petitioner deferred to the discretion of the Board.

RECOMMENDATIONS

The Administrative Law Judge makes the following recommendations to the Board:

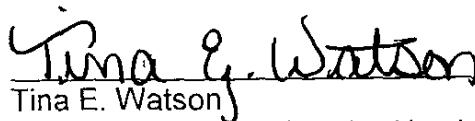
1. Respondent pay a civil fine in an amount to be determined by the Board.
2. Respondents pay restitution to the HCLRF in the amount of \$9,510.00 which includes litigation cost of (\$1,610.00).
3. Respondent's licenses, pursuant to MCL 339.2411(3), should be revoked until the civil fine and restitution have been paid.



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 22nd day of January, 2009.



Tina E. Watson
State Office of Administrative Hearings and Rules

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