

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
BOARD OF RESIDENTIAL BUILDERS AND  
MAINTENANCE & ALTERATION CONTRACTORS

DEPARTMENT OF LABOR &  
ECONOMIC GROWTH,  
BUREAU OF COMMERCIAL SERVICES *ex rel*  
GWENDOLINE IMES

Docket No. 2007-1489  
Complaint No. 301115

Complainant,

v  
AMERICAN HOMESCRAFTORS, INC  
BRENT CHARLES MORTON, QUALIFYING OFFICER (10/1/88 to 2/16/06  
License No. 21-02-000047

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 September 9, 2008;

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 Robert H. Mourning, Administrative Law Judge, dated June 26, 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 \$10,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 301115 must be clearly indicated on the check or money order, and the payment sent to the Department of Labor & Economic Growth, Bureau of Commercial Services, Administrative Services Division, P.O. Box 30018, Lansing, Michigan 48909.

2. Respondent shall make RESTITUTION to Gwendoline Imes by paying in full the Judgment dated January 23, 2006 entered in the 55<sup>th</sup> District Court, Case No. 05-002863-SC-D55 in the amount of \$1,569.37, plus statutory interest by certified check made payable Gwendoline Imes and mailed to 3720 Lott Ave, Holt, MI 48842, within 60 days from the mailing date of the Final Order.

3. The license of Respondent, and any and all Article 24 licenses held by Respondent shall be and hereby CONTINUED REVOCATION. Respondent may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 licenses held by Respondent are in suspended or revoked status. 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.

4. Respondent's failure to comply with each and every condition of this Final Order shall result in CONTINUED REVOCATION of any and all Article 24 licenses held by Respondent. 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. 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.

4. Respondent shall submit in writing to the Michigan Department of Department of Labor & Economic Growth, Bureau of Commercial Services, Administrative Services Division, 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 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 25<sup>th</sup> day of November, 2008.

BY:   
Mark T. Glynn, Chairperson

Date mailed: November 25, 2008

Proof of Compliance should be filed with:

Department of Labor & Economic Growth, Bureau of Commercial Services  
Administrative Services Division  
P.O. Box 30018  
Lansing, MI 48909

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of	Docket No.	2007-1489
Bureau of Commercial Services, Petitioner	Agency No.	301115
v		
American Homecraftors, Inc. Brett Charles Morton, Q.O., Respondent	Agency:	Bureau of Commercial Services
	Case Type:	Sanction

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Issued and entered  
this 21<sup>st</sup> day of June 2008  
by Robert H. Mourning  
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter is commenced with the issuance of a Formal Complaint dated May 14, 2007, charging American Homecraftors, Inc. (Respondent) , with one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101 et seq. On December 5, 2007, a Notice of Hearing was mailed to the parties, scheduling a contested case hearing for February 13, 2008, at 9:00 a.m., in the hearing rooms of the Department of Labor & Economic Growth, State Office of Administrative Hearings and Rules, Ottawa Building, 611 West Ottawa, 2<sup>nd</sup> Floor, Lansing, Michigan. The Notice of Hearing was mailed to Respondent's last known address.

On February 12, 2008, the Bureau of Commercial Services (Petitioner) requested an adjournment. On February 12, 2008, an Order Granting Adjournment was issued, rescheduling the hearing date to April 30, 2008.

On April 30, 2008, Assistant Attorney General Jennifer Fitzgerald appeared on behalf of the Bureau of Commercial Services (Petitioner). Neither Respondent nor an attorney on behalf of Respondent appeared at the hearing.

Assistant Attorney General Fitzgerald requested that Petitioner be allowed to proceed in Respondent's absence pursuant to Section 72 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.272 (APA), and that a default be granted on behalf of Petitioner pursuant to Section 78 of the APA, being MCL 24.278.

Sec. 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.

Sec. 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.

Before taking proofs in this matter, Assistant Attorney General Jennifer Fitzgerald moved to strike "Brett Charles Morton, Qualifying Officer" from the Formal Complaint. This motion was granted.

Further, Petitioner moved for default, which was also granted. As a result of the default, the factual allegations contained in Petitioner's Formal Complaint were deemed proven.

Petitioner offered the following exhibits, which were admitted into evidence:

Exhibit 1: Statement of Complaint, 10/12/05.

Exhibit 2 Contract, 7/5/05.

- Exhibit 3 Copy of Payment for \$1500.00, 7/5/05.  
Exhibit 4 Judgment from Small Claims, 1/23/06.  
Exhibit 5 Amended Formal Complaint, 5/14/07.

### **ISSUES AND APPLICABLE LAW**

The general issue is whether Respondent violated the Code. The specific issues are whether Respondent violated MCL 339.604(b) and MCL 339.2411(2)(a) and (l).

### **FINDINGS OF FACT**

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

1. At all times relevant to this Formal Complaint, Respondent has been licensed by the State of Michigan as a residential builder or maintenance and alteration contractor under the Code.
2. On or about July 5, 2005, Respondent entered into a contract with Gwendoline Imes to perform services regulated by the Code and Ms. Imes issued the Respondent a check in the amount of \$1,500.00.
3. Respondent accepted and/or negotiated the check, but has not performed the services for which payment was accepted.
4. Ms. Imes requested the return of the monies paid to Respondent, but said Respondent has failed or refused to return said monies.
5. Without legal excuse, Respondent has failed to perform the terms of the contract.

6. On January 23, 2006, a Judgment was entered against Respondent in 55<sup>th</sup> Judicial District Court in the amount of \$1,500.00 in damages and \$69.37 in costs.

7. Respondent has failed to satisfy the Judgment.

### **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 30.

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 requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist, 428 Mich. 248 (1987).

Having granted a default in this case, it is concluded that Petitioner has established, by a preponderance of the evidence, that Respondent has violated MCL339.604(b) and MCL 339.2411(2)(a) and (l).

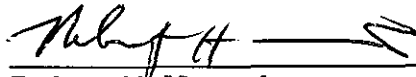
### **Restitution**

Petitioner did not request restitution in this matter. The homeowner received a money judgment in court. Therefore, the Administrative Law Judge believes that the penalty of restitution is not appropriate in this case.

**RECOMMENDATIONS**

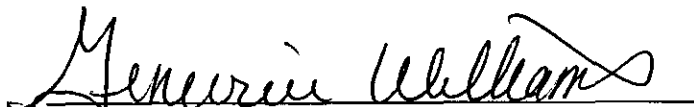
The Administrative Law Judge recommends that the Board impose the following sanctions on Respondent:

1. A civil fine in the amount of \$500.
2. In the event the civil fine is not paid within 60 days following the issuance of the Board's Final Order, then all licenses under the jurisdiction of the Board should be suspended. No new or renewal licenses should be issued until the civil fine has been paid in full.
3. In the event the civil fine has not been paid within 90 days following the issuance of the Board's Final Order, then all licenses under the jurisdiction of the Board should be revoked.

  
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Robert H. Mourning  
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 21<sup>st</sup> day of June, 2008.



Genevieve Williams

State Office of Administrative Hearings and Rules

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