

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*
KATIKINENI KUMAR

Docket No. 2007-953
Complaint No. 303142

Complainant,

v

AUTUMN PARK LLC
JOHN C. SHEKERJIAN, QUALIFYING OFFICER
License No. 21-02-153608

Respondent.

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 Michelle Howie, Administrative Law Judge, dated August 6, 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 \$30,000.00 (total fine) was based on assessing the maximum \$10,000.00 for (3) violations found by the Administrative Law Judge. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 303142 must be clearly indicated on the check or money order, and the payment sent to the Department of Labor & Economic Growth, Administrative Services Division, P.O. Box 30018, Lansing, MI 48909.

2. Respondent shall pay RESTITUTION to Katikineni Kumar by paying in full the Judgment dated November 9, 2005 entered in the 6th Judicial District Court, Case No. 05-067822-CZ plus statutory interest, in the amount of \$280,643.53, certified check made payable to Katikineni Kumar and mailed to Katikineni Kumar, 34501 Fendt St., Farmington Hills, MI 48335, within 60 days from the mailing date of this Final Order.

3. The license of Respondent, 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 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 303142 and 304733. 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.

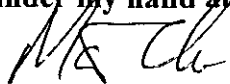
5. Respondent shall submit in writing to the Michigan Department of Department of Labor & Economic Growth, Bureau of Commercial Services, Administrative Services Division, P.O. Box 30018, Lansing, Michigan 48909, proof of compliance with each and every requirement of this Final Order, in a form acceptable 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 25th 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.	2007-953
Bureau of Commercial Services, Petitioner	Agency No.	303142
v	Agency:	Bureau of Commercial Services
Autumn Park LLC John C. Shekerjian, Q.O., Respondent	Case Type:	Sanction

and

Bureau of Commercial Services, Petitioner	Docket No.	2007-955
v	Agency No.	304733
John Richards Development Corp. John C. Shekerjian, Q.O., Respondent	Agency:	Bureau of Commercial Services
	Case Type:	Sanction

**Issued and entered
this 6th day of August, 2008
by Michelle Howie
Administrative Law Judge**

AMENDED HEARING REPORT

This matter was before the undersigned Administrative Law Judge on April 14, 2008 at the State Office of Administrative Hearings & Rules, Cadillac Place, Detroit, Michigan. On May 7, 2008 a Hearing Report was issued which contained omissions and incorrect violations cited in the Conclusions of Law Section. Specifically Formal Complaint No. 303142 alleged violations of MCL 339.2411(2)(a), MCL 339.604(b) and MCL

339.2411(2)(l). However, the Conclusions of Law section of the Hearing Report cited violations of MCL 339.604(c), MCL 339.2411(2)(c) & (l).

In addition, Formal Complaint No. 304733 alleged violations of MCL 339.604(b) and MCL 339.2411(2)(l). However, there is reference throughout the Hearing Report to a violation of MCL 339.2411(2)(a). This violation was not alleged against John Richards Development Corp., Agency No. 304733.

For the purpose of correcting those errors, this Amended Hearing Report will replace the previous report issued for Docket 2007-953; Complaint No. 303142; and Docket 2007-955; Complaint No. 304733.

Further, Petitioner has requested that this ALJ reconsider the amount of restitution recommended in the amount of \$85,245.00 to reflect the judgment of the 6th Circuit Court Judgment against Respondents in the amount of \$280,643.53.

A request for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the ALJ's proposed decision and/or recommendation. This ALJ's findings and recommendations were appropriate and supported by the evidence of record. Therefore, Petitioner's request is hereby **DENIED**. A further explanation for the basis of the recommended restitution amount is included in the Conclusion of Law Section of this Amended Hearing Report.

PROCEDURAL HISTORY

This matter commenced with the filing of a Formal Complaint (Complaint) dated October 10, 2006 against Autumn Park LLC and John Richards Development Corp., John C. Shekerjian is the Qualifying Officer for both companies (Respondents), by the

Department of Labor and Economic Growth, Bureau of Commercial Services (Petitioner) alleging one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101, et seq.

A Notice of Hearing (the Notice) was issued scheduling a contested case hearing at 9:00 a.m. on September 20, 2007 at the State Office of Administrative Hearings and Rules, Cadillac Place, 2nd Floor Annex, Suite 2-700, 3026 W. Grand Blvd., Detroit, Michigan. An Order Granting Adjournment was issued at the request of Petitioner adjourning the hearing until January 10, 2008. A second Order Granting Adjournment was issued at the request of Petitioner adjourning the hearing until April 14, 2008 the same proceeded as scheduled.

The Order with Notice of Hearing was sent to Respondents last known addresses of record. Administrative Law Judge Michelle Howie presided. Kim Breitmeyer, Administrative Law Specialist, appeared on behalf of Petitioner. Neither Respondents nor an attorney on behalf of Respondents appeared at the hearing.

The hearing proceed in Respondents' 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 Complaint were deemed proven. Testimony was taken regarding restitution.

EXHIBITS

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

<u>Exhibit</u>	<u>Description</u>
1	Purchase Agreement (4/14/04)
2	Proof of Deposit Payment (\$85,245)
3	Emails (From Homeowner)
4	Court Default Judgment (11/9/05)
5	Court Order Denying Motion to Set Aside (7/13/06)
6	Court Order fro Collection Remedies (10/13/06)
7	Court Order to Pierce Corporate Veil (11/22/06)

WITNESSES

Katikineni Kumar homeowner testified for Petitioner.

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Sections 604(b) and 2411(2)(a) & (l) of the Code, being MCL 339.604(b) and MCL 339.2411(2)(a) & (l). Those sections and rules state 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:

(b) Practices fraud, deceit, or dishonesty in practicing 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.

(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.

FINDINGS OF FACT

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

1. Autumn Park LLC, John C. Shekerjian, Qualifying Officer (Respondents), has, at times relevant to this Complaint, been licensed as residential builders under the Occupational Code.
2. John Richards Development Corp., John C. Shekerjian, Qualifying Officer (Respondents), has, at all times relevant to this Complaint, been licensed as a residential builder under the Occupational Code.
3. A Complaint was filed against Respondents, conforming to the requirements of § 2411 of the Code, with the Department.
4. On or about February 24, 2004, Autumn Park LLC, John C. Shekerjian, Qualifying Officer, entered into a contract to construct a residential property, a service regulated by the Code, with Katikineni A. and Praveena Kumar. (Exhibit1)
5. Respondents have, without legal excuse, failed to perform the terms of the contract, contrary to MCL 339.2411(2)(a).
6. On or about January 31, 2004 and May 25, 2004, Katikineni Kumar paid Respondents by checks in the amounts of \$55,990.00 and \$29,255.00 respectively.

7. Respondents accepted and/or negotiated the checks but have not performed the services for which payment was accepted.
8. Complainants, the Kumar's, requested return of the monies so paid to Respondent but Respondent has failed and refused to return said monies, thereby engaging in conduct which is fraudulent, deceitful, or dishonest within the meaning of 604(b) of the Code, MCL 339.604(b).
9. On November, 9, 2005, a Default Judgment for damages was entered against Respondent in favor of Mr. Kumar in regards to this matter in the 6th Circuit Court State of Michigan in the amount of \$280, 643.53 plus Interest for damages. (Exhibit 4)
10. Respondent has failed to satisfy the Judgment, contrary to MCL 339.2411(2)(l).
11. There was no evidence on record as to the basis for the 6th Circuit Court's judgment for damages in the amount of \$280,643.53.

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 Respondent. 1990 AACRS, 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). However, Petitioner presented testimonial evidence regarding the amount of restitution due to the homeowners. Based upon the facts described herein, Petitioner has proven, by a preponderance of the evidence, that Respondents, John Richards Development Corp., John C. Shekerjian, Qualifying Officer, violated Sections 604(b) and 2411(2)(l) of the Code; and Respondents, Autumn Park LLC, John C. Shekerjian, Qualifying Officer, violated Sections 604(b), 2411(2)(a) & (l) of the Code.

Petitioner recommended restitution to the homeowner in the amount of the 6th Circuit Court Judgment of (\$280,643.53). Restitution is described as the act of restoration. The basic purpose of restitution is to achieve fairness and to prevent unjust enrichment of a party. In tort law restitution applies to the measure of damages required to restore the plaintiff to the position he or she held prior to the commission of the tort. However, punitive damages are assessed for the purpose of punishing the wrongdoer's conduct, not to provide restitution.

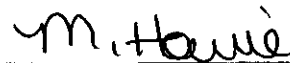
The statutory provisions of MCL 339.604(h) requires restitution to be made by a violator based upon the proofs submitted to and findings made by the ALJ at hearing. The 6th Circuit Court's judgment in the amount of \$280,643.53 was for total damages, which are appropriate and permissible in Civil Court proceedings. However, in these proceedings the ALJ has the authority to recommend remedies that make the complainant whole for violations but not to assess for punitive damages. There was no evidence on the record to establish the basis for the 6th Circuit Courts judgment amount of \$280.643.53 except for the judgment itself which stated that the amount was for damages.

Based on the testimony and evidence on record the homeowners loss \$85,245.00 in deposit money as a result of Respondents' violations. Therefore, the homeowners are entitled to restitution in the amount of their proven losses. Petitioner's recommendation for a larger restitution amount is not supported by the evidence presented at hearing and is out of the jurisdiction of these proceedings.

RECOMMENDATIONS

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

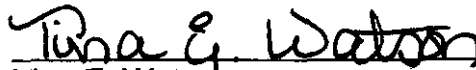
1. Respondents pay a joint civil fine in an amount determined by the Board.
2. Respondents pay joint restitution in the amount of \$85,245.00 which includes the two deposits paid to Respondents. (\$55,990 and \$29,255).
3. If the civil fine and restitution are not paid within 60 days of the Final Order then Revocation of all licenses until the civil fine and restitution is paid.
4. John C. Shekerjian is barred from establishing any new corporations with licenses as Qualifying Officer.



Michelle Howie
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 6th day of August, 2008.



Tina E. Watson

State Office of Administrative Hearings and Rules

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